

# Charities Bill 2007: Excluding Human Rights – The Repercussions

A Joint Position Paper from

Amnesty International Ireland



FLAC



ICCL



Front Line



## Background

The long-awaited legislation to regulate charitable organisations in Ireland has been working its way through the houses of the Oireachtas. In its original form, the Charities Bill included “the advancement of human rights” as a charitable purpose,<sup>1</sup> as recognised by the corresponding legislation in the UK and Northern Ireland. However, for reasoning which is at best inadequate, the advancement of human rights has been removed from the Bill as a charitable purpose.

The Bill is shortly due to go through the report (and final) stage of the Seanad. We are strongly of the view that unless this original wording is reinstated, existing charitable organisations who work on a rights-based approach will come under threat.

## Why did the Government remove the advancement of Human Rights from the original Bill?

We understand from discussions and the Oireachtas debates that the government has a number of arguments for removing “the advancement of human rights” as a charitable purpose:

1. There is a concern that the mechanism whereby tax exemptions can be awarded to charitable organisations may be abused or extended.
2. To ensure that non-human rights organisations including political groupings and in particular, terrorist type organisations don't use human rights as a front to obtain charitable status.
3. Existing human rights organisations with charitable status will retain it, so concern is unwarranted.

## Concern about tax argument

The Bill already contains wording which provides that even if the Charities Regulator recognises an organisation as a charity, the Revenue Commissioners have the discretion to refuse to grant the same organisation charitable status from a taxation perspective.<sup>2</sup>

## Concern about ‘front organisations’ argument

We understand that one of the primary purposes behind the establishment of the Charities Regulator will be to examine and vet prospective charities in order to be able to weed out those who may abuse charitable status. Further, there is sufficient protection already in the Bill to exclude offending organisations from the Register.<sup>3</sup>

## Concern about existing charities argument

As pointed out by the Law Society, the Bill's current definition of a charitable purpose “could have a detrimental effect on the charitable status of existing charities”.<sup>4</sup> The Bill currently provides that organisations that are registered charities at present will

<sup>1</sup> Head 3, Section 3(1)(d)(v) of the Charities Regulation Bill 2006.

<sup>2</sup> Section 7, 17 (2) of the Committee Amendments to the Charities Bill 2007.

<sup>3</sup> Amongst other sections, Section 43 (1) of Charities Bill 2007.

continue to be deemed to be registered. A significant number of charitable organisations now use or aspire to use a human rights perspective in their work. If the new legislation is enacted as it stands, it will leave such organisations open to challenge on their charitable status. Since there is provision under the Bill for a 5-year review of the Act, the advancement, protection and promotion of human rights should be included from the outset as a charitable purpose.

### **General concerns about the future of organisations working to advance human rights**

If the “advancement of human rights” is not reinstated into the Bill, the following may arise:

- Because it will not be a charitable objective, organisations engaging in the advancement of human rights will find it more difficult to access funding, as foundations and donors require absolute clarity regarding charitable status.
- As the advancement of human rights is a recognised charitable objective in the UK, including Northern Ireland, the current Bill will undermine the principle of equivalence in the Good Friday Agreement.<sup>5</sup> UK organisations which advance human rights will be able to promote these aims in the Republic of Ireland (under EU freedom of movement of services) but Irish organisations working in this field will not be able to benefit from such promotion. Thus resources including funds and volunteers for human rights objectives or new organisations may be diverted to jurisdictions which recognise the advancement of human rights as a charitable purpose.
- Typically, existing organisations have a charitable exemption for education, religious or humanitarian work. If they now frame their work in human rights terms, the Charity Regulator may remove their charitable status. Irish non-governmental organisations will be in the bizarre position of trying to deny to the Charities Regulator that their work includes the advancement of human rights to retain charitable status.
- Any non-governmental organisation would be open to malicious complaints to the Charity Regulator that it was working to advance human rights. Even if an organisation could prove that its work also carried out its registered charitable objective the very effort of trying to prove that the work was within the objectives that qualify it as a charity could tie up its resources to a very damaging extent, particularly for small or under-resourced organisations.

It is clear from the Seanad debate on 4 December that there are no legal constraints raised by the Attorney General on the inclusion of the advancement of human rights.

In the context of reduced support for human rights and equality bodies in Ireland today generally, the deliberate exclusion of human rights as a recognised, valuable activity, beneficial to the community, appears to be an attempt to further muzzle criticism of government policy. Incongruously, the government continues to espouse human rights principles on the national and international scenes.

We have identified between 60 and 200 Irish charities working with very vulnerable people in Ireland today whose work may be seriously impacted by the exclusion of human rights as a charitable purpose. All future organisations or re-organisations of existing organisations will inevitably be left out.

***We strongly urge Senators to take this final opportunity to ensure that the advancement of human rights is included as a charitable purpose under the Charities Bill 2007.***

<sup>4</sup> Memorandum to Senators from the Human Rights Committee of the Law Society, 3 December 2008. This document highlights the practical legal difficulties which may face charities working in the area of human rights as a result of the Bill.

<sup>5</sup> See Chapter 6 on Rights, Safeguards and Equality of Opportunity, paragraph 9 of the Good Friday Agreement 1998, which states that the human rights measures brought forward by the Irish government would “ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland”.