

Children's Rights Alliance Submission to the Department of Community, Rural and Gaeltacht Affairs in relation to the 'Establishing a Modern Statutory Framework for Charities' Consultation Paper

May 2004

The Children's Rights Alliance welcomes the opportunity to submit its views to the Department of Community, Rural and Gaeltacht Affairs in relation to the 'Establishing a Modern Statutory Framework for Charities' Consultation Paper.

The Alliance is a coalition of seventy-eight non-governmental organisations concerned with meeting the needs and safeguarding the rights of children in Ireland. The Alliance works to secure the full implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child, to which Ireland has been a State Party since 1992.

At the outset, the Alliance would like to welcome the Department's proposal to update the legislation covering charities, in order to create a modern legal framework under which charities can operate. The focus of our submission is on the proposed wording of the definition of what constitutes a charity, as laid out in Section Four of the Consultation Paper.

The present method for classifying charities is archaic, dating back to the 1600s, and is clearly in need of reform. The classification is no longer suitable to meet the needs or reflect the work of the community and voluntary sector and other actors in the area. The proposed introduction of a statutory definition outlining what constitutes a charity, as put forward in the consultation paper, is a significant improvement. However, once introduced it is likely to be many years before the definition is revisited. It is therefore imperative that the new definition should be capable of encompassing all elements of the current work of charities and also be sufficiently flexible to respond to trends and changing needs in the sector that may arise in the years to come.

Over recent decades, the work of charities has shifted away from the traditional service-based charity model to a more dynamic and advocacy-based approach. Charities are also increasingly operating in a rights-based framework, reflecting developments at both the international and community level and models of best practice used to address issues such as disadvantage, social exclusion and poverty.

Increasingly we have come to understand that work undertaken to alleviate hardship arising from poverty and social exclusion is a matter of obligation, not merely a matter for which a discretionary or charitable response is adequate. Those that are experiencing poverty are not only experiencing hardship but also a violation of their basic human rights. Consequently, many organisations have allocated greater priority to promoting and protecting the human rights of those they represent, work with or for whom they provide services.

Groups working in the field of child welfare and child protection - comprising practitioners delivering services, groups made up of children, and groups that see the interests of children as part of their overall agenda - have decided, based on their own experience, to work for the promotion and protection of the fundamental human rights of children.

Working from a rights-based perspective is an empowering approach that implies an obligation to take the required steps to respect and uphold these rights. The rights-based approach has the potential to have a significant positive impact on those whose rights are being abridged. This contrasts with the charity-based approach where assistance is discretionary.

Most organisations that promote and protect human rights hold charitable status. However, when seeking charitable status recognition, many of these organisations must, regardless of their work programme, ensure that their actual purpose conforms with the narrow eligibility criteria necessary to qualify for charitable status.

There are some organisations that work to alleviate poverty that do not provide any direct services to those affected by poverty. Instead the work of the organisation is focused on the provision of essential training or in the role of advocate, providing those experiencing poverty with a voice at the level of public policy making.

From time to time, critically important interventions are made by groups whose sole function is advocacy and the promotion and protection of human rights. For example, a charitable organisation's work may focus exclusively on engaging with statutory consultation processes on proposed new legislation or policies. It is critical that such groups are not excluded or penalised, intentionally or unintentionally, by an inadequate mechanism of charity status recognition. Such groups should not be required to amend their work, replicate work done by others or reduce the time they give to key issues in order to meet the criteria for charitable status.

Any new definition of what constitutes a charity must be broad enough to encompass work that charitable groups are actually engaged in, such as the promotion and protection of human rights. It is arguable that a recognition of work in the area of human rights is implicit in the proposed new definition, as laid out in the consultation document. However, the new definition would be substantially improved by the addition of a phrase specifically referring to "*the promotion and protection or the advancement of human rights*".

The Alliance is, thereby, calling for the inclusion of the phrase "*the advancement of human rights*" as a separate bullet point in the new definition or alternatively the inclusion of the phrase "*the promotion and protection of human rights*" as a sub-bullet point under the "*advancement of community welfare*" bullet point.