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Commission
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I am delighted to welcome the Human Rights Commission to Galway to NUI Galway, for this public Consultation Meeting. This consultation is about the advancement of social, economic and cultural rights, an area of human rights only occasionally discussed in rights terms. I am grateful for being asked to present a response to this historical and valuable Strategic Plan 2003-2006.

Economic, social and cultural rights

Let me begin by praising the many dedicated, committed and hard working people and organisations in Ireland who are pursuing the development of economic, social and cultural rights. These often unsung heroes are occasionally mentioned in the media, but hardly ever seek or are granted the limelight. These people and organisations are striving to place on an established footing to ensure that the inherent dignity of each human being is upheld. They are pursuing the advancement of social economic and cultural rights in Ireland.

However, I think it is important at an occasion such as this to set out clearly what we mean when we refer to advancing social, economic and cultural rights. We must understand that this activity is already an everyday part of Irish life, and not, as some would have us believe, a foreign or fearful concept. Here are some of these economic, social and cultural rights which we seek to advance:

- Ensuring the equal rights of women and men to the full enjoyment of rights
- Promoting rights of opportunity to gain a living by work, freely chosen, including technical and vocational guidance and training
- Development of policies to achieve steady economic, social and cultural development under conditions safeguarding fundamental freedoms
- Developing rights of protection and assistance to the family, as the fundamental group unit of society
- Ensuring protection of mothers before and after childbirth
- Protection of children and young persons from exploitation
- Promoting the right of all to enjoy the highest attainable standard of physical and mental health
- Promoting the rights of everyone to education, directed to the full development of the human personality and the sense of dignity, including a right to free primary education for all and equal access to higher education

- Pursuing rights to enjoy just and favourable conditions of work – fair wages, equal wages for equal work, a decent standard of living for workers and their families
- Pursuing safe and healthy working conditions, equal opportunities in promotion, rest, leisure and reasonable working hours
- Ensuring respect for the liberty of parents to choose the type of school for their children (which conform to the minimum standards established) in conformity with their own convictions
- Rights to form and join trade unions and associated rights
- Advancing rights to social security and pensions
- Advancing rights to an adequate standard of living, including adequate clothing, food, shelter and housing, and the continuous improvement of living conditions as resources increase
- Advancing the human right across the world to be free from hunger for all human beings and promoting international measures to ensure that this is achieved
- Developing the rights of all to take part in cultural life, enjoying the benefits of scientific progress, and to benefit from the protection of moral and material interests from scientific, literary or artistic work which they have produced
- Ensuring that the State respects freedom of scientific research and creative activity

All of these have been extracted from the *International Convention on Economic, Social and Cultural Rights (ICESCR)*,¹ copies of which is available here.

There are a great number of people and organisations pursuing these objectives in Ireland today. We all know people working to advance all these areas of Irish life. However, many do not actually realize that what they are developing is enshrined in international human rights and that our Government has already made a commitment to developing these rights in Ireland.

International and comparative human rights approaches can act to provide a language for excluded and discriminated individuals, groups and NGOs who wish to challenge existing policy measures. For those groups who are excluded from political power and whose rights may be ignored or denied, comparisons with international human rights norms provide valuable comparisons. The development of a conceptual framework places on the political agenda a new paradigm to assess the basis of State policies, which is not just confined to the old dichotomies of private versus public housing provision.

At an everyday level we can see the relevance of the human rights norms for Ireland. Among tenants of social housing, for instance, there are regular demands being expressed for such rights as adequate and affordable housing, for quiet enjoyment, for crime free neighbourhoods, for opportunities for personal and community development, for adequate facilities for young people and people with disabilities, and for dignified treatment. Indeed, the Irish Times last year relayed a report from a Local Authority estate in Dublin where young people were actually becoming homeless as a

¹ UN Doc. A/6316 (1966) *International Covenant on Economic, Social and Cultural Rights*. UNGA Resolution 2200A (XXI) Entered into force 3 January 1976. (AVAILABLE HERE)

result of overcrowding and stress arising from poor housing conditions.² These Local Authority tenants had prepared a wish list relating to their housing rights. They wanted to feel safe, to be crime free, drug free and feel “happy and proud.” The wish list asked for a park, youth activities, a football pitch, a swimming pool, affordable childminding facilities, a chemist, phone boxes, a library and activities for children.³ Perhaps unaware to this group, all these rights have already been set out within the UN Committee on Economic, Social and Cultural Rights General Comments 4 and 7, on the extent of right to adequate housing.

The Human Rights Commission can provide valuable assistance to these people and organisations by translating the language and norms of these internationally and nationally accepted rights into the context of their work.

This involves creating opportunities and information for the large numbers of people and groups through accessible means where they can interpret their own work and participate in the development of economic, social and cultural rights in Ireland.

As Eleanor Roosevelt explained, when asked where human rights begin:

In small places close to home – so close and so small that they cannot be seen on any map of the world. Yet they are the individual person; the neighbourhood he or she lives in; the school or college he or she attends; the factory, farm, or office where he or she works. Such are the places where every man, woman and child seeks justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Implementing economic, social and cultural rights

My second point relates to advancing and implementing these rights. States such as Ireland who have accepted, signed and ratified these economic, social and cultural rights have an obligation to implement them, and indeed, make regular reports to UN bodies on how they are doing so. Ireland has made two such reports to date.

Two important principles for the implementation of economic, social and cultural rights have been established. These are the **core minimum obligations** of States, and the obligations in relation to the **progressive realization** of rights common to all States. While the first is mandatory, the issue of progressive realization has created some “wriggle room” for States to argue in terms of the complexities of administrative measures and expenditure levels, absence of clear indicators and benchmarks, use of aggregated data in reports which hide patterns of deprivation and discrimination etc. to avoid censure. The acceptance of the principle of progressive realization involves a commitment to non-regression of economic, social and cultural rights at a minimum, (especially in times of recession) and at its best an advancement of the economic, social and cultural rights for all.

² *Irish Times* 28th May 2002. p. 11.

³ *Ibid.*

Of course, progressive realization of rights builds on the **core minimum obligations** of States to respect, protect and fulfil the economic, social and cultural rights, and this obligation is unavoidable following ratification, even to the extent that lack of resources is not acceptable with the assistance of the international community being made available on the request of the State concerned.

In Ireland, the State has not yet accepted that economic, social and cultural rights are legally enforceable except in one or two areas, and the State has created complex administrative and discretionary measures in a whole range of areas, where, even though large-scale expenditure takes place, a human rights perspective is avoided.

It is significant to note that the campaigns for resources by groups in Ireland, while often about discrimination in general, are becoming increasingly concentrated in trying to establish the extent of the “core minimum obligations” of the Irish State. These campaigns and protests have often been around the obligations of the Irish State in terms of primary health care (often involving access to local services, reduced waiting times for treatment), basic accommodation for Travellers and people without homes, access to primary education, support and accommodation services for people with disabilities, minimum levels of income and services for the unemployed, older people and people in need, accommodation and health care responsibilities in relation to older people, enforcement of regulations in relation to tenancies, access to basic legal services and others. While all of these relate to the human rights principle of the “core minimum obligations” of the State, they are rarely articulated as such, and thus are not interpreted by these activists or others as campaigns for the development of human rights.

Indeed, the language of greater participation in Government policy making, social inclusion, extensive consultation of the planning of services, and more recently the policy of interpreting economic, social and cultural rights rights in terms of customer charters for Government service users,⁴ have all operated to dilute the message that these demands are, in fact, fundamentally about economic, social and cultural rights.⁵

The Limburg Principles⁶ were formulated in 1986 by a meeting of authoritative experts, concerning the interpretation, scope and nature of the States Parties obligations under the ICESCR. A key factor at the time was identified as the “vagueness of many of the rights as formulated by the Covenant and the resulting lack of clarity as to their normative implications.”

The concept of a **minimum core obligation** on States is central to the implementation and integrity of the Covenant, and is set out in General Comment No. 3. *The Nature of States Parties Obligations*. Each State Party, notwithstanding its level of economic

⁴ See Government of Ireland, (July 2002) *National Action Plan Against Poverty and Social Exclusion (NAPinl)* Draft Second Plan - 2003/05, where the EU obligation to address access to resources, rights, goods and services for all was interpreted as “the development of more formal expressions of entitlements across the range of public services and to setting standards and guidelines regarding the standard of service delivery which can be expected by the customer, taking into account the Council of Europe recommendations on access to social rights”.

⁵ See recent ESRI and NESC Reports in this area.

⁶ UN Doc. E/CN.4/1987/19. “The Limburg Principles on the Implementation of the ICESCR.” 16 HRQ 37-40 (1987).

development, has a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in this instrument. According to the UNCESCR, a State Party in which any significant number of individuals is deprived of basic shelter and housing is, prima facie, failing to perform its obligations under the Covenant.⁷

The nature of State's domestic obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) are set out in Article 2.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Limburg Principles clarified the meaning of some of the terms in the Covenant, such as: **“to take steps...by all appropriate means including particularly the adoption of legislation;”** **“to achieve progressively the full realisation of the rights;”** **“to the maximum of its available resources”**.

The term **“to undertake steps”** has a significance for the immediacy of the obligations under the Covenant. The Covenant imposes an immediate and readily identifiable obligation on States Parties.⁸ Steps must be undertaken by States directly upon ratification of the Covenant, and this “represents a clear legal undertaking.”⁹ One of the first of these appropriate steps should be for the State Party to undertake a comprehensive review of all relevant legislation with a view to making national laws fully compatible with international legal obligations.¹⁰

The term **“to the maximum of its available resources”** has been interpreted to mean that both the resources within a State, and those provided by other States or the international community, must be utilized for the fulfilment of each of the rights found in the Covenant.¹¹ The term has been interpreted to include money, natural resources, human resources, technology and information.¹² Even when “available resources” are demonstrably inadequate, States Parties must still strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. The drafters of the section originally were inclined to address this obligation to the resources of the country, and not just to budgetary appropriations.¹³ Significantly, this

⁷ UN Doc. E/C.12/1990/8.CESCR. *General Comment No. 3. The Nature of States Parties Reporting Obligations.*

⁸ Alston & Quinn, “The Nature and Scope of States Parties Obligations under ICESCR,” 9 *HRQ* 156-229 (1987) at p.160.

⁹ *Ibid.*, p.166.

¹⁰ *Ibid.*

¹¹ UN Doc. E/C.12/1991/4. UNCESCR *General Comment No. 4. The Human Right to Adequate Housing.* Geneva.

¹² Robertson, “Measuring State Compliance with the Obligation to Devote the Maximum Resources to Realizing Economic, Social and Cultural Rights,” 16 *HRQ* 693-714 (1994).

¹³ Alston & Quinn, *op. cit.*, p. 178.

principle requires an equitable and effective use of and access to the resources available. Although the alleged lack of resources is often used to justify non-fulfilment of certain rights, the UNCESCR has emphasized that even in times of severe economic contraction and the undertaking of measures of structural adjustment within a State, vulnerable members of society can, and indeed, must be protected by the adoption of relatively low-cost targeted programmes.

If a State claims that it is unable to meet even its minimum obligations because of a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal to satisfy, as a matter of priority, those minimum obligations. However, lack of resources can never be used to justify failure of a State to fulfil its obligation to monitor non-enjoyment of the rights set out in the Covenant. In essence, the obligation of States is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to adequate housing for every individual in the shortest possible time, using the maximum available resources. The discretion of a State here is not unlimited, but:

...while the Covenant itself is devoid of specific allocational benchmarks, there is presumably a process requirement by which States might be requested to show that adequate consideration has been given to the possible resources available to satisfy each of the Covenant's requirements.¹⁴

The Progress Report of the UN Special Rapporteur on Housing in 1993¹⁵ pointed out that the definition of "**maximum of available resources:**"

...represents perhaps the core issue in the perception and practice of States vis-à-vis economic, social and cultural rights. In practice, States continue to exhibit an overarching tendency to rely on this principle in seeking to rationalize failures to ensure these rights. At the most rudimentary level, this phrase means that both the resources within a State and those provided by other States or the international community must be utilized towards the fulfilment of each of the rights found in the Covenant.

The term "**to achieve progressively,**"¹⁶ imposes an obligation on States to move as quickly and effectively as possible towards the goal of realizing fully each of the rights contained in the Covenant, rather than any indefinite postponement. The concept of progressive achievement is "in many ways the linchpin of the Covenant."¹⁷ The UN Special Rapporteur has pointed out that;¹⁸

This principle imposes an obligation on States to move as expeditiously and effectively as possible towards the goal of realizing fully each of the rights found in the Covenant. Put simply, States cannot defer indefinitely efforts to ensure the full realization of the Covenant. Not all rights under this text, however, require progressive realization. The adoption of legislation relating to the non-discrimination clauses of the Covenant and monitoring of the status of realization of the rights in question must occur immediately following ratification. This obligation must be read

¹⁴ *Ibid.*, p. 180.

¹⁵ UN Doc. E/CN.4/Sub.2/1993/15. paras. 54-57.

¹⁶ UN Doc. E/C.12/1771/4. UNCESCR. *General Comment No. 4. The Human Right to Adequate Housing*. Geneva.

¹⁷ Alston & Quinn, *op. cit.*, p. 172.

¹⁸ UN Doc. E/CN.4/Sub.2/1993/15. paras. 58-60.

in the light of Article 11.1 of the Covenant, in particular, the phrases "an adequate standard of living" and the "continuous improvement of living conditions."

Conversely, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources. The obligation of progressive realization, moreover, exists independently of the increase in resources. Above all, it requires effective use of resources available, both from domestic and external sources.

The term "**by all appropriate means, including particularly the adoption of legislative measures,**" makes it clear that legal measures are not mandatory within States Parties to incorporate the terms of the Covenant. However, the view that legislation alone is sufficient to comply with the Covenant is refuted by the suggestions contained in the guidelines governing the form and content of States reports under the Covenant.¹⁹ The guidelines clearly indicate that States should provide details not only of relevant laws, but also of relevant agreements, court decisions, policies, programs, techniques, measures.²⁰

It should be noted, however, that Article 2(1) would require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.²¹

The term "**by all appropriate means**" has been broadly interpreted. In addition to legislative measures, administrative, judicial, economic, social and educational steps must also be taken. In general terms, Governments must also take steps which are deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. States Parties are also obliged to develop policies and set priorities consistent with the Covenant, based upon the prevailing status of the rights in question. They are also required to evaluate the progress of such measures and to provide effective legal or other remedies for violations.²²

Violations of economic social and cultural rights

So far, we have been working on the assumption that all States are acting in good faith to fulfil their internationally accepted obligations in this area, and these were clearly set out in the Limburg Principles. However, where States chose to violate these rights, then there must be some sanction available. People of all countries are entitled to the benefits of these internationally accepted rights.

The Maastricht Guidelines²³ drawn up in 1997 by human rights experts elaborated on the Limburg Principle in terms of appropriate responses and remedies for violations of economic, social and cultural rights.

¹⁹ UN Doc. E/1991/23. *General Comment No. 3. The nature of States Parties obligations.*

²⁰ Alston & Quinn, *op. cit.*, p. 167.

²¹ *Ibid.*

²² UN Doc. E/C.12/1771/4. UNCESCR *General Comment No. 4. The Human Right to Adequate Housing.* Geneva.

²³ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. 20 *Human Rights Quarterly* 691-704. (1998)

These guidelines point out that failure to provide essential primary care for those in need can amount to a violation. Equally, where a significant number of people are deprived of essential food, essential primary health care, shelter or housing, or a basic education there is a violation.

Indeed, a violation can take place where a State pursues by action or omission a policy or practice which deliberately contravenes or ignores the obligation of the ICESCR .

Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include, the active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination or the formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed. Similarly, the calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant can amount to a violation.

Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include the failure to take appropriate steps as required under the Covenant or the failure to utilize the maximum of available resources towards the full realization of the Covenant.

The State is responsible for violations within its territory and must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

There must be access to remedies, adequate reparation and no official sanctioning of violations.

Of course, in Ireland, ***we already have justiciable measures in relation to sanctions against violations of economic, social and cultural rights.*** There are criminal sanctions for breaches of health and safety legislation and standards. Equally, and more simply, The National Minimum Wage Act 2000 allows for imprisonment of up to three years for failure to honour this economic and social right.

Conclusion

1. Advancing economic, social and cultural rights is an everyday activity in modern Ireland and needs to be recognised as such. Many people and organisations are not aware of the human rights significance of this work. The Human Rights Commission can bridge that gap through education, consultation and support.
2. The Human Rights Commission has a valuable role to play in allowing those organisations and individuals who are working hard to improve the social, economic and cultural positions of people in Ireland, and particularly those who are working with the most excluded to translate their demands into the

internationally accepted language of human rights, as well as demonstrating the comparative and international context of these demands.

3. Ireland has agreed with the other countries of the world to meet its “*core minimum obligations*” and to *the progressive realization*” of economic, social and cultural rights. At home, however, the State is refusing to accept these obligations, when claimed by groups in need whose rights are affected. The Human Rights Commission must ensure, therefore that these “*core minimum obligations*” are legally established and enforced.
4. Equally, there is a need to ensure that State agencies themselves, are not operating and promoting policies or approaches which are, in fact, mere justifications for the cloaked violation of the economic, social and cultural rights already accepted by the Irish State.²⁴
5. Where violations of these accepted rights take place there is a need for punitive measures to be implemented and in Ireland there are many precedents for this approach. The Human Rights Commission must work to establish sanctions against violations of economic, social and cultural rights in law and prepare draft legislation extending this approach to all areas of economic, social and cultural rights covered in human rights instruments.

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²⁴ Recent reports on administrative and management approaches to rights which ignore violations by ESRI and NESC could fall into this category.