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Emerging Human Rights Issues

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Mr. Chairperson, Minister of State, colleagues and friends.

May I begin by thanking Professor O'Flaherty for his wide-ranging, comprehensive and succinct analysis of emerging human rights issues, for how he presents the complex links between global, European and Irish human rights discourse in such a way that it becomes *easy listening*, and to acknowledge his own enormous contribution to the realisation of rights at each of these levels.

I too am honoured by the kind invitation to address the conference by way of respondent and I too have approached this task with some sense of intimidation. I have only had the opportunity to take one law course formally, and that is when I studied business law as part of an MBA at Smurfit Business School. It's true to say that in 1996 there were no courses dedicated specifically to business ethics, corporate social responsibility and certainly not business and human rights, so as Professor O'Flaherty has said, Irish practice in this arena has some way to catch up. Yet it is also true to say that the corporate responsibility to protect human rights is progressing, especially through the contributions of organisations like 'Business in the Community', (who have recently sponsored a full week and national conference on Corporate Responsibility, and we welcome their participation at this conference), through discussions now emerging within the Law Society and certainly within the Irish Human Rights Commission's agenda, most recently through our participation in the 10th International Conference of National Human Rights Institutions on the theme of Business and Human Rights, where we along with other delegates adopted the Edinburgh Declaration which addresses the human rights responsibilities of both States and Business.

I offer my brief remarks this morning from three standpoints: (1) as a member of the Irish Human Rights Commission I wish to outline some recent questions we have raised regarding the interplay of business and human rights; (2) as a trained ethicist, I would like to highlight some broad questions that I believe ought to be part of the backdrop of our deliberations at today's conference, and indeed all genuine deliberations about human rights; and (3) informed by an ethical stance, my own life has been marked by working towards the realisation of human rights in a variety of issues, one of which I will address specifically this morning. Let me begin with an outline of the ethical backdrop.

In his recent book on 'The Idea of Justice' Amartya Sen, Nobel Laureate, philosopher and economist, asks the question: "What exactly are human rights? Are there, as is often asked, really such things . . . ? The 'existence' of human rights is obviously not like the existence of, say, Big Ben in the middle of London. Proclamations of human rights, even though stated in the form of recognising the *existence* of things that are called human rights, are really strong ethical pronouncements as to what *should* be done."¹

What should be done? Now, more than ever before within the context of our very vulnerable Irish economy and society, it is critical that lawyers, civil society actors, politicians, citizens, residents and national human rights institutions come to the pressing human rights issues with a sense of ethical imperative, ethical urgency. Sen argues that 'there is an implicit assumption in making pronouncements on human rights that the underlying ethical claims will survive open and informed scrutiny' and that we should come to deliberations such as those we are having today with 'open impartiality' so that we can take part in an interactive process of critical scrutiny, open to arguments coming from others and sensitive to the relevant information that can be obtained.² Furthermore, feminist ethicists such as Carol Gilligan, Alison Jagger and Nancy Fraser remind us that we must not only bring a gender analysis to our critical scrutiny—that is, to consistently raise the question as to how the issues of human rights impact women and men's lives differently (and this is particularly critical, say, with regard to the issue of immigration and human trafficking), but that we extend this analysis to incorporate how different aspects of one's identity and social position may increase or compound the risks of human rights violations or vulnerability.³

¹ Boston: The Belknap Press of Harvard University, 2009, p. 357.

² *Ibid.*, p. 358.

³ Carol Gilligan, *In A Different Voice* (Boston: Harvard University Press, 1982); Alison Jagger, *Just Methods: An Interdisciplinary Feminist Reader* (Boulder, CO: Paradigm Press, 2007); and Nancy Fraser, *Scales of Justice: Re-Imagining Political Space in a Globalizing World* (New York: Columbia University Press, 2008).

In this regard I concur with Professor O’Flaherty’s suggestion that we keep in mind the intersection of human rights vulnerability. I think it is equally important that we keep in mind the intersection of human rights power, namely, that those of us with certain dimensions of social power, be it wealth, gender, ability or sexual identity majority status, hold the ethical responsibility to listen deeply and sensitively to those with less social power. In my own life I have found this to be exceptionally challenging, especially though not only with regard class, as it calls me to be consistently self-critical, to become aware of how certain dimensions of my own social conditioning have led me to a sense of superiority that surely must be false, if we all hold equal moral worth in both our differences as well as in our common essence as human beings. Indeed, as Professor O’Flaherty has intimated with regard to reports of assaults on trans-gendered and cross-dressing people, we are all challenged to uncover and purge ourselves of prejudice and fixed views that may be derived from ethical or moral positions. However, here I wish to add, ethical or moral positions that go unexamined, that are not subject to the critical scrutiny that Sen and others propose, and to replace these with ethical claims that withstand rigorous analysis and that are rooted in the moral virtues of empathy, integrity and truth-telling.

Speaking now in my capacity as a Commissioner, the Commission is raising the question: Why is business and human rights important? Lack of oversight in a range of different contexts has been a clear feature of the global recession and also clearly has been a problem in Ireland.

In terms of human rights classically it has been states – through their Governments - that have the primary obligation to secure universal enjoyment of human rights and this includes an obligation to protect all individuals from the harmful actions of others, including companies.

However we know that across the globe frequently governments fail to regulate the human rights impact of business or to ensure access to justice for victims of human rights abuses involving business. We note that a recent survey of Irish CEO’s, carried out on behalf of ‘Business in the Community,’ indicates that 92% of CEO’s believe that the Government should have its own Corporate Responsibility strategy in place.⁴

⁴ www.bitc.ie

At the same time, we think it is important to ask: Does the Irish government properly regulate Irish businesses to ensure they cannot violate human rights in this or other States? Does the Government give adequate guidance to Irish businesses to allow them to understand and support the human rights obligations of Ireland? If not, who should provide this guidance? Individual Government departments or the National Human Rights Institutions or both?

Apart from the importance of vindicating rights that the state has signed up to it may well be that in the future effective and judicious regulation may enhance the attractiveness of a country's investment environment in a way that it might not have in the past. In short there might potentially be an economic benefit to states being able to show that they have regulated the area of business and human rights. It is in any event 'the right thing to do' as our President said at a conference in Trinity a couple of months ago.

Now I come to my third standpoint: that of realising human rights with and for LGBT people, and may I begin by adding my voice of acknowledgment and deep appreciation for Dr Lydia Foy, a champion of human rights in our midst. Dr Foy thank you, especially for your immense inspiration and perseverance.

Eleven years ago the Equality Authority established an advisory group on lesbian, gay and bisexual issues, though there was a public silence on the issue of rights and protections for same-sex couples. If one were to review the *Irish Times* archives today, one would discover that the first time there is any mention of these rights was December 2002 when the editorial commented on the fact that the British Government intended to extend to gay and lesbian couples the property and inheritance rights afforded to married couples and that the Equality Authority's group had endorsed similar changes in Irish law. Over the next two years, one could count on a single hand the number of articles published in that same newspaper on this topic. In late 2004, my life partner Ann Louise Gilligan and I sought permission to take a case for the recognition of our Canadian marriage, and subsequent to that a national, public conversation began about the human rights of same-sex couples. Due to the extraordinary advocacy of organisations such as GLEN and Marriage Equality, and the subsequent political consensus that emerged, the Irish Government passed the Civil Partnership Act in 2010. This was a moment of substantive progress, and now we have law that provides us with a solid foundation to complete the full realisation of human rights and fundamental freedoms for same-sex couples and their families.

Our public conversation, then, turns to the question: Where to from now?

For the recognition of the dignity and freedom of lesbian and gay people, the next set of deliberations ought to aim towards the opening up of the social institution of civil marriage for same-sex couples. While it has been stated that a political consensus has emerged that the Irish state requires a constitutional referendum for this aim to be realised, *to date there has been no rigorous legal public analysis to substantiate this claim*. Such a claim, rather, pre-empts the much-needed public dialogue and debate on this human rights issue. In a proper democracy I submit that we should seek to open up the dialogue rather than to shut it down, to examine if a referendum is required—or if equality can be achieved by legislation—through legal debate that is grounded in critically examined ethical principles and presumptions.

In tandem with this informed and sophisticated dialogue on the opening up of marriage to all citizens in this state, we also ought to address the rights of children. Because it is only the institution of marriage that receives full constitutional protections and the recognition of family, I submit that our deliberations ought to be focused on what laws require changing so that children of lesbian and gay married couples will hold the same rights as children of heterosexual married couples. It seems to me that this is the most adequate way to pursue a child-centred perspective on these issues.

If ethics is about ‘practicing the good life’ it undoubtedly behoves every state living in this period of history to discern carefully what legal choices will best enhance the well-being of adults and children. Today twelve countries on four separate continents have opened the institution of marriage to same sex couples with protections for their children and there has been no evidence or demonstration of harm against the institution of marriage, the adults or the children, indeed quite the contrary. It will be important to keep this evidence of ‘practicing the good life’ in mind as we debate these issues here.

Thank you.