

Begging the

The *Criminal Justice (Public Order) Bill 2010* proposes restricting the activity of begging. Rose Wall and Michele O’Kelly argue that the bill suffers from vagueness and ambiguity, creating the possibility that it will be applied arbitrarily if enacted in its current form

The *Criminal Justice (Public Order) Bill 2010*, currently at select committee stage, introduces new laws restricting the activity of begging. It is a response to the judgment of the High Court in *Dillon v DPP* (2007), which found that the previous law in this area, section 3 of the *Vagrancy (Ireland) Act 1847*, was unconstitutional. Section 3 was found to constitute a prohibition against begging in any public place in all circumstances. It was accepted by the High Court that such an unrestricted prohibition was in breach of article 40.6.1, which protects the right to freedom of expression. It was also found that, because the offence of begging was “so arbitrary, so vague, so difficult to rebut” and “so ambiguous” in the way it was defined, it was considered to be unconstitutional, violating several articles, namely articles 34.1, 40.4.1, 40.1, and 40.3.

However, the High Court also made clear that the right to freedom of expression can be regulated in the interests of the common good, leaving open the possibility of making more clearly defined and nuanced laws to control the location, manner and other circumstances in which begging might take place.

In light of the *Dillon* case, the aforementioned bill does not seek to impose an overall ban on all forms of begging. Instead, section 2 seeks to make begging

an offence only where it is accompanied by unacceptable behaviour, such as harassment, intimidation, assault, threat or obstruction. Section 2 creates a summary offence that attracts a maximum fine of €400, a custodial sentence of up to one month, or both.

Section 3 gives new powers to the gardaí to direct persons begging within ten metres of an ATM, a dwelling, or the entrance to a business premises to move on. Failure to comply with such directions will also be an offence, and a person is liable, on summary conviction, to a fine of up to €300.

Section 4 provides that a garda may arrest, without warrant, any person whom he or she suspects, upon reasonable grounds, of having committed an offence under sections 2 or 3, and may require the person arrested to give their name and address. Failure to comply with this request or to give false information shall be an offence and shall be liable to a fine not

exceeding €200 upon conviction.

The Mercy Law Resource Centre has several concerns about the new bill.

Firstly, the new law as established by the bill suffers from similar defects of vagueness, arbitrariness and ambiguity as did the previous law, and is similarly open

to misuse by enforcement authorities.

The offences criminalised by the bill are duplicated elsewhere, for example, the *Offences Against the Person Act 1861*, the *Criminal Justice (Public Order) Act 1994* and the *Criminal Justice Act 2006*. This raises the question as to why these new offences are being created.

The government’s regulatory impact analysis justifies the duplication

on the grounds that, in the new legislation, “begging is the activity which is itself being targeted”. However, begging itself is not the activity criminalised by the bill; rather, it is the accompanying behaviour (harassment, and so on), which

is already criminalised under pre-existing legislation. If there is no difference between the offences criminalised under the bill and pre-existing legislation, then the bill is not necessary. If there is a difference, then that difference needs to be clearly spelt out, so that the public at large knows what kind of behaviour constitutes this offence. In the absence of such clarity, the law suffers from vagueness and ambiguity, which creates the possibility that it will be applied arbitrarily.

Secondly, the bill fails to take a holistic approach to the problem of begging and associated behaviours. It focuses on enforcement to the exclusion of rehabilitative intervention and support. Research in Britain by Johnsen and Fitzpatrick has shown that enforcement alone tends only to displace and often exacerbate the problems, whereas enforcement as part of an overall coordinated approach offering targeted intervention and support is more likely to be successful in dealing with the problems and their underlying causes. A holistic approach is therefore in the interests of the public who seek protection from problematic begging behaviour.

The research also confirms that people who beg are highly vulnerable individuals, the great majority of whom suffer from a combination of one or more of the problems of homelessness, substance addiction, mental illness, or a traumatic childhood.

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If the needs of these highly vulnerable people are to be taken into account, criminal law enforcement must be integrated with intensive support interventions tailored to the individual's needs. The cost of imprisonment provided for in the bill could be directed towards such rehabilitative intervention and support.

Thirdly, the regulatory impact analysis that accompanies the 2010 bill states repeatedly that begging cannot be justified on economic grounds due to the comprehensive range of income supports, health care, and housing supports available.

However, a variety of factors can cause people to find themselves in a situation where they have to beg, and this is only likely to increase in the coming years in light of the ongoing financial downturn.

The impact of the habitual residence condition often results in people not having any access to regular social welfare entitlements. In a case where a negative decision has been appealed, a person often has no option but to beg in order to remain in the state long enough to vindicate their rights on appeal. Rough sleepers who are unable to provide proof of address, and asylum

seekers who have limited social assistance and who are ejected from their direct provision accommodation, represent a further group of people who are compelled to beg.

The assumption that there is no economic justification for begging must therefore be questioned. It is incumbent on the government to put in place adequate social protection for people who have no alternative but to beg, in line with its obligations under article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which protects the right of everyone in this jurisdiction to an adequate standard of

living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

In conclusion, the bill is ineffective, as it does not address the root causes of begging. Research needs to be carried out in consultation with organisations working with people who beg so as to work towards solutions that are just and effective. This may require changes in policy and practice rather than legislation. **G**

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