

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders**

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10 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Section 22 of the Electoral Act 1997 as amended in 2001, which restricts civil society organizations' effective exercise of the right to freedom of association and strongly impacts their fundraising capacity.**

**Since 2001, the amended law has been a major concern for the non-profit organization sector. According to information received, an uneasy modus vivendi has always existed between SIPOC (Statutory body exercising a supervisory role of the Electoral Act) and the concerned sector who has repeatedly criticized the amended law for its vagueness and uncertain wording. It is reported that the approach of SIPOC in its application of the restrictions has significantly intensified in recent years as the wording of the amended law continues to cause legal uncertainty and operational challenges.**

*Section 22*

*(2) For the purposes of this Part –*

*[...]*

*(aa) 'political purposes' means any of the following purposes, namely-*

- (i) (I) to promote or oppose directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or*
- (II) to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or*
- (III) to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or*
- (IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority at a Dáil, Seanad or European election, or referendum; A "campaign conducted with a view to promoting or procuring a particular outcome at a Dáil, Seanad or European election, or referendum" shall be understood to include any activity intended to affect the electoral prospects of a party or a candidate, to enhance or prejudice the standing with the electorate of a party or a candidate, at a Dáil, Seanad or European election, or to promote the acceptance or rejection of a referendum proposal by the*

*electorate in relation to a referendum for which the polling day has been set by the government;*

- (ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;*
- (iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition;*

Section 22 of the Electoral Act defines ‘political purposes’ in a way that can potentially capture almost all advocacy work that civil society organisations in Ireland carry out.

In 2001, Section 22 of the Electoral Act extended the donation restrictions that previously applied only to election candidates and political parties to all contributions given ‘for political purposes’ to any ‘third party’. The donation restrictions include donations in kind, i.e. not just money but also the supply of voluntary services, any reduction in rates for the use of property or supply of services, and donations of property or goods.

The Electoral Act prohibits ‘third parties’ from using any of the following sources of income for ‘political purposes’: (1) donations from international sources, (2) anonymous donations of more than €100, (3) cash donations of more than €200, and (4) donations of more than €2,500 from one source. Within these limitations, donations of more than €200 may only be received from ‘corporate donors’ (including trusts) if the corporate donor is registered on the Standards in Public Office Commission (SIPOC)’s Register of Corporate Donors and provides a statutory declaration with its donation.

If ‘third parties’ wish to use small domestic donations of more than €100 that are permissible for ‘political purposes’, they must (1) provide the name and address of all donors, (2) register with SIPOC and state the nature, purpose and estimated amount of donations and their proposed use for every year, (3) open a separate bank account into which all donations for ‘political purposes’ are lodged and out of which only work for ‘political purposes’ can be funded, and (4) notify SIPOC of all donations exceeding the statutory limits and send the prohibited excess to SIPOC within 14 days, following which SIPOC will share such details with both Houses of the Oireachtas.

We are deeply concerned by Section 22 of the Electoral Act which appears to prohibit any person or organization based in Ireland from accepting international donations. In addition, we are also concerned by the impact of the arduous tracking and reporting requirements requested for small domestic donations. These disproportionate donation restrictions on civil society organizations would limit the ability of such organizations to carry out their legitimate work in contributing to public policy development in Ireland. The curtailment of the ability to influence policy, and particularly to influence policy so that it is reflective of Ireland’s human rights obligations, would undoubtedly have a chilling effect on civil society in Ireland, and the individuals who volunteer for and work within these organizations

We would like to transmit our concerns in relation to the incompatibility of Section 22 of the Electoral Act with article 22 of the International Covenant on Civil and Political Rights (ICCPR), which Ireland ratified on 8 December 1989 as well as with other established international instruments and human rights principles. In particular the Electoral Act's restrictions on funding for civil society activity infringe the right to freedom of association that includes the right to seek, secure and use financial resources, including from international sources.

We recall your Excellency that freedom of association may include a duty on the State to fully facilitate access to resources by civil society actors that face difficulties in participating in public life. In this connection, we recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon States to, inter alia, "recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association" (para. 82 (c)) and that "regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding" (para. 82 (d)). He also urged states "to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities."

The right to freedom of association serves as a channel for the exercise of other civil, cultural, economic, political and social rights and is an essential element of democracy, constituting a valuable indicator of the extent to which States respect the enjoyment of many other human rights.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful to receive your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please indicate whether your Excellency's Government is planning in consultation with relevant stakeholders to take any urgent measures to amend the Act in compliance with international human rights standards and within which timeframe

We reiterate our willingness to assist Ireland in its efforts to strengthen the country's legislative and institutional framework, and thus to guarantee the realization of human rights for all persons in Ireland.

We strongly encourage your Excellency's Government to urgently amend section 22 of the Electoral Act as we consider this section incompatible with the right to Freedom of Association under article 22 of the International Covenant on Civil and Political Rights.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders