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Minister of State for Equality, Integration & Human Rights,
8th Annual Human Rights Conference
"Emerging Human Rights Issues"
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Ladies and Gentlemen, distinguished speakers and guests, I am delighted to be here with you today to formally open the 8th Annual Human Rights Conference. I would like to thank both the Irish Human Rights Commission and the Law Society of Ireland for the opportunity to address you on the topic of *Emerging Human Rights Issues*. There are many emerging rights issues and this morning I will touch on a few areas which I understand are the focus of your discussions.

Since my appointment as Minister I have taken a forward looking approach. For this reason I initiated a process of reviewing the workings of the Equality Authority, the Equality Tribunal and the Irish Human Rights Commission. The first step in the review process is near completion: scoping papers conducted by outside experts on universal issues concerning equality and human rights bodies, and how policies in these areas might be linked with those of social inclusion and combating poverty. These scoping papers will be completed in the next two weeks and will define the parameters of the review I intend undertaking in the New Year.

This review takes place beneath a backdrop of a newly configured Department of Community, Equality and Gaeltacht Affairs. The new departmental structure has created new possibilities for the Government to work in a co-ordinated manner on issues of equality, human rights and social inclusion.

Human rights policy, of course, is not just a matter for my Department but cuts across all areas of Government policy. An example of this, which I know will be discussed today, is the linking of environmental protection with human rights. An example of this is the UNECE Aarhus Convention, a ground-breaking initiative designed to strengthen environmental rights for citizens, something which I as a Green Party elected representative am very supportive of. The Convention seeks to ensure that members of the public and their representative organisations can play a full and active role in maintaining and enhancing our environment.

It has three pillars:

- access to environmental information;
- public participation in the drawing up of plans and programmes with implications for the environment;
- and access to justice.

At its core, it links environmental and human rights, acknowledging that we owe an obligation to future generations to bestow on them a clean and protected environment. It goes to the heart of the relationship between people and governments, and is about government accountability, transparency and responsiveness.

We now have the legislative framework giving effect to the first pillar on access to environmental information through regulations transposing an EU Directive. These are the Access to Information on the Environment Regulations 2007, which came into

effect in 2007. In concept at least, these regulations are similar to the Freedom of Information Acts, and any person who wants environmental information is perfectly entitled to seek access to it under either system. Unlike the previous regulations on access to environmental information, the present system provides for a very wide definition of environmental information and for a right of appeal. The right of appeal is to the Commissioner for Environmental Information, who is the same person as the Information Commissioner. This has added to the effectiveness of the regulations. More generally, I encourage all public bodies to engage pro-actively with the system, and to take to heart their responsibilities to make environmental information available on their web-sites and to give effect to the other measures required by the regulations.

Ireland is also now compliant with the public participation requirements of the Convention and the related EU Directive.

Unfortunately Ireland has yet to ratify the third pillar of the Convention, on access to environmental justice, but I hope we will do so in the near future. Much progress has been made to date, with many measures already taken at domestic level. For example, the planning system is a participative process with the public enjoying a range of entitlements in respect of access to information, participating in the decision-making and access to a well established and accessible planning appeals process.

My colleague, Minister for the Environment, John Gormley, is working closely with the Attorney General's office to finalise implementation of that third pillar of the Convention, to ensure that access to environmental justice is exactly that: accessible to all. When this work has been completed, the Aarhus Convention will be ratified by the State.

Another area of environmental policy where the importance of human rights arises is in our climate change policy. Climate Change – arguably the greatest moral imperative of our time – is a significant human rights issue. As former UN Commissioner Mary Robinson and recent founder of a Climate Justice Foundation has stated in the past: the negative impacts on people of changes in climate do not always involve horrific headlines and images of hurricanes, floods or refugee camps. It is more likely to affect people in cumulative and unspectacular ways. The poor and vulnerable are already and will continue to suffer disproportionately. Carbon emissions from industrialised countries have human and environmental consequences. Climate change is already affecting the fulfillment of human rights, and, as greenhouse gases continue to be emitted the basic rights of millions of the world's poor – to life, security, food, health, shelter and water – will continue to be violated.

Though our Constitution has always been the primary source of a number of fundamental rights, the enactment of the European Convention on Human Rights Act 2003 underpins the status of human rights in Ireland.

The impact of the Convention in migration matters, including protection matters, is profound. The State's immigration processes are subjected regularly to review wherein the emerging jurisprudence of the European Court of Human Rights is considered.

In the immigration context, the principle of *non-refoulement* at Article 3 of the Convention, under which a person cannot be subjected to torture or to inhuman or

degrading treatment or punishment, provides a fundamental safeguard for persons whose removal from the State is in contemplation. This has long been an overarching principle of our laws and immigration system and was put on a statutory basis in the Refugee Act, 1996. Before the European Court cases such as *Soering v United Kingdom*, *Chahal v United Kingdom*, *D v United Kingdom* and *Saadi v Italy* provide evidence of the extensive reach of the *non-refoulement* principle.

The principles of Article 5(4) of the Convention, which requires that every person detained must be able to challenge the lawfulness of his or her detention, also influence our immigration laws as, of course, does Article 40(4) of the Irish Constitution.

The protection of private and family life provided by Article 8 of the Convention has featured prominently in the jurisprudence of the Irish courts and the European Court of Human Rights. Of course, these protections are not absolute and, in the immigration context, give rise to a tension between the State's interest in managing migration and claims under the Article. For example, in the *Bode* case, the Supreme Court held that Article 8 had no application to the Minister's consideration of an application under the IBC/05 Scheme. Article 8 was also considered recently by the European Court of Human Rights in the context of the right to privacy in *S & Marper v United Kingdom* - a case concerning the retention of biometric and DNA information.

The Immigration, Residence and Protection Bill 2010, currently before the Dáil, provides a legislative framework for the future management of inward migration to Ireland, by way of a comprehensive overhaul of the State's immigration and protection laws dating back to the Aliens Act of 1935. It has been developed in close consultation with the Office of the Attorney General with particular emphasis on ensuring that the various processes in the Bill comply with the State's international obligations under the ECHR.

The passing of Civil Partnerships legislation is also a landmark in terms of Ireland becoming a more open and inclusive society. For too long a basic human right was denied to one section of the community because of who they loved. Our laws will validate and protect the relationships of those who have until now been invisible in the eyes of the State.

I also welcome the establishment by the Minister of Social Protection of the Gender Recognition Advisory Group. This will advise the Minister on the legislation required to provide for legal recognition of the acquired gender of transsexuals. It will also examine the issue of the establishment of a gender recognition register and granting the entitlement to marry in a legally recognised reassigned gender. These are important issues and the work of this group is complex but necessary to put in place a process which fully respect the rights and dignity of the applicant and command the respect and trust of all in terms of its integrity and fairness.

I understand that another topic you will discuss today is Data Protection, which is in many ways the classic example of a balancing of rights: the right to security balanced with the right to privacy. Citizens are rightly concerned about issues such as identity theft and security of private data but are re-assured when technology can be used to convict criminals or prevent acts of terrorism.

Data Protection origins can be traced back to the late 1960s when the development of computer technologies and information systems capable of storing and processing large amounts of information - including personal information relating to individuals - first gave rise to fears that these new technologies and systems could facilitate misuse of such data and threaten privacy and other personal rights. These fears were intensified by the enormous storage capacity of automated systems as well as the ease and speed with which stored data could be processed - and used for purposes for which they were never intended - without the knowledge or agreement of the individuals to whom they related. There were concerns also that personal data held in such systems could be stolen or improperly copied or distorted.

In the mid-1970s, work commenced within the Council of Europe with the twin aim of developing common standards in order to promote good data protection practice, and ensuring that trans-border flows of data were not hindered by the existence of different standards in neighbouring countries.

At EU level, Directive 95/46/EC was adopted in 1995. This Directive builds on the work of the Council of Europe but is a more extensive and detailed instrument.

The Data Protection Acts 1988 and 2003 transposed both the Directive and Council of Europe Convention into Irish law.

The Data Protection Directive does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community Law, such as police and judicial cooperation in criminal matters. There are, however, a number of separate instruments which deal with this issue to some extent.

Article 16 of the Lisbon Treaty provides a new legal basis for data protection law. In particular, it allows the EU to have a single legal instrument for regulating data protection, including in the areas of police cooperation and judicial cooperation in criminal matters. Article 39 of the TEU makes special provision for data protection in the area of Common Foreign and Security Policy. This is a policy area which I am sure will be the focus of much debate in the years ahead.

In conclusion ladies and gentlemen I want to wish you all well with today. This conference takes place at an opportune time: at a time of departmental review of the State's human rights infrastructure and the Government's preparation for Ireland's Universal Periodic Review next year. This conference will assist us as we take stock of where we are and chart where we are going on our journey to making Ireland a beacon of human rights protection for others.
