

**HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY:
REASONS FOR HOPE**

Address by Michael D. Higgins, President of Ireland

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Inter-American Court of Human Rights

San José, Costa Rica

- **Excelentísimo Señor Presidente, Juez Diego Garcia Sayan**
- **Excelentísimo Señor Vice Presidente, Juez Manuel Ventura Robles**
- **Ministros,**
- **Embajadores**
- **Señoras y Señores**
- **Como Presidente de Irlanda, es un enorme placer presentarme hoy antes ustedes.**

[I am deeply honoured as President of Ireland to have this opportunity to address you today.]

- Here, in this young institution, which has succeeded in such a brief time in placing itself at the core of international human rights architecture, and which has contributed so much to human rights case law and jurisprudence in its short history, it gives me great satisfaction to consider some of the major questions which challenge all of us, politicians and lawyers, activists and academics, philosophers and administrators, in relation to the exercise of the fundamental rights of the human person at this moment in history.
- Over sixty years have passed since the end of World War II, that conflict which galvanized the world's leaders into the reflective debate that culminated in the Universal Declaration of Human Rights of 1948.
- In Europe, those post-war years saw the emergence of the European Human Rights institutions and instruments – the Council of Europe, the European Convention on Human Rights, the European Court of Human Rights – as well as the stirrings of an economic cooperation. This nascent economic cooperation was rooted in a desire for peace and reconciliation and laid the pathway towards the European Union which we know today and which continues to develop and evolve in an increasingly globalised world.
- Here, on the American continent, the worldwide reaction to the horrors and excesses of the Second World War found its regional counterpart in the founding of the Organisation of American States (OAS), and its adoption of the OAS Charter and the 'American Declaration of the Rights and Duties of Man' in Bogotá, Colombia in 1948.
- Although perhaps overshadowed in the perception of human rights discourse by its younger, universal brother, the American Declaration remains one of the great expressions of international human rights

principles today; its provisions a source of obligation for all OAS Member States in the promotion and protection of human rights in the hemisphere.

- In time, of course, that great political expression of the rights of man and the duty of states to protect those rights lead to the ‘American Convention on Human Rights,’ and the establishment of this Court which has done so much to promote the cause of human rights; not just in your region – though your role has been pre-eminent here – but also through your invaluable contribution to wider debates concerning human rights law and practice.
- These debates raise many critical questions as we consider how we wish to see our world progress and develop in the twenty-first century. Just as the American Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights were grounded in a vision that had only recently witnessed the moral abyss of the Holocaust, today we need a discourse and practice that continues to evolve to meet the challenges of a changing world.
- We need a human rights discourse that can deal with issues that are communal as well as individual, that operate within the norm of citizenship and outside of it. We need practices that guarantee that what has been achieved as universal is vindicated through its implementation on an accountable and transnational basis. In doing so, and without abusing the notion of cultural diversity through any relativism that might serve as a cloak for a violation of human dignity or integrity, we might plot our course through the prism of different cultures, themselves in a continuing process of change.
- Jürgen Habermas has described human rights as the only language in which the opponents and victims of murderous regimes can raise their voices. His is a description that starkly reminds us of how these rights must be so deeply grounded and strongly defended that their universality, indivisibility and inclusiveness can be reiterated and fortified across time and change and generations.
- The vindication of human rights is best seen as a public project with a participation that reflects such public significance. The project is one that calls for contributions from various sectors in society, and from many disciplines, ranging from law, to philosophy and anthropology.
- Ireland, like Costa Rica, is a small country proud of its contribution to the development of international humanitarian law and of human rights traditions – a contribution rooted in our shared and passionate belief in freedom.
- It was here, in San José, that pioneering Salvadoran José Simeón de Cañas successfully advocated for the total abolition of slavery in the newly

formed United Provinces of Central America – one of the great moral dilemmas for humanity in the nineteenth century.

- Throughout Ireland's complex history runs a strong thread of internationalism and activism. People like the Liberator Daniel O'Connell (best known for securing Catholic Emancipation in Ireland but who also supported the abolition of slavery in the USA during his American lecture tours), and other less known names such as Richard Davis Webb, Richard Allen and James Houghton remind the world of the significant role Irish people played in the international anti-slavery movement of the nineteenth century.
- The energy and passion of these men brought the great African-American social reformer Frederick Douglass to Ireland for meetings in 1845; a visit which inspired many more Irish men and women – despite their own struggles for freedom – to take up the cause of anti-slavery. In doing so they often had to confront others of their countrymen who, while willing to invoke national independence and seek international support for it, would not lend their voices to denouncing what was a universal scandal.
- It is remarkable that this outreach of empathy from Ireland towards those who were enslaved in another continent occurred at a time when my country was experiencing the worst cataclysm ever to befall it. The *Gorta Mór*, the Great Irish Famine of the 1840s, was a moment, in our country's history, of a great recognition of the common humanity that exists across distance, oceans and cultures and of the manner in which human histories and journeys become entwined and interconnected as they weave a greater moral narrative.
- Last month marked the sixth anniversary of the adoption of the Declaration on the Rights of Indigenous Peoples, in September 2007. In South America, scholars have recently been rediscovering a little known aspect of the life of Irish revolutionary hero Sir Roger Casement who, in 1911, documented in brutal detail the terrible treatment of the Putomayo's indigenous peoples by the London-based Peruvian Amazon Company. Casement had also, several years earlier, carried out a similar exposé of the dreadful crimes committed by the rubber companies in the Congo. His passionate humanitarian legacy has more recently been brought to a wider, Spanish speaking audience by Nobel laureate Mario Vargas Llosa, whose imagined Casement autobiography, *El Sueño del Celta* [*The Dream of the Celt*] so movingly depicts the life and lonely death of this early advocate for the defenceless and the voiceless.
- The work recently carried out by the Institute for Irish Studies at the University of São Paulo by Dr Laura Izarra and other researchers also gives a whole new significance to Casement's work and life and the relationship between them.

- One of the very earliest references in literature to the concept of ‘Crime against Humanity’ can, in fact, be found in Casement’s Putamayo Journal, where he highlights the impunity enjoyed by the perpetrators of the worst excesses against the Indians by their oppressors. He wrote:

“These men have never been punished for the most awful offences against humanity. Not one.”

- In all of Roger Casement’s writings there is a strong invocation to and a call for adherence to the universal values of respect for human dignity and individual rights, as well as to the development of humane working conditions for people and the absolute need for commercial enterprises to be conducted in an ethical manner. He raised the question of impunity and punishment for grave crimes - the kind we would now consider crimes against humanity. These are issues which remain central to contemporary debate.
- This debate is nowhere more active than in relation to the area of transitional justice and the complex realities presented by post-conflict situations, where political settlements and compromises may still be fragile.
- As we in Ireland have learned from our own peace process in Northern Ireland, these are not easy questions to address. The legacy of war leaves many painful issues of truth and memory and there is no easy pathway to the reconciliation of conflicting needs for justice, truth and memory with what is sometimes a brittle political consensus.
- What may constitute a new departure is the call for resources and their management to become a regular tool of conflict resolution. After all, resources – the control and abuse of them – is at the root of so many conflicts. Why not incorporate them as tools of ensuring what are often fragile peace terms?
- In their introduction to the impressive collection of essays *The Role of Courts in Transitional Justice, Voices from Latin America and Spain*, the editors Jessica Almquist and Carlos Esposito, point out that:

“The international institutional advances over the last twenty years bear witness to a growing international conviction that grave crime cannot go unpunished and that courts have a crucial role to play in times of transition, including in conflict situations, and to the establishment of the basic conditions for lasting peace in a given country or region.”

- I wish to deeply commend the work which this Court carries out in relation to such investigation and prosecution of grave crime, for its courageous opposition to impunity.
- In his contribution to the book I have just mentioned, Mr Antônio Augusto Cançado Trindade, former President of this Institution, shows how this Court, as well as your sister institution, the Inter-American Commission for Human Rights, have developed strategies to overcome so many of the obstacles faced by the Court in its search for justice, and how the work of the Inter-American Court of Human Rights has contributed to the advancement of the cause of international human rights everywhere.
- For Justice Cançado Trindade, the current historical process is witnessing the gradual humanization of international law, a new *jus gentium* for our times, summed up in his outlook and belief that the state exists for the human being and not vice-versa. In this essay and in a related speech made to the European Court of Human Rights in 2004, he looks in particular at the landmark judgements of the Inter-American Court of Human Rights, including its significant case law on the fundamental right to life.
- He references in particular the paradigmatic case of the so-called street children of Guatemala (Villagrán Morales and others v. Guatemala, 1999). In this significant judgement, the fundamental right to life of street children was asserted internationally for the very first time, providing justice for the families of five boys who were tortured and murdered in police custody, and thereby establishing an international precedent regarding treatment of this most marginalized group of human beings.
- In another historic judgement related to the 1991 Barrios Altos massacre in Peru, this court warned that measures of amnesty, of prescription, or exclusion from responsibility are inadmissible for grave violations of human rights that included torture, summary or extra-legal or arbitrary executions, and forced disappearances, as they violate non-derogable rights recognised by international human rights law. This case law has since been reiterated by the Court with regard to prescription in other well-known judgements, most recently in relation to the El Mozote massacre that took place in Morazán, El Salvador in December 1981.
- This deeply significant and growing body of case law has resulted in a greatly increased confidence and certainty in relation to the Court's operation in the face of the many challenges posed to its action in a region where many countries are in post-conflict transition and where various types of transitional justice measures are in place in many states.

- I am aware, in this regard Sr. Presidente, that in your former capacity as Minister for Justice in Peru, you have also worked on these questions of restorative justice in your home country and, in that capacity, you have also contributed greatly to developing inclusive, respectful approaches to these profound questions.
- I spoke earlier of Roger Casement and his Amazon journal; yet another of the themes which exercised this great humanitarian so powerfully was the treatment by the rubber companies and their accompanying state security forces of the indigenous peoples of the Amazon basin. Today, with the intense exploitation of this region's natural resources by the world's extractive industries, we find the lands and livelihoods of many indigenous communities being increasingly threatened through potentially dangerous and unsustainable mining and logging practices and we are reminded that community, collective rights and the rights of future generations are at risk.
- I know that this Court had been to the forefront regarding the protection of the rights of indigenous communities in this part of the world, thus leading the way with regard to a generous and full interpretation of their rights.
- I note, for example, the Court's judgement of 27 June 2012 in favour of the Sarayaku Indigenous Community in Ecuador, where it found, in relation to a petroleum exploration project which encroached on the Sarayaku traditional lands, that the state had observed neither the community's right to be consulted, nor their community property rights or their cultural identity. This judgement, as well as an earlier, related judgement concerning a case in Surinam, is seen as a key milestone for indigenous peoples, in particular as to their right to consultation.
- Mr President,
- In addressing your Court today I have placed emphasis in the first instance on those rights which are set out in the UN Conventions and Treaties, and in those regional Conventions which also bind us – i.e. the European Convention on Human Rights and the American Convention on Human Rights – as these are the questions which you, as an internationally constituted treaty-based Court of Law, must address.
- I would also, however, like to take some moments for a brief broader reflection, paying attention not only to the concepts of civil and political rights, to that most fundamental right to life and liberty, but also to the question of economic, social and cultural rights – in essence, to the right of the person to human flourishing.

- Across the world many countries are slowly beginning to emerge from the shadow of the 2008 economic crisis, and are reflecting on what has been learned and on how, in the future, we can build societies and economies on a more equitable, sustainable model, and how we can replace one of unbridled speculation which has resulted in so much distress and hardship for so many peoples in recent times.
- We are challenged to identify, specify the possibilities, the constraints and indeed the contradictions that may arise when we are asked to put our Human Rights rhetoric to the test within economic frameworks, some of which may be unaccountable.
- In the human rights discourse old issues have been joined by new ones, challenging yet full of promise for scholarship and practice. Among the scholars is Professor Mark Goodale who edited a recent work that carries the title 'Human Rights at the Crossroads'. That work shows that the issues have not gone away. They remain, they extend and they become more complex.
- We remain challenged in our pursuit and delivery of the fundamental concept of "universality". Some scholars favour a "transnational universalism". The debate continues of course on the origins, or sources, of human rights, and it is a debate that is no longer confined to choosing between Reason and Revelation. The debate now at the heart of scholarship is on the concept of culture. An old divide between what was referred to as Western sourced rights' theories and Asian or African cultural systems has evolved into a more complex set of divisions around the challenge of seeing the extension of rights through the prism of culture without sinking into such a cultural relativism as would yield up what has been achieved since 1948.
- It has been my own view, for a long time, that the human rights discourse, in any of its aspects, is not best-served by being restricted within the boundaries of legalism. However one assesses it, the origins of the contemporary human rights discourse come from a political background, a complex set of circumstances, that may be interpreted differently. This complex context gives rise to some fundamental questions such as was the issue that faced the drafters of the 1948 Universal Declaration one of retaining sovereignties, while appearing to commit oneself to a philosophy of 'never again' in terms of the depths to which human beings' treatments of each other had fallen, or was it a real new beginning? Then too there are all the debates as to whether human rights at its worst can become a whip by which one nation can lash its opponents so that the discourse has descended to being, at best, a rhetorical instrument.
- In the end the debate about human rights is tested by its ability to deliver emancipatory release from their conditions for those communities who are suffering the deprivation of such rights. The question of whether human

rights delivers for such communities on the ground, sometimes within nations, sometimes within the guarantees of citizenship, sometimes without, which creates special problems, should be real sources of our concern. These are not abstract moral communities.

- I do not subscribe to any of the deep pessimisms that sometimes flows from the literature, but I am convinced that we must deal with the philosophical issues and at the same time deliver a set of practices that will enable the experience of human rights to extend. If this is to happen, practical manuals of practice and exchange of information are necessary, and when they are provided they are most welcome.
- This is certainly the case with the publication in recent years of 'Human Rights Indicators – A Guide to Measurement and Implementation' which is published by the United Nations Human Rights Office of the High Commissioner.
- In addition, I am aware of a very welcome recent and growing debate on the inadequacy of Gross Domestic Product, and its inappropriate use as a measure of the wealth of a nation or its people. Further back one of my favourite sources, anthropologist James C. Scott had written of the disaster that flowed from the introduction of 'cadastral mapping'; from an enumeration that led as he has it in his work, to a subordinating centralisation of authority.
- Nevertheless how could one ignore the words from economist G. K. Galbraith in the foreward to the UN guide to which I am referring:
"If it is not counted it tends not to be noticed"
- Then too governments themselves, we must recognise, in different parts of the world are beginning to see the advantage of figures and measures that have transparency. In time no doubt the value will extend to the discourse at the highest level and may come to be used in the monitoring of compliance with international obligations. However, countries are using measures that disaggregate or dismantle gross indices.
- In the press release from the UN guide we are told that in 2009 Guatemala became the first state to use the human rights indicators developed by the Office of the High Commissioner for Human Rights to assist in its reporting to the United Nations treaty bodies on the rights to health, food and education.
- Brazil, Kenya, Mexico, Nepal, Sweden and the United Kingdom have also used elements of the framework to develop and meet human rights objectives. Navi Pillay, the UN High Commissioner for Human Rights emphasises that the indicators and the methods in the guide;

“are primarily meant to inform more comprehensive assessments and are neither designed nor suitable for ranking the human rights performance of states.”

- Already, many countries in Latin America are leading the way in showing how human rights are being translated into better economic and social realities for people on the ground. Various governments have, through well targeted social programmes, reduced inequalities and provided people with access to education, healthcare and a social safety net, enabling millions to achieve better standards of living and making an enormous difference to economic growth. In the last twenty years, millions of Latino Americans have crossed key poverty thresholds, with many moving out of poverty and into fuller participation in society.
- The success of these programmes is a tribute to the vision and strength of leadership in the region, and an inspiration to those elsewhere who are struggling to find new paradigms for how to grow and develop their society, provide decent work for all, particularly for our young people, and how to promote the development of the creative energies and full human potential of our citizens.
- Here, in Costa Rica, this leadership has been shown most particularly in relation to climate change and sustainable development. We increasingly experience the serious effects of climate change, surely the biggest and most intractable of all the global challenges facing the contemporary world. The Central American region, with its myriad of delicate ecosystems, its fragile and unusual geography, and its many rare and irreplaceable life forms, is unfortunately, and often literally, in the eye of the storm.
- It is inspiring to see that Costa Rica is now recognized globally as the leader in green economic development, with innovative programmes like the Payments for Environmental Services which has contributed significantly to reforestation and biodiversity conservation. I applaud Costa Rica’s declared intention to become the first carbon neutral country in the world by 2021. When achieved, this will mark yet another green first for this country, once again showing the world that, no matter the obstacles, nothing is beyond our creative capacities once the realization of human potential through social inclusion and quality education becomes a lived reality in society.
- In Ireland the debate on human rights and climate change was a key focus for our Presidency of the European Union during the first six months of this year 2013. We are keenly aware of our responsibilities as citizens of this planet, and our obligation to ensure that those who are most vulnerable, and who have contributed least to global warming, are not left to bear the consequences alone.

- Last year, a story by Simeón Tegal, funded by the Pulitzer Center on Crisis Reporting, caught the attention of the world's media. It described how a tiny rise in the sea levels in the Bajo Lempa region of western El Salvador since 2005 had seen the Mangroves, on which the community of La Tirana depends to survive, literally vanish into the sea. Further up the coast, Tegal interviewed a woman farmer, Herminia Arqueta, who had seen her harvest destroyed by the flooding caused by the severe tropical depression of October 2011. This woman told Tegal that her community can no longer differentiate between the seasons, reminding us that climate change cannot just be allowed to remain a subject for scholarly debate in scientific journals.

It is a reality which affects the lives of many, impacting most harshly on those most vulnerable to its effects. For them, the cataclysmic effects forecast recently by the World Bank if current emissions levels are allowed to continue, are already present.

- There are however reasons to maintain hope. As the UN approaches the 2015 milestone for the achievement of its Millennium Goals, there is a renewed focus on the delivery of our promises and commitments to overcome poverty and injustice, and to assist those most affected by changes in climate. As we face the growing challenges of climate change, Costa Rica continues to be at the vanguard of change, remaining a positive role model and a testament to inclusive growth.
- Resilience is a word that has come to my mind again and again during my visit to Central America. Your region of the world has suffered much, both in the distant and recent past, and it would be facile to underestimate the many challenges which you continue to face. Yet everyone I meet greets me with warmth, energy and hope for the future.
- In Ireland also we have experienced many setbacks in recent times. Nevertheless, we have also experienced a great spirit of hope and determination as people have come together to find imaginative solutions to our current difficulties. This spirit of renewal has caused us to reflect more deeply on the importance of sustainable development and human rights as the cornerstones of a caring and flourishing society.
- Ireland was honoured last year to be elected for the first time to the United Nations Human Rights Council for the period 2013-2015. We are deeply privileged to serve on the Council and regard this as a further opportunity to ensure that concern for human rights and their protection remains at the core of our foreign policy.
- We have, therefore, many reasons for hope as evidenced by the impressive work that is being done in this Chamber, and in this region more generally, to meet the great challenges for human rights presented by the legacy of the troubled recent past in Latin America and the Caribbean.

- Yes it is true that human rights everywhere are contested, many challenges remain, and yet their potency and legitimacy continues to grow and develop, as the work of this Court so tellingly demonstrates. This is the practiced work of hope and the legacy of those who build it – the kind of hope that Václav Havel spoke about when he said:

“Hope is definitely not the same thing as optimism. It is not the conviction that something will turn out well, but the certainty that something makes sense, regardless of how it turns out.”

- Here in this chamber, you are working to deliver justice and remedies in a way that makes sense, that is inter-generational in its aims, and emancipatory in its promise, and that will truly contribute to the realization of the vision of those men and women who sought in the Universal Declaration of Human Rights, to create the promise of a different future for the next generation. The American Declaration of the Rights and Duties of Man states that:

“All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers to one another”.

- In the spirit of that statement, as brothers and sisters who continue to travel in hope, I wish you every success as you continue to realise the aspirations of your founders and deliver them into lived realities as we seek together to make this world a more just and inclusive place for the generations that come after us.

Muchisimas gracias por su presencia aqui hoy.

[Thank you]