# Ninth Dave Ellis Memorial Lecture:

# Using the Law to Secure Social Justice

**Michael Farrell**

*Dublin, 3 December 2015*

I am honoured to have been asked to give the 9th Annual Dave Ellis Lecture both because over the years the lecture has become an important opportunity to discuss the use of the law in securing social justice for the disadvantaged and marginalised in our society and because it commemorates the life and work of Dave Ellis, who was the leading pioneer of the community law movement in Ireland.

This year there is an added poignancy for me because I first really met Dave at the inaugural meetings that set up the Right to Remarry group which campaigned for a Yes vote in the Divorce referendum that was held 20 years ago last week. As the older folk in the audience will remember, that referendum was carried by a very slender margin so that anyone who played any part at all in the Yes campaign, even just attending those early meetings, could claim to have played a part in securing that historic victory. So we had that in common.

I got to know Dave much better when I joined FLAC in 2005 and came to appreciate the key role he had played in the Law Centres movement, to which he devoted his whole professional life. Sadly he was not to be with us much longer as he died in February 2007. His wisdom and experience would have been of great assistance during the difficult years we have come through since then. And I'm sure he would have enjoyed being part of the much more substantial victory in the Marriage Equality referendum this summer, which showed how much this country has changed in the last 20 years.

I am glad Dave's wife Sarah and members of his family are with us again this evening and I hope that what I have to say will contribute to the discussion on how to achieve Dave's ideals.

## Leaving FLAC

As you will have heard, I will be leaving FLAC at the end of this year after $10^{1/2}$ years as its senior solicitor. Inevitably this is a sad occasion for me, both because of the good work being done by FLAC and because of the good friends I will be leaving behind. There have been some important achievements during those years, the best known in my particular area of work being, of course, the Lydia Foy case and I am glad that Lydia is here tonight after finally receiving a birth certificate as the person she is, rather than who the State or anyone else wanted her to be.

For me there has been other, less well-known work as well, a lot of it in the area of social welfare and I have been pleased and honoured to have been able over the years to be able help people to get the benefits that they were entitled to, but which they had been refused. The amounts were not large in monetary terms, but they meant a great deal to the clients, most of them single mothers in the asylum system. But I have also been deeply frustrated that it has often taken months of work to get what should have been offered to these claimants in the first place and that the same unfair decisions continue to be made and there are just not enough solicitors or staff in law centres or Citizens Information Centres to be able to represent all the people involved.

And that is not to mention the frustration when we managed to establish that asylum seekers in the Direct Provision system could be entitled to receive Child Benefit only for the law to be promptly changed to definitively exclude them from this supposedly 'universal' entitlement.

Excellent work has also, of course, been done by FLAC Director General Noeline Blackwell and Paul Joyce in raising awareness of the mortgage crisis long before Government began to take it seriously and in campaigning with considerable success for measures to protect mortgage holders trapped in a nightmare not of their own making. Unfortunately, however, that is a struggle that is set to continue as the financial institutions keep finding ways to circumvent and undermine the new controls.

I would like to mention as well some of the FLAC staff who are not in the public eye but who are vital to important areas of its work. Zsé Varga and Lorraine Walsh have re-organised the staffing of FLAC's legal advice clinics right across the State where worried people can go to get essential basic advice about their legal problems. Jackie Heffernan has streamlined and professionalised FLAC's telephone information lines and a series of simple booklets about the most common legal problems. Yvonne Woods is responsible for FLAC's publications and publicising its policy documents and briefing papers and Gillian Kernan compiles the statistics that inform and reinforce those policy papers.

Catherine Hickey and Emer Butler organise the whole operation and work to raise the funds to keep it all going. And Rachel Power, Eithne Lynch and Eamonn Tansey run the Public Interest Law Alliance, which has done remarkable work in persuading barristers and private law firms to undertake pro bono work for NGOs in the community and voluntary sector.

I will be sorry to leave them all behind and I would like to mention as well the dozens of young law student interns who have worked in FLAC during my time there and whose enthusiasm and commitment – and sense of fun – gives me hope and confidence for the future of the legal profession and the human rights movement.

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## The effects of the Economic Crisis

I am glad of the opportunity to give this lecture at this point in time. It comes at an important moment when there is an opportunity to press for significant changes to be made.

We have come through seven years of hardship and austerity that have weighed most heavily upon the poorest and most vulnerable in our society. Now we are being told that the worst is over and the tide is turning; that exchequer returns are up and that taxes may be cut just as an election is looming.

The Christmas lights are already on. Grafton Street is crowded again and the Irish Times is filled with glossy gift catalogues, and talk is beginning that the Celtic Tiger may be replaced by a new 'Celtic Phoenix' arising from the ashes of the economic crisis.

But the return to prosperity is only skin deep. Grafton Street may look like a wonderland but Clery's, once the most iconic store for Dubliners and people from the country alike, is closed and its workers are on the street. Poverty is still with us and it is closer and more evident than before.

Kitty Holland, writing in the *Irish Times* a couple of weeks ago, reported on the number of homeless people she saw sleeping in doorways as she walked across the city. It is a year since Jonathan Corrie died in a doorway opposite Leinster House[i1] and yet if you walk along O'Connell Street this evening you will still see homeless people bedding down for the night just across the street from the GPO where the founders of the State declared their intention to cherish all the children of the nation equally.

In September last there were 738 families, including over 1,500 children, recorded as homeless in Dublin and all over the country there are hundreds more in daily fear of losing their homes to repossession or because of rents they cannot pay. One in nine of our children live in consistent poverty and one in three households headed by single parents are at risk of poverty.

In our hospitals the numbers on trolleys have reached 300 on recent nights and the Government's latest plan is to reduce the number to an apparently acceptable 236 per night. Around the State Traveller families are living in badly wired halting sites with inadequate water supplies and sanitation. Another Carrickmines tragedy could happen on any cold night when the electricity supply is overloaded or when cables are blown down.

Three thousand six hundred asylum seekers and their children are living in the Direct Provision system that is almost universally regarded as unsuitable for anything but short-term stays. And

[1] The seat of the Oireachtas (the Irish Parliament)

more refugees are due to arrive shortly – and we should welcome them wholeheartedly – but it is not clear that they will be treated any better.

There are deep fault lines in our society with those at the margins falling consistently behind. Speaking at a seminar on his Ethics Imitative last March, President Michael D Higgins stated that "*the current levels of inequality pose nothing less than a fundamental challenge to the legitimacy of institutions and the morality of the State*".

He warned against the temptation to return "*to a position of 'business as usual'"* when the worst of the crisis appeared to be over and said: "*We must not, then, miss this opportunity to seek, together, a new set of principles by which we might live ethically as a society*"[2].

**Opportunities for Change**

Fortunately, I think that we do have opportunities before us to try to develop a society and a set of principles that will care for and protect the weakest sections of our community in times of crisis and in better times will seek to end that gulf of inequality that the President was speaking about.

On the one hand we have an election looming within a few months whose outcome is probably the most uncertain in the history of the State. The electorate is deeply discontented with the existing political system and eager for more radical change. Like President Higgins, they do not want to return to '*business as usual'* after the years of austerity and pain. There are new parties and alliances offering themselves with more radical programmes and at least some of the more established parties are seeking to make themselves more relevant to the new situation.

It is a good time to go to those seeking our votes and ask them to commit themselves to real structural change that would protect the rights and needs of the poor and marginalised even in times of crisis.

And on the other hand there have been some victories by civil society recently, most notably the Marriage Equality referendum, where determined campaigning by the lesbian and gay community and their allies put the issue on the political agenda in the first place and then delivered a majority far greater than most of the political parties anticipated.

It showed what can be done and hopefully it has given confidence to others in our society that they too can achieve substantial change. I would like to think as well that very many of those who worked so hard in the Marriage referendum campaign would be prepared to battle for the rights of other disadvantaged groups as well.

[2] Speech at the President of Ireland's Ethnics Initiative National Seminar, 28th March, 2015. Available at Aras an Uachtarain website www.president.ie.

I also think that many of the principles or values that President Higgins talked about are already there in the shape of the suite of international human rights treaties and conventions that the State has ratified or signed up to. In particular that group of conventions is designed as a floor or base of minimum standards that should be provided for all in society and should be protected in times of crisis such as we have just come through. It should also provide a mechanism through which [3]people can seek to access and enforce these standards if they are not maintained by the authorities.

I would like to be able to say that these principles are also included in the Irish Constitution but, unfortunately, protection for social and economic rights – which are the rights I am most concerned about in this lecture – is very weak in the Constitution and the Supreme Court has in the past set its face firmly against reading such rights into the Constitution. In the case of ***T. D v Minister for Education*** in 2001[3], the then Chief Justice Ronan Keane said he had "*the gravest doubts as to whether the courts at any stage should assume the function of declaring what are today frequently described as 'socio-economic rights' to be unenumerated rights guaranteed by Article 40 [of the Constitution]".* That view is also reinforced by an exaggerated deference shown to the Executive by the courts in matters of social policy.

The rather unhappy history of attempts to assert the entitlement of vulnerable individuals or groups to social or economic rights through the Constitution has been set out very comprehensively by Professor Gerry Whyte of TCD in his book "*Social Inclusion and the Legal System; Public Interest Law in Ireland*", a new edition of which was published earlier this year.

The Constitution is a creature of its time, the late 1930s. While it was an achievement at the time to adopt a democratic constitution when much of Europe was succumbing to Fascism, the form of democracy it established was pious, socially conservative and notoriously condescending to women. It requires considerable updating and amendment to serve the Ireland of today.

So what can the law and what can FLAC, the community law centres, and the civil society organisations that they work with do to assert and deliver the social and economic rights of the weak and vulnerable in our community?

**International Human Rights Standards**

As I indicated the State has ratified a whole suite of international and regional human rights treaties and conventions, most notably, of course, the European Convention on Human Rights (ECHR), but also the Revised European Social Charter, the UN's International Covenants on Economic, Social and Cultural Rights (ICESCR) and Civil and Political Rights (ICCPR), together with UN Conventions on the Elimination of Discrimination Against Women

[3] [2001] 4 IR

(CEDAW), the Rights of the Child (CRC) and the Elimination of Racial Discrimination (CERD), all of which have significant social and economic rights dimensions.

The ICESCR Covenant, whose 50th anniversary will be celebrated in January next, includes in particular the rights to an adequate standard of living, including access to adequate food and shelter; social security; the highest available standard of health care; education; equality between men and women; and fair wages and safe working conditions. And while the Covenant requires the '*progressive realisation'* of these rights rather than their immediate implementation, it requires each state to act "*to the maximum of its available resources*" to secure that realisation and states are also expected to ensure that there is no regression from basic standards already achieved, even in times of recession.

This State, quite shamefully, has not yet ratified the UN Convention on the Rights of Persons with Disabilities, even though Ireland was one of the sponsors of this convention when it was first mooted. We are now one of only three EU member states which have not ratified the Convention (the others are Finland and The Netherlands). On this international Day of Persons with Disabilities, I would like to call on the Government to ratify this Convention without further delay.

We have also failed to ratify Protocol 12 to the ECHR which strengthens the Convention's prohibition on discrimination, or the Optional Protocol to the ICESCR Covenant, which allows individuals to make complaints against their governments for failure to implement covenant rights, despite a Government promise to do so. Interestingly, the ICESCR monitoring body has very recently given its first decision under the Optional Protocol in which it condemned Spain for failing to provide adequate safeguards for mortgage holders threatened with re-possession. And we have not ratified the UN Convention on the Rights of Migrant Workers and their Families, which would seem to be particularly relevant in these days but which the EU states as a bloc seem to have set their face against.

The conventions which we have ratified already together make up a substantial charter of rights but it would be nice to round it off with the significant treaties and protocols that we have not accepted to date.

What effect do these treaties and conventions have in practice?

Ireland does not give automatic legal effect to international conventions that it ratifies. That requires legislation by the Oireachtas and the ECHR is the only one of the human rights conventions I have mentioned that has been given direct effect in this way. It was given this status, without a great deal of enthusiasm, as a result of the Good Friday Agreement of 1998. The Irish Government had pressed for the ECHR to become part of the law in Northern Ireland and was then obliged to adopt similar human rights provisions in its own jurisdiction. It still took some five years of campaigning led by ICCL, of which I was then Co-Chairperson, working

closely with the Committee on the Administration of Justice in Northern Ireland, to secure the passing of the ECHR Act, 2003.

**The Effectiveness of the European Convention on Human Rights Act**

So how effective has the ECHR Act been?

Perhaps the best way to assess its effectiveness is to look at how it worked in the Lydia Foy case where its most unusual provision was used for the first time.

Lydia Foy first applied for a new birth certificate reflecting her female gender in 1993, 22 years ago. She was refused and in 1997 FLAC began legal proceedings on her behalf, relying on the Constitution. Her case was rejected by Mr. Justice McKechnie in the High Court in 2002[4]. He held that there was nothing in the Constitution that would support a right to be recognised in a gender other than the one in which she had been registered at birth. He did acknowledge the trauma and suffering caused to Lydia and other transgender persons by the lack of legal recognition and called upon the Government to take action to remedy the situation.

In 2002 the European Court of Human Rights found the UK in breach of the ECHR for failing to give legal recognition to two transgender women under laws almost identical to those in Ireland[5]. A year later the ECHR Act was passed, giving the European Convention limited effect in Irish domestic law and FLAC issued new proceedings on behalf of Lydia Foy. This time we relied on the new Act and in particular a provision that allowed the courts to issue a Declaration that existing law was incompatible with the European Convention. The courts did not have power to strike down the incompatible provision but this mechanism enabled them to refer it to the Government to take action.

The new case was heard by Judge McKechnie in 2007. This time he held that the failure to recognise Lydia Foy in her preferred gender was in breach of the ECHR but he still found nothing in the Constitution that would help her[6]. Instead he made a Declaration of Incompatibility, the first to be made by an Irish court, and indicated that he expected the Government to respect the decision of the court and act upon it promptly.

It is well-known now that it took another eight years and a third application to the courts before the Gender Recognition Act was finally passed this year and Lydia and a substantial number of transpersons at last received birth certificates showing who they really are. It took a whole new campaign by FLAC, working with Transgender Equality Network Ireland (TENI), which had grown out of the publicity and mobilisation around Lydia Foy's case, to secure the change. We

[4] Foy v An t-Ard Chlaraitheoir [2002] IEHC 116

[5] Goodwin v UK (2002) 35 EHRR 18; [2002] ECHR 588; 'I' v UK Application No. 25680/94 July 2002

[6] Foy v An t-Ard Chlaraitheoir [2007] IEHC 470; [2012] 2IR 1

enlisted the support of European and UN human rights monitoring bodies to express their concern and we worked hard to spread awareness of the High Court decision and of Ireland's increasing isolation as the last EU member to refuse to allow any form of gender recognition.

The Government eventually dropped an appeal against the High Court decision and agreed to introduce new legislation, which led to further lobbying and campaigning, including a very effective canvass of TDs and Senators by TENI, and the ultimate result was legislation, which has its flaws but is among the most progressive laws in Europe today.

**The verdict on the effectiveness of the ECHR Act?**

The ECHR Act eventually worked and worked in a situation where there was no remedy under the Constitution. It was the Declaration of Incompatibility that won the support of international human rights agencies and persuaded the Government to move at last. But the cost was unacceptable and unsustainable in terms of the eight year delay and the personal toll on Lydia Foy, and the commitment of time and effort required from FLAC, TENI and other bodies was on a scale that could not be replicated in other cases.

It is clear that to be an effective mechanism for vindicating human rights and securing social justice the ECHR Act needs to be radically amended.

This lesson was repeated in a number of other cases where the ECHR Act has been relied upon. It was used in several cases where local authorities were seeking to evict tenants under Section 62 of the Housing Act, 1966. Under Section 62 the District Court was required to issue an eviction order without any hearing on the merits of the case whenever a local council requested it. The courts had previously rejected constitutional challenges to this procedure but in ***Donegan v. Dublin City Council*** the High Court made another Declaration of Incompatibility in 2008, which was upheld by the Supreme Court and led to an amendment of the Housing Act that came into force earlier this year - some seven years after the initial decision[7].

The ECHR Act was used as well in two cases concerning seriously disabled Travellers living in overcrowded and totally unacceptable conditions in the South Dublin County Council area. Both cases were called ***O'Donnell v South Dublin County Council***[8].

In those cases the courts were able to use the ECHR Act to find that the council's failure to provide appropriate accommodation was in breach of the ECHR - an advance on earlier attempts to use the courts to assert Travellers' rights. But the courts were only able to award damages to the applicants following a judgment in another eviction case which held that courts could not

[7] [2008] IEHC 288; [2012] IESC 18; [2012] ILRM 233

[8] O'Donnell (minors) v South Dublin County Council [2008] IEHC 454; O'Donnell v South Dublin County Council [2007] IEHC 204

grant injunctions or mandatory orders against public bodies under the ECHR Act. In housing cases in particular, an injunction to stop an eviction or an order to provide appropriate accommodation is likely to be of much more use to an applicant than damages.

So, eleven years after the ECHR Act came into force, the conclusion must be that while it can potentially protect rights not provided for in the Constitution, it will not provide an effective remedy unless it is amended to allow the courts to award remedies other than damages and to require the Government to act upon Declarations of Incompatibility within a strictly limited time frame.

What then about the other international and regional human rights treaties and conventions ratified by the State which have not been incorporated into Irish law to even the limited extent that the ECHR has been?

They are not to be dismissed. Most of them operate by committees of independent experts periodically examining the records of the states concerned and publishing their conclusions. Most of the conventions also have individual complaints mechanisms. The Lydia Foy case showed that advocacy, awareness raising and what is sometimes called '*the mobilisation of shame*' can be as important to the ultimate result as the legal arguments in court.

Criticism by international monitoring bodies can be very effective in persuading Governments to change their policies. In addition the European Court of Human Rights has recently begun to take account of decisions and opinions of the UN monitoring bodies, and the UK courts have also been willing to consider the views of bodies like the UN Committee on the Rights of the Child and the Committee for the Prevention of Torture. There is no reason why the Irish courts should not take account of such evidence as well, although it might require a legal enactment to allow them to do so.

**The EU Charter of Fundamental Rights**

And then we come to the newest actor on the stage: the Charter of Fundamental Rights of the European Union. The Charter contains all the rights set out in the European Convention on Human Rights with additional protection for the rights of the child, privacy and data protection, the right to asylum, and a new right to 'Good Administration'. The Charter was given binding force only six years ago by the adoption of the Lisbon Treaty but it has already made its mark in this country. In joined cases taken from Ireland and the UK in 2011, the Court of Justice of the European Union (the EU Court) held that asylum seekers should not be sent back to the country where they first entered the EU if there was evidence that they would be subjected to inhuman or degrading treatment.

In the ***Digital Rights Ireland*** case in 2010[9] the EU Court annulled the Data Retention Directive for the whole EU and just three months ago in ***Schrems v The [Irish] Data Protection Commissioner***[10], the Court refused to accept that there were sufficient safeguards in the protocol under which Facebook Ireland was transferring personal data about its users to its headquarters in the US.

The Charter also has the considerable advantage that, as part of EU law, it can overrode Irish law and it also provides much faster results because Charter cases are considered by the EU Court, which is not subject to the enormous backlog of cases awaiting hearing in the Court of Human Rights in Strasbourg and is sometimes faster than the domestic courts.

There is, of course, a drawback because the Charter only applies to EU law or domestic laws or policies that are implementing EU law; though that is quite a wide canvas in itself and has been widely interpreted by the EU Court. And there is always the potential for a benign form of 'mission creep'. If the application of the Charter in a particular area raises standards of human rights protection, the Irish courts may find it difficult to apply lesser standards in other cases just because they do not involve an EU issue. And it will have shown what can be done.

**Amending the Constitution**

I have argued in this lecture that there are serious problems of poverty and neglect in our society that I do not believe will be remedied by a rising tide lifting all boats – that is if the tide rises significantly at all. We must not go back to '*business as usual*' and we must try to use the lessons from the crisis to put in place mechanisms to protect the vulnerable against any future crisis and to repair as much as possible the damage done by the crisis just passed.

I have suggested as well that there is an opportunity now to make significant advances because there is a new openness to debate and to change, especially in the run-up to the election and to the commemoration of 1916 which will hopefully prompt reflections on how we can and must do better in the second century after the Rising.

I would suggest too that as well as calling for specific policy decisions in particular areas, it is important to change and improve the structures for protecting rights in the future. This lecture has argued that the suite of human rights treaties and conventions that the State has already accepted contain most of the new principles that President Higgins spoke about, and in particular rights to food, accommodation, an adequate standard of living, social welfare, education, accessible health care, and gender and racial equality. Any gaps could be filled in by the overdue ratification of the other key international conventions and protocols that I have mentioned.

[9] Digital Rights Ireland, Cases C-293/12 and C-594/12, 8 April 2004

[10] Maximillian Schrems v Data Protection Commissioner, Case C-362/14, 6 October 2015

The fundamental problem is how to make these rights enforceable. The most effective way would be to enshrine them in the Constitution and that is a discussion that has already begun.

At its final session in February 2014, the Constitutional Convention, which had already called for Marriage Equality, voted by 85% to 15% to call for amendment of the Constitution to strengthen the protection of economic, social and cultural rights. That recommendation was overshadowed by the Marriage referendum campaign but it is still awaiting a response from Government.

I would like to suggest that all political parties and independent candidates in the forthcoming elections should be asked to include a specific section on human rights in their manifestos and that they should be asked specifically to commit to holding a referendum to include economic, social, and cultural rights in the Constitution, to amend the ECHR Act to allow the courts to give effective remedies for breaches of the ECHR, and to require the Government to act on all Declarations of Incompatibility made under the Act within a specified time frame; and to ratify the Convention on the Rights of Persons with Disabilities, Protocol 12 to the ECHR and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights without delay.

And I would suggest that when the new Dail and Seanad assemble, they should establish an all-party Oireachtas Committee on Human Rights that could discuss the conclusions of the international monitoring bodies on Ireland's reports under the various human rights conventions, and the state's response to decisions by the European Court of Human Rights, the Court of Justice of the European Union and the domestic courts in cases involving human rights issues.

**Structures for Strategic Litigation**

But if, or when, these changes are made, there will still be a need for people to take cases to the courts, using the enhanced mechanisms that have been established in order to tease out and develop the full potential of the new human rights provisions.

FLAC and the other law centres and NGOs with legal expertise like the Immigrant Council of Ireland, the Irish Refugee Council, the Migrant Rights Centre, the Mercy Law Centre and a number of private law firms have been taking cases raising social and economic rights issues over the last 10 years and more, but most of them have been too overstretched to coordinate their work systematically and strategically with their colleagues or to do the detailed research necessary to have maximum effect.

Especially now, in the post-Atlantic Philanthropies era, when money is going to be extremely scarce – and I would like to pay tribute to Atlantic for the extraordinary support they have given to the human rights sector over the last ten years or more – there is going to be a need for much closer coordination between all those engaged in strategic public interest litigation, from the frontline workers on the ground in disadvantaged communities and advice workers in Citizens Information Centres, to the law centres, legal NGOs and solicitors and barristers working on

such issues, to share their information and experiences, choose cases carefully to test the legislation and run information and publicity campaigns to change the law where necessary.

And while many academic lawyers have made very valuable contributions to the debates around the protection of social and economic rights, there is a strong argument for some of the universities to establish units like the Socio-Economic Rights Institute of South Africa, which is specifically dedicated to supporting public interest litigation on behalf of the poor and disadvantaged.

None of this is particularly new, we have discussed many of these ideas before but today we have an exceptional opportunity to influence a new Oireachtas and a new Government – and Opposition – to make some radical changes in the structures for protecting social and economic rights. And we face the challenge laid down by the President – to ensure that as the crisis recedes for the moment, we do not allow things to revert to '*business as usual*' once again.

**Defending the Human Rights Act**

Finally, as a footnote, but a very important one, I want to mention what is happening in relation to the European Convention on Human Rights in our neighbouring jurisdiction. The Conservative government in the UK included in its manifesto for the general election last May a pledge to repeal the Human Rights Act, 1998, which incorporated the ECHR into UK domestic law, and to replace it with a new 'British' Bill of Rights. This is a very serious issue for Britain, for Northern Ireland and for the ECHR itself.

Within the UK the Human Rights Act has transformed the attitudes and the jurisprudence of the British courts. The judiciary have embraced it with enthusiasm and there is hardly a significant case heard in the Superior Courts where the Human Rights Act is not discussed and frequently it has a significant, if not decisive, effect on the outcome. Many of the most senior judges have publicly opposed repeal of the Act and the Scottish and Welsh Executives are firmly against it.

Nicola Sturgeon, the Scottish First Minister made a passionate defence of the Human Rights Act at a meeting in Glasgow in September last, saying that repealing or weakening it would be "*a monumental mistake*" and would strike at "*the poor, the vulnerable and the dispossessed*"[11].

Repeal would also have serious consequences in Northern Ireland, where incorporation of the ECHR into domestic law was a key element in the section of the Good Friday Agreement dealing with human rights protections and where the Human Rights Act forms the basis of the code of conduct of the PSNI. Repealing the Act would undermine the Agreement and would arguably be in breach of the parallel international Agreement between the British and Irish governments.

[11] The Scottish Government, Speeches and Briefings, First Minister Nicola Sturgeon at Pearce Institute, Govan, 23 September, 2015

Repeal of the Human Rights Act would also do considerable damage to the European Convention itself and to the whole architecture of human rights protections across Europe. The authority of the European Court of Human Rights is already challenged by states like Russia, Turkey, and Ukraine, which are repeatedly found in breach of the Convention but do very little to end the abuses that lead to those decisions.

If the UK, one of the founding countries of the ECHR and one which has generally accepted the decisions of the Strasbourg Court, now chooses to distance itself from the Strasbourg system and effectively pick and choose which rights it should respect, it would provide an excuse for other, seriously delinquent, states to do likewise and would remove a crucial source of hope from thousands of victims in those countries.

A coalition of human rights NGOs here, in Northern Ireland, Scotland and the UK as a whole worked very hard to get the ECHR written into the Good Friday Agreement in the form of the Human Rights Act in Northern Ireland – and a little later the ECHR Act in this jurisdiction. I would like to suggest that human rights lawyers and organisations here should join with our colleagues in Northern Ireland and in the UK as a whole to resist any move to repeal or water down the Human Rights Act and to defend the European Convention on Human Rights, which represents a beacon of hope to so many people across our shared European continent.

Thank you very much for your attention.

**Michael Farrell, 3rd December 2015**