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**Remarks by Dr Mary Murphy
Acting Chair
Irish Human Rights and Equality Commission (designate)
Economic, Social and Cultural Rights: Constitutional Convention
Grand Hotel, Malahide
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Dear Convention members and guests,

Thank you for the invitation, it is my pleasure to speak to you on the issue of the place of economic, social and cultural rights in the Constitution and we welcome that it is being discussed at the Convention.

I speak as acting chair of the new Irish Human Rights and Equality Commission (designate) whose mission is to strengthen efforts to promote and protect human rights and equality in Ireland. Section 2 of the Human Rights Commission Act 2000 defines “human rights” as those rights, liberties and freedoms guaranteed under the Constitution and the international human rights conventions ratified by the State.

A large number of rights, particularly economic, social and cultural rights, are either absent from the text of the Constitution or from the remit of Constitutional recognition and protection and we would like to see the totality of these human rights guaranteed domestically in the Constitution.

Our 1937 Constitution was progressive for its time, eleven years before the 1948 Universal Declaration of Human Rights, in articles 38-45 it promoted a culture of fundamental principles and enumerated rights, it clearly promoted the common good and the idea of a just society. 77 years later as a living document it is entirely consistent

that this original communitarian philosophy be expressed in contemporary terms as justiciable economic and social rights.¹

Through our work in the IHRC and Equality Authority we observe the experience and frustration of the public as they attempt to vindicate their economic and social rights, in 2012 over one third of our communications related to areas like health, housing and social protection. Consistent with Amnesty's recent poll findings, we see the clear gap between what citizens want and the availability of straightforward Irish domestic mechanisms to vindicate these rights. Indeed in my own working life, having worked with various organisations fighting for work, housing and adequate income, I have seen first hand the powerlessness of citizens struggling to deal with poverty and adversity.

Fears that such rights would interfere with separation of powers are unfounded. In fact it can be argued that enumerated rights, democratically determined, limit judicial activism and clearly demarcate government's policy role. In fact, enumerated rights reinforce the separation of power. This is clear in theory and also in practice. Across different jurisdictions the role of the courts has not been to determine policy or resource allocation. Rather courts determine if government decisions are reasonable and proportional and consistent with due process as set out in human rights instruments; that decisions are accountable, transparent, evidence based, consultative, participative and that there has been adequate consideration for alternatives. These human rights principles provide in effect a framework for good governance.

Nor does it mean that one's need equates to a right, be it in the field of health, education or social security. It does mean, however, that decision-makers must account for their decisions and that proportionality and non-discrimination become a centre for decision-making, buttressed by participation and accountability processes. Provided it can be explained why, after a decision-making process that is reasoned, proportional and non-discriminatory, one is not entitled to a particular form of social support, then human rights principles will have been respected.

This is crucial. Economic and Social rights are therefore not a panacea and to propose them is not radical. Crucially justiciable rights do not ignore resource limitations; they give a framework with which to manage resource limitations and to protect the most vulnerable. International experience mentioned earlier shows courts have been even handed and balanced in their approach to justiciable rights; Portugal is a case in point.

¹ Discussion Document on Economic, Social and Cultural Rights, IHRC 2005 at p.99.

It is worth reflecting on this moment of crisis, it reminds us how we are all vulnerable. Economic and social rights are an expression of our empathy towards each other. Stronger economic and social rights might have offered a buffer or shock absorber in the management of fiscal adjustment. The Council of Europe is clear that human rights are not dispensable, even in times of crisis.² Such an approach would not have avoided fiscal adjustment but it would have enabled a framework for greater proportionality, fairness and protection of the vulnerable.

Indeed the role of national and international elites in determining responses to the fiscal and financial crisis has made manifest the relationship between economic and social inequalities and political or power inequalities. This makes us realise the true indivisibility of these rights and the very strong correlation between economic and social inequality and political participation. It is also the case, from Greece to Ireland, that over this crisis, institutions established to promote and protect human rights have also had budgets cut and the human rights and equality infrastructure has been eroded and diminished.

In this sense economic and social rights offer a form of empowerment for the most vulnerable and for all who seek and work for a fair society. We have seen all too clearly how unemployment, emigration, deprivation and homelessness are not only perilous at the level of the individual, family and community but also the damage they pose to democracy. There is a strong correlation between economic and social inequality and political participation and trust in core political institutions have been deeply eroded.

Justiciable economic and social rights offer opportunity to restore faith and trust in political institutions. Too many times Ireland has been found to be in breach of the European Convention in recent significant cases before the European Court of Human Rights and is increasingly critiqued by UN human rights committees and treaty monitoring bodies including for example on the issue of extreme poverty³. Incorporation of our ratified international human rights conventions into domestic law can help us avoid this.

The point is that contestation of justiciable rights in courts are only ever a last option. The real attraction is how a rights approach, democratically determined by the people,

² Council of Europe (2013) *Safeguarding human rights in times of economic crisis* Issue Paper Council of Europe Commissioner for Human Rights.

³ Office of the High Commissioner for Human Rights, 'Report of the Independent Expert on the Question of Human Rights and Extreme Poverty: Mission to Ireland', Geneva, May 2011.
<http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx>

offers the opportunity to rebalance. It offers a framework of good governance, strong democracy and better policy processes that can realise more sustainable outcomes. Human rights principles can guide Ireland towards a real republic of equals, capable of protecting the vulnerable and of making the economy work for society and our common good.

To conclude, this moment is timely. You as convention members have an important democratic opportunity to advance the lessons from the crisis and strengthen our collective capacity to advance social and economic rights and equality. What we are proposing is not radical. You have heard from experts how it can be done in a fashion that reinforces the separation of powers between government and the judiciary. Crucially from the perspective of the Irish Human Rights and Equality Commission (designate) it will empower citizens, protect the most vulnerable and offer a framework that can restore faith in our democratic institutions. We ask you to build on our already well established constitutional tradition and to recommend amending our living constitution by further embedding economic and social rights into our constitutional and democratic framework.

Ends

Contact Mary Murphy, Acting Chair