

REPORT ON ALLEGED COMMENTS BY GARDA MEMBERS ON MARCH 31ST 2011
RELATING TO TWO FEMALE PROTESTORS ARRESTED AT A "SHELL TO SEA"
DEMONSTRATION AT OR NEAR AUGHOOS, ERRIS, CO MAYO ON MARCH 31ST 2011.

This report is provided to the Minister by the Garda Síochána Ombudsman Commission (GSOC) in accordance with Section 80(5) of the Garda Síochána Act 2005. The report is based on an interim progress report presented to the Commissioners by a GSOC Designated Officer and approved by the Director of Operations.

The Commission wishes to report the following in respect of the alleged comments made by Garda members following the arrest of two women at a "Shell to Sea" demonstration at or near Aughoos, Erris, Co Mayo on March 31st 2011:

1. The investigation has found no evidence of a criminal offence having been committed by any of the gardaí in question.
2. The alleged comments were made during a conversation between five members of the Garda Síochána who were on duty at the time and located in a marked Garda jeep. The five members had been involved in the arrest of the two women. This conversation was captured on a pocket camcorder device that had been seized from one of the women by gardaí during their arrest, placed in a pocket by a Garda member and unknowingly left in "record" mode.
3. It had been alleged that Garda members can be heard joking on the recording about raping the females if they refused to give their name and address, on deporting them from Ireland (as one was believed to be an American Citizen), on enlisting the support of the Garda National Immigration Bureau to harass them and other comments of an inappropriate nature. Whilst the audio on the recording is of poor quality during some sections of this conversation, an approximate transcript of the conversation has been prepared and supports these allegations.
4. At no stage during this incident were either of the women involved threatened personally with being raped, deported or any other form of threat by gardaí. They did not hear the conversation at the time as it took place inside a Garda jeep where the only persons present were the five Members of the Garda Síochána. The two females concerned only became aware of the alleged conversation *after* the event, following their release and on reviewing the content of the camcorder that had been returned to them by gardaí.

5. All members of the Garda Síochána involved in the incident have been formally interviewed by GSOC.
6. One of the women arrested in the incident attended at GSOC for interview. She has lodged a separate complaint with GSOC concerning the conduct of the gardaí. Aspects of this complaint are being investigated.
7. The second woman has failed to cooperate with the GSOC investigation thus far. Her solicitor has advised that she is now employed overseas and will not be returning to Ireland for approximately one year. She has not made a complaint to GSOC about this incident.
8. During the course of the investigation with Garda members, it was suggested that another Garda member may have overheard one of the females using the word "rape" during the course of their arrest and prior to the word being used by any Garda member.
9. This line of enquiry was pursued and a detective garda who was present when the arrests took place has provided GSOC with a statement as follows:

"As the prisoners were being brought to the cars to transport them to the station, one of them kept shouting something like 'she is not safe on her own with ye' or 'she is not safe with ye' and I also heard her shout 'she could be raped by ye'. I am not sure of the exact words used and as I was walking back towards the mini bus, I cannot say which protester said this. Both of them were shouting. I did mention this to some of my colleagues after the controversial tapes were released to the media."
10. The arrests were video recorded at the time, and the footage was reviewed by GSOC in light of the above statement. It has not been possible to corroborate this statement from the recording. High winds have distorted the sound and although the recording has been analysed in a well-equipped, professionally operated studio, it is indistinct.
11. Disciplinary issues may arise in the case of two Garda members, and consideration is being given on how best to take these forward. There is no evidence of any breach of discipline by the other three gardaí.

The Commission also wishes to highlight the following points in respect of the pocket camcorder device referred to in paragraph 2 above.

1. GSOC officers were unable to take possession of this recording device until the 14th April 2011 at 14:40hrs. On handover to GSOC, the device was submitted to the Forensic Science Service for Northern Ireland (FSNI) for forensic retrieval of all files including any

items where an attempt had been made to delete them (as the significance of these deleted files to the GSOC investigation was not known).

2. Footage of the original incident giving rise to the GSOC investigation was recovered from the device along with a number of files that had been deleted and overwritten. Despite extensive efforts by FSNI, these overwritten files were not capable of being retrieved in a viewable format due to the damage caused to the files by the overwriting process. The FSNI has reported that 6 files were deleted from the device between 21:06hrs on the 13th April 2011 and 08:02hrs on the 14th April 2011. It would appear from the FSNI report that the deletion of files from the device took place throughout the night of the 13th – 14th April 2011 with other files being created and overwritten at 02:45hrs, 05:03hrs, 06:41hrs and 07:14hrs. Whilst the FSNI has noted that the clock on the device was 2hrs 34mins slow, it can nonetheless be seen that a sequence of deletions from the device had taken place shortly prior to GSOC taking possession of the device.
3. Regrettably, the level of co-operation provided to the investigation by a number of persons, including some individuals associated through academic links with the two women, has been unsatisfactory.
4. It is the Commission's view that issues arising in relation to obstruction of GSOC officers will require further consideration.