

Policy Submission

**Making Economic, Social
and Cultural Rights Effective**

**Submission to the
Human Rights Commission**

August 2006

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to
The Irish Human Rights Commission
on
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1. Introduction

Combat Poverty is a state advisory agency which develops and promotes evidence-based proposals and measures to combat poverty in Ireland. Combat Poverty works for a poverty-free Ireland by striving for change which will promote a fairer and more just, equitable and inclusive society.

This paper is a response to the Irish Human Rights Commission's request for submissions on its discussion document *on Economic, Social and Cultural Rights*. The submission is informed by a number of our initiatives relating to economic, social and cultural rights including:¹ programmes to strengthen the participation of people experiencing poverty in the policy making process; public awareness initiatives on rights-based approaches to tackling poverty; our work on the National Action Plan against Poverty and Social Exclusion (NAPInclusion); our involvement in a *Participation and Practice of Rights Project*² and our perspective on the development of an All-Island Charter of Rights.

In the statement of principles in our current Strategic Plan 2005-2007, we state that combating poverty *involves the recognition of economic, social and cultural rights, the eradication of discrimination and respect for diversity*. Access to adequate income and quality public services are two of our key objectives. Active citizenship and the right to participate are basic rights for groups and communities experiencing poverty.

2. Summary

Our submission to the Irish Human Rights Commission (IHRC) makes recommendations on the following issues:

- The application of economic, social and cultural rights in the eradication of poverty.
- The application of economic, social and cultural rights in law.
- Informing and underpinning the National Action Plan against Poverty and Social Inclusion (NAPInclusion) by economic, social and cultural rights.
- Strengthening accountability mechanisms for ensuring compliance with economic, social cultural rights commitments.

3. Economic, Social, and Cultural Rights and Poverty Eradication

Recommendation 1

The application of economic, social and cultural rights is central in the eradication of poverty.

The Universal Declaration of Human Rights asserts that poverty is a human rights issue. Poverty seriously compromises human dignity. Economic, social and cultural rights, such as the right to health, the right to an adequate standard of living, the right to education, the right to housing, the right to work and the right to a sustainable environment are essential to uphold human dignity and are directly relevant to the eradication of poverty.

A number of economic, social and cultural rights are expressed in both the constitution and in legislation. For example:

- The Irish Constitution includes a right to equality before the law, the right to free primary education and the right not to have one's health endangered.
- Social welfare, housing, health, education and equality legislation contribute to the protection and promotion of economic, social and cultural rights.

The Irish Government is obliged to give "full effect" to economic, social and cultural rights expressed in the International Convention on Economic, Social and Cultural Rights (ICESCR)³. Giving economic, social and cultural rights "effect" provides a framework for accountability in the discharge of responsibilities and consequently has a role in anti-poverty policies.

4. Application of Economic, Social and Cultural Rights in Law

Recommendation 2

Seek the introduction of socio-economic status as grounds for discrimination in the Employment Equality Act 1998 and the Equal Status Act 2004.

Socio-economic status is not currently included in the equality legislation. Making socio-economic status a ground for discrimination in the equality legislation would enable people in poverty to make claims against discrimination they experience because of their socio-economic circumstances.

Recommendation 3

Explore evidence from other jurisdictions which have given economic,

social and cultural rights legal effect.

Countries such as South Africa, Norway and Finland apply economic, social and cultural rights through the law. The application of rights in these countries should be reviewed and the lessons drawn from their experience. If relevant, this could then inform their application in Ireland.

Recommendation 4

Seek the inclusion of economic, social and cultural rights in the proposed All Island Charter of Rights.

Combat Poverty with Pobal, through Border Action, implements part of the Peace and Interreg Programmes in the Border Region and on a cross-border basis. Through this work we seek to promote social inclusion, support local economic and social development and contribute to peace building. Much of this work is informed and underpinned by economic, social and cultural rights. One recent research project examines how peace building can be undertaken within a rights-based framework.⁴

As part of the Good Friday Agreement an All Island Charter of Rights is proposed. We see this as important. The Charter should include economic, social and cultural rights.

5. Incorporating Economic, Social and Cultural Rights in The National Action Plan against Poverty and Social Exclusion (NAPInclusion)

Recommendation 5

The National Action Plan against Poverty and Social Inclusion (NAPInclusion) should be informed and underpinned by economic, social and cultural rights.

A number of organisations including the EU, Council of Europe and the Committee on Economic, Social and Cultural Rights (CESCR) have highlighted the requirement for Ireland and other EU Member States to integrate economic, social and cultural rights into their National Action Plans against Poverty and Social Exclusion.

Draft guidelines for applying a human rights approach to poverty reduction have been developed by the UN. Economic, social and cultural rights can be given effect as part of the NAPInclusion by:

- a) Making explicit the values of human rights anti-poverty strategies in a language that rejects charitable solutions and provides for minimum legal entitlement to basic rights;
- b) Making a commitment to counter discrimination against individuals and groups, and promote their equality;
- c) Supporting the active and informed participation of people experiencing poverty or their representative organisations in public policy decisions that affect them;
- d) Employing rigorous monitoring and evaluation mechanisms;
- e) Ensuring transparent and accessible mechanisms for accountability; and
- f) Co-operating with the requirement to progressively realise these rights, including through the allocation of resources⁵.

Recommendation 6

Develop and apply minimum standards in NAPInclusion.

Economic, social and cultural rights were recognised as citizenship rights in the NAPInclusion 2003 – 2005. More needs to be done to realise these rights in practice. The NESC has identified the need for detailed norms or standards to be set in relation to these rights⁶. Benchmarks and indicators can be used to set the standards. People need to be made aware of these standards and their entitlements.

Recommendation 7

The NAPInclusion should be equality proofed.

The twin principles of equality and non-discrimination are fundamental elements of international human rights law. Discrimination can lead to poverty and promotion of equality contributes towards the eradication of poverty. The National Action Plan against Poverty and Social Exclusion should be assessed for its ability to reduce discrimination and promote equality.

Recommendation 8

Inform local communities about their rights through awareness raising and training.

Making economic, social and cultural rights effective requires active and informed participation by people living in poverty. To ensure effective participation people living in poverty need to be informed of their rights and supported to participate in the relevant policy processes and structures.

Recommendation 9

Consider and apply the learning from a “Participation and Practice of Rights Project”.

One demonstration project which Combat Poverty is involved with is the *Participation and Practice of Rights Project (PPR)*. This project seeks to build the capacity of disadvantaged communities to claim their rights, seek accountability and propose policy changes (see Appendix 1 for details of one of the initiatives undertaken as part of this project which demonstrates the effectiveness of this approach). The PPR is now moving into a second three-year phase. Lessons will be analysed and documented to inform future approaches to giving economic, social and cultural rights effect.

Recommendation 10

Expand the scope of Poverty Impact Assessment to include criteria for checking compliance with standards in international treaties ratified by Ireland, which promote economic, social and cultural rights. Combat Poverty could be mandated to fulfil a regulatory function in this regard to ensure compliance.

Poverty proofing (now referred to as Poverty Impact Assessment [PIA]) is cited in the NAPInclusion 2003-2005 as “the principal instrument for mainstreaming social inclusion at central Government level”. It is defined as:

“the process by which government departments, local authorities and State Agencies assess policies and programmes at design, implementation and review stages in relation to the likely impact that they will have or have had on poverty and on inequalities which are likely to lead to poverty, with a view to poverty reduction”.⁷

Under PIA, there is a requirement on government officials to assess all major economic and social policy proposals in terms of their impact on poverty. New Poverty Impact Assessment Guidelines were developed in 2005 and are referred to in the Regulatory Impact Analysis (RIA) Guidelines produced by the Department of the Taoiseach. The RIA applies to all proposals for primary legislation including: changes to the regulatory framework; significant Statutory Instruments; proposals for EU Directives; and significant EU Regulations when they are published by the European Commission.

There is potential for the scope of PIA to be extended to include an assessment of the extent to which the policies meet the economic, social and cultural rights commitments in treaties ratified by Ireland eg. the International Convention of Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women.

Combat Poverty could be mandated to fulfil a regulatory function in this regard to ensure compliance.

Recommendation 11

Consider putting Poverty Impact Assessment into legislation.

Putting Poverty Impact Assessment into legislation would give it more force, with sanctions for non-compliance. Examples of where this type of approach have been used are environmental impact assessment regulated by the Environmental Protection Agency, and “Section 75” of the Northern Ireland Act 1998 which requires “public authorities in carrying out their functions to have due regard to the need to promote equality of opportunity”.

Recommendation 12

Put rigorous monitoring and evaluation mechanisms in place in NAPInclusion to make sure that commitments on economic, social and cultural rights are being met.

Monitoring and evaluation are key to determining how well anti-poverty strategies are performing. Such assessment helps to identify good practice, as well as finding out where things are not going well and where changes or further action may be required.

Targets, indicators and data are essential tools in assisting in monitoring and evaluation. From an economic, social and cultural rights perspective, targets, indicators and data should be disaggregated as far as possible to monitor progress in relation to groups and communities experiencing poverty.

Following through on the participation principle, people experiencing poverty should participate in the monitoring and evaluation process.

Sanctions for non-compliance should be part of the monitoring and evaluation framework.

6. Strengthening Accountability Mechanisms

Recommendation 13

Consider how the role of IHRC and various Ombudsmen could be strengthened to promote, and ensure the protection of, economic, social and cultural rights.

Accountability is a fundamental principle in making economic, social and

cultural rights effective. Accountability mechanisms should clearly communicate how the NAPInclusion has impacted on economic, social and cultural rights. Quasi-judicial mechanisms such as the Ombudsman, the Ombudsman for Information, the Ombudsman for Children and the IHRC have a role to play in creating awareness of rights and infringements, and in seeking ways to strengthen accountability.

Recommendation 14

The Joint Oireachtas Committee on Family and Social Affairs should produce an annual report on the implementation of the NAPInclusion, including its impact on economic, social and cultural rights.

The importance of the Joint Oireachtas Committee on Social and Family Affairs should be reflected by requesting them to produce an annual report on the implementation of NAPInclusion, including its impact on economic, social and cultural rights. This report could be informed by briefings from relevant organisations such as Combat Poverty, government officials and community and voluntary organisations.

Recommendation 15

Improve access to rights and entitlements for people at risk of poverty.

It is at the administrative level that people experiencing poverty are most likely to seek the fulfilment of their economic, social and cultural rights or to seek redress. Recent research by the Northside Community Law Centre into the Social Welfare Appeals System reveals that many of the current administrative systems are not sufficiently accessible, or sufficiently transparent in their decision making⁸. People in poverty also face barriers in accessing the Social Welfare Appeals system. These barriers mainly relate to insufficient access to information, often caused by low literacy levels.

Information, independent advice and transparency in decision-making are all requirements of a transparent, accessible and effective accountability mechanism.

Recommendation 16

Ensure anti-poverty organisations are resourced to monitor compliance with Ireland's obligations in relation to economic, social and cultural rights.

In recent years a number of community and voluntary organisations, including the NGO Coalition on the Convention on the Elimination of Racial Discrimination (CERD) and the Women's Human Rights Alliance (WHRA), have come together to make 'shadow' reports on Ireland's compliance with human rights commitments⁹. This is an important accountability mechanism and should be encouraged. It is important that community and voluntary organisations working against poverty be resourced to participate in monitoring Ireland's compliance with its international treaty obligations in relation to economic, social and cultural rights.

Recommendation 17

Ensure that consultations take place with people experiencing poverty and their representatives in relation to reports that the Government submits to international treaty monitoring bodies.

Ireland, by ratifying the human rights treaties, is obliged to comply with the monitoring bodies' reporting, complaints and inquiry procedures. The Office of the United Nations High Commissioner for Human Rights (OHCHR) considers that reporting can only be truly effective "if governments prepare their reports in a transparent and participatory process involving all relevant domestic civil society actors before submitting the report"¹⁰. There already exists a good level of consultation in relation to the NAPInclusion. This could be developed to include consultations with community and voluntary organisations in advance of Ireland's next report to the International Convention on Economic, Social and Cultural Rights, which is due to be submitted in June 2007.

APPENDIX 1

Participation and Practice of Rights Project (PPR)¹

This project has developed a demonstration model of a human rights-based approach to basic services among marginalised communities with the aim of empowering people in these communities to secure the rights and services that affect the quality of their daily lives. Such a process seeks to challenge current policy and service delivery approaches, involve service-users in decision-making on the provision of services and give them tools to hold government accountable for failure to provide services.

One of the specific projects under taken by PPR was in Dublin's north inner city. This was action-based research on drug users' experience of treatment in local drugs and health services. The aim was to carry out a community-led process that would identify a model of seeking redress through a rights-based approach.

A core aspect of the project was working in collaboration with UISCE, a support network for drugs-users, and the Mountjoy Street Family Practice. The outcome of the discussions with the drug-users was that they wanted to be treated with equality, sensitivity and respect. They felt discriminated against in their access to services and the way service providers dealt with them because of their drug use and associated problems. They reported difficulty in getting medical cards, GP services, dental treatment, psychiatric services or adequate, confidential counselling. Many felt that methadone maintenance was merely maintaining, not treating, their drug addiction. They wanted more equal and respectful treatment and support in integrating back into society. The drug-users prioritised their issues and developed an action plan which was brought to community networks and the local drugs taskforce, leading to informal discussions with local service providers. A more detailed action plan was developed, as well as responsibility taken to monitor its delivery.

Empowering people in poverty to secure their rights involves personal development and assertiveness training as well as education in human rights law. Essential participation from a human rights perspective sees people in poverty as agents of their own change, provides them with the tools, confidence and know-how to seek redress.

¹ The Participation and Practice of Rights Project (PPR) is a coalition of organisations from Northern Ireland and the Republic of Ireland including the Irish Congress of Trade Unions; the Committee on the Administration of Justice, Northern Ireland, the Community Foundation, Northern Ireland, the Irish Council for Civil Liberties, the Combat Poverty Agency and community groups in north Belfast and Dublin's north inner city.

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<http://www.ohchr.org/english/issues/poverty/guidelines.htm>

¹ See bibliography for a range of references. Further material is also available on our website at www.combatpoverty.ie or by contacting the Combat Poverty Agency directly (00353 1 6706746)

² The PPRP Project is a co-operation between the Commission for the Administration of Justice, Northern Ireland, the Irish Congress of Trade Unions, the Irish Council for Civil Liberties, the Community Foundation for Northern Ireland, the Combat Poverty Agency and communities in North Inner City Dublin and North Belfast.

³ Hunt, P. (2002) *Social and Economic Rights: Challenges and Opportunities for Social Policy*. Presentation to the Annual Conference of the Irish Social Policy Association, Dublin, 12-13 September, 2003. www.ispa.ie

⁴ This project "A Human Rights Approach to Peace-Building" is being undertaken by the University of Galway for Border Action. It reviews international rights instruments in relation to peace building and assesses their potential for application in the Irish/Northern Irish context. The project is "work in progress", with an expected publication date before the end of 2006.

⁵ O'Flynn, J. (2002) 'Social Rights: A Framework for Eradicating Poverty' in *Social Rights and Social Cohesion*. Dublin: EISS, IEA and DSFA.

⁶ National Economic and Social Council (2003) *An Investment in Quality: Services, Inclusion and Enterprise*. Dublin: National Economic and Social Council.

⁷ Office for Social Inclusion (2006) *Guidelines for Poverty Impact Assessment*. www.welfare.ie

⁸ North Side Community Law Centre (2005) *The Social Welfare Appeals System: Accessible and Fair?* Dublin: NCLC.

⁹ Combat Poverty funded the shadow report produced by the WHRA and follow up information seminars. Combat Poverty also funded an information conference by the NGO Coalition on CERD.

¹⁰ Office of the High Commissioner for Human Rights (2002) *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*. www.ohchr.org