



Policy Submission

**Submission on the
Establishment of a
Human Rights Commission**

January 1999

1. The role of the Combat Poverty Agency

The role of the Combat Poverty Agency is, in summary, to advise and make recommendations to the Minister for Social, Community & Family Affairs on all aspects of economic and social policy in relation to poverty in the state; to initiate and support measures aimed at overcoming poverty; to examine the nature, causes and extent of poverty and to promote greater public understanding of poverty.

In responding to poverty, governments and societies have a number of instruments at their disposal. These include macro-economic policy, budgetary and financial policy, the utilization of the public administration, the enlistment of voluntary effort and the law. The law has a distinct role to play in combatting poverty and social exclusion and in providing social protection for those most at risk. In particular, there is potential for recent European and international concepts of social rights to strengthen the existing bases of social rights and responsibilities embodied in Irish social policy and law.

2. The National Anti-Poverty Strategy (NAPS)¹

The Agency's view on the role of the law in combating poverty and social exclusion must be set in the context of key social, economic, political and policy developments which may be anticipated over the next number of years.

Foremost of these is the National Anti-Poverty Strategy (NAPS), *Sharing in progress* (1997), which has been adopted by the government. The strategy analyses poverty, sets down a number of key targets for the reduction of poverty and devises a set of mechanisms to ensure that the strategy is translated into practical effect. The strategy is supported at the highest possible level, being led by a Cabinet sub-committee on social inclusion, chaired by An Taoiseach. All national policies are now expected to be poverty-proofed i.e. before their adoption they must be carefully tested for their likely effect on ameliorating poverty. This process has considerable potential to ensure that over the next number of years all policies have positive outcomes for those living in poverty and inequality and that unintended negative outcomes are avoided.

2.1 NAPS and the membership of the Human Rights Commission

The National Anti-Poverty Strategy, *Sharing in Progress*, does not have a statutory basis, but the law may nevertheless in the future have an important role to play in the implementation of its principles. With regard to the Human Rights Commission:

- its statutory duties should include a specific focus on disadvantaged areas and particular groups experiencing poverty and social exclusion.

¹ NAPS was initiated by the Irish Government following the UN Summit on Social Development (1996) in Copenhagen.

- The legislation setting up the Commission should be tested, prior to its drafting and enactment, to ensure that it is consistent with the principles of the NAPS. A process should be set in place to monitor any unintended consequences of the legislation which might contribute to poverty. This process, termed poverty-proofing², in effect requires that legislation be tested for its impact on poverty before and after enactment;
- Disadvantaged groups and communities have the right to participate in key decisions affecting them. This could take the form of procedures for consultation to be laid down in the legislation for the Human Rights Commission and the representation of disadvantaged groups on the Commission. It is important that individuals, voluntary and community organizations be adequately resourced to make their contribution and fully participate in the Commission;
- The recruitment and selection process for the membership of the Commission should be open and transparent with clear lines of accountability. Recruitment and selection process should be at a minimum reflective of a human rights approach and employ objective and measurable criteria such as experience and knowledge of human rights issues and a track record of human rights promotion and protection. It may be appropriate that open competition processes would be employed in relation to key Commission posts such as the Head of Commission.
- The independent status of the Commission should be of primary importance and is critical to its effectiveness as a protector and promoter of human rights. To ensure this independence the Commission must be well-resourced; have security of funding; have an independent premises; be able to recruit staff independently; have the capacity to establish regional networks and regularly involve a high degree of public consultation in its work. It must be facilitated to have a broad rather than limited understanding of its role. This correlates with the spirit of the Paris Principles whereby "as broad a mandate as possible" is advocated.

3. Economic and social rights are human rights

International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life - work, food, housing, health care, education and culture - are adequately and equitably available for everyone³

Since the 1970s, the Commission on Human Rights laid particular emphasis on, *inter alia*, issues related to social and economic rights⁴. The UN

² Poverty proofing was approved by government decision in 1998.

³ United Nations. *Fact Sheet No. 16* The committee on economic, social and cultural rights.

⁴ Commission on Human Rights. (22 December 1997) Item 5 Report of the Secretary-General pursuant to Commission on Human Rights resolution 1997/17.

Declaration of Human Rights (1948) includes economic and social rights (articles 22-27) and a separate UN convention on economic, social and cultural rights elaborates on this in a legislatively binding way. Ireland is a signatory of the International Convention on Economic, Social and Cultural Rights.

The report of the European Union's Comité des Sages⁵ laid down a number of core social rights to inform modern society in such areas as the right to equality, education, work, social security, family protection, and minimum income. It is important that Ireland move toward, rather than away from, international social rights norms and embedding them in fundamental law.

Ireland has become an ever-more integrated part of the European Union, a process likely to accelerate now that Ireland has joined the Eurozone of the single currency (1999). It is important therefore that Ireland participates in the processes of social integration that accompany completion of the single market and the establishment of a closer Union. The following advances at European level are highlighted:

- the Fundamental charter for the social rights of workers and its subsequent recommendations;
- the employment chapter of the Treaty of Amsterdam, setting objectives for employment policy;
- clauses in the Treaty of Amsterdam prohibiting discrimination and supporting action against social exclusion;
- the right to a voice in policy-making for non-governmental organizations (stimulated by declaration #23 of the Treaty of Maastricht);
- the adoption by a growing number of European countries in recent years of a right to housing;
- proposals for a new corpus of social rights law, presented by the Comité des Sages;
- propositions to expand transferable social security rights put forward by the High-Level Panel on the Free Movement of Workers (the Veil report);
- growing commitment at international level to link trade to concepts of social justice, environmental protection and sustainable economic development.

The implications of these for legislation governing human rights and the Human Rights Commission should be a matter of priority. This approach is illustrated by a European example of rights to housing and shelter. By

⁵ Report of the Comité des Sages. (1997) *For a Europe of civic and social rights*. European Commission

employing this in Ireland, housing authorities could respond to homelessness in a more appropriate manner and enable homeless people to have access to shelter, housing and settlement services. Such a right will not of itself solve homelessness but will lead policies to rehouse the homeless, prompt the speedy allocation of resources to the problem and give homeless people legal recourse in the event of non-response by the authorities.

3.1 Social origin

The Combat Poverty Agency has long been concerned with issues of discrimination based on social origin and related factors. Its own research and the work of other organisations that it has supported highlight the economic, social and cultural consequences of discrimination, for example in the case of people with disabilities, gays and lesbians, Travellers, women, refugees and asylum seekers and older people. Much poverty research points to the inequality people in poverty experience with regard to participation in or benefits from work, education, health, income distribution, culture, etc.

The understanding of human rights must enunciate an understanding of social origin that specifically includes people living in poverty (economic status). It should also particularly refer to gender, age, disability, age, sexual orientation, marital status, colour, ethnic or national origin, political or religious belief and language. Travellers should be named specifically in the legislation to ensure their inclusion in the interpretation of ethnic or national origin.

3.2 Women's rights

The human rights of women may not be specifically referred to in human rights legislation or literature. However this pattern is increasingly being reversed and it is now becoming more common to highlight specific human rights issues affecting women. The Agency proposed that Irish human rights legislation must adopt this approach. It should embrace the elimination of gender disparity and discrimination; ensure that there is adequate redress for violations against women's human rights; promote the protection of women's human rights; counteract the negative images of women and girl children in traditional and non-traditional media, education, religion and culture and advocate equal rights for all.

3.3 Children's rights

Ireland has the second highest national level of child poverty in the EU with a large minority (up to one third) of Irish children living in poverty (based on 1994 data). The understanding of human rights must enunciate an understanding of human rights that embraces children. The concluding observations from the UN Committee on the Rights of the Child in January 1998 noted its concern "about the incidence of child poverty and homeless children" in Ireland. It was also concerned about "the difficulties still faced by children from vulnerable and disadvantaged groups, including children belonging to the Traveller community, children from poor families and refugee children, as to the enjoyment of their fundamental rights, including access to education, housing and health services".

4. Underpinning peace, reconciliation and social justice

The agreement signed in Belfast on 11th April, also called the Good Friday agreement, makes provision for closer relationships between Ireland, Northern Ireland and Great Britain. It is essential that social inclusion and social equality feature prominently in the closer coming together of Ireland, Northern Ireland and Great Britain. An important precedent has been set by the European Union's Programme for Peace and Reconciliation that functions in both

jurisdictions on the island of Ireland. The Agency is actively involved in embedding peace through its involvement in the delivery of the EU Special Support Programme for Peace and Reconciliation. Arising from this it is convinced that a key element in the long-term consolidation of the peace process in both parts of the island is ensuring that individuals and groups who are most marginalised and excluded feel that they are fully involved and integrated into society. In this regard a strong emphasis on social rights is critical in ensuring that people enjoy the broadest range of human rights.

Legislation for the new Human Rights Commission in both jurisdictions should promote convergence between north and south on an agenda of non-discrimination, equality and the promotion of the rights of social minorities. They provide an unusual opportunity for the strengthening of economic and social rights in both parts of the island and in achieving complementarity in the different institutions which promote equality, social and human rights.

Accordingly it is important that:

- Ireland complete the triad of human rights protection in these islands by the incorporation of the European convention of human rights into its domestic law;
- the Human Rights Commission in Ireland adopt a broad remit of concerns in the area of social rights.
- poverty and social inclusion should be included within the remit of new Human Rights Commissions and the Joint Committee of both Commissions should deal with issues of social rights in both parts of the island;
- the Human Rights Commission should be particularly concerned with the protection of rights of groups who participated in the conflict e.g. people who suffered during the conflict and ex-prisoners.

5. Powers of the Commission

The Good Friday Agreement points out that the Commission in the South will have an equivalent mandate to the NIHRC whose powers are set out as:

- To keep under review the adequacy and effectiveness of laws and practices and make recommendations to the Government as necessary;

- Provide information and promote awareness of human rights;
- Consider draft legislation referred to the Commission
- In appropriate cases, bring court proceedings or provide assistance to individuals doing so.

In addition the Government can specify the powers of the Commission. The Agency strongly endorses the above four powers and is particularly pleased that public awareness is named as this is a pre-requisite to meaningful expression, public understanding and realisation of human rights. In particular the Agency encourages the incorporation of human rights education into the content of life-long learning - from early childhood education to adult education, in both formal and informal educational settings.

However the Agency suggests that the powers and effectiveness of the Commission here could be strengthened by legislation interpreting the above powers as *duties*. Furthermore, the Agency⁶ endorses the addition of the following duties:

- Monitor human rights issues
- Investigating human rights violations
- Duty to receive complaints
- Duty to conduct and commission research
- Power to hold inquiries and compel witnesses
- Power to conciliate and adjudicate complaints
- Power to intervene in court proceedings
- Supervising and monitoring arrests and detentions under emergency legislation.

6. Concluding comments

The Agency values the opportunity to contribute to the development of the Heads of Bill for the establishment of a Human Rights Commission in the Republic of Ireland and look forward to commenting on them when they are in the public domain. It strongly welcomes the development of the Commission, both in the context of a national commitment to creating a more just society through poverty reduction and the developing peace process on the island. It looks forward to the development of the Commission and to making further contributions to its work.

⁶ These proposals draw on the work of FLAC, the National Consultative Committee on Racism and Interculturalism and work in N. Ireland on creating an effective human rights commission, by Brice Dickson, University of Ulster and newly appointed Head of the NIHRC.