

Submission of the Staff of the Irish Human Rights Commission (IHRC) to the  
Working Group on the Merger of the IHRC and Equality Authority (EA)

23 November 2011

The IHRC Staff of public servants welcome this opportunity to make a submission to the Minister for Justice and Equality's Working Group. We believe in the principles of human dignity, freedom and equality that underpin human rights law and have a wide range of experience in promoting and protecting human rights.

We approach this merger process with an open mind. We sincerely hope that in restructuring the State's human rights and equality bodies, the Government will seize the opportunity to strengthen the protections which these structures can offer for the benefit of everyone in this State. We hope that the Government can demonstrate leadership here and deliver a new body that sets international best practice, as was the case with the establishment of both the IHRC and the EA.

We greatly look forward to working in the new body with our colleagues from the EA and will strive to ensure the success of this new body.

We hope that our submission, which draws from our expertise and practical experience working for the IHRC, will assist the Group. We would welcome an opportunity to meet with the Group to provide further details and clarifications.

### ***Overarching Principles***

The IHRC Staff strongly recommend that the merger should be guided by the United Nations Principles Relating to the Status of National Institutions (Paris Principles) as interpreted,<sup>1</sup> and have regard to the Belfast/Good Friday Agreement.<sup>2</sup>

### ***Role of the IHRC***

We are committed to the work of the IHRC as Ireland's "A" status National Human Rights Institution (NHRI). There remain a large number of areas in which the human rights of people in Ireland are not being fully respected. Having a NHRI is a crucial oversight mechanism. We regret that the IHRC has not had sufficient resources to carry out its work more recently.<sup>3</sup> The new body should ensure continuing oversight of human rights protection in Ireland, continuing the work of the IHRC and of the EA to date.

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<sup>1</sup> As interpreted by the ICC Sub Committee on Accreditation, which is recognised by the UN.

<sup>2</sup> The IHRC owes its existence to the Belfast/Good Friday Agreement and in recognising that, the IHRC Staff consider the Agreement should inform the merger process and that the links between the IHRC and the Northern Ireland Human Rights Commission be retained and further developed within the new context.

<sup>3</sup> €1.46 million for the IHRC is currently insufficient. It only covers wages and some administrative costs.

## ***The Vital Importance of Independence<sup>4</sup>***

The IHRC is an independent institution. Staff have been selected by open competition for their experience in human rights and other disciplines and were appointed as public servants at a remove from Government. Our sole concern is the promotion and protection of human rights.

A NHRI must be an independent institution. The 'independence' of a NHRI requires that the following standards be observed:

- No interference from the State in its operations and in carrying out its mandate. This includes the need for separate control over HR, Payroll, Finance and IT etc;
- Adequate human and financial resources to fully carry out its mandate;
- There should be no administrative links with Government, but rather accountability to the national parliament, in this instance the Oireachtas;
- Not only should it *be* independent, but it should be *seen to be* independent in structure and practice by the public.

Independence can be guaranteed through:

- Independent, transparent, public appointments procedure for the Board;
- Independently appointed (non-executive) Board representing different segments of Irish society (pluralistic), gender balanced with no government/civil servant representation;
- Independently recruited and appointed Chief Executive Officer;
- Budgetary independence;<sup>5</sup>
- Selection and appointment of its own staff;
- Transparent working processes ;
- Adequate powers and functions.

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<sup>4</sup> Please see Paris Principles and ICC General Observations at <http://www.ihrc.ie/publications/list/general-observations-icc-sub-committee-on-accredit/>. The UNDP-OHCHR NHRI Toolkit should also be a source of reference for the Working Group in its discussions <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

<sup>5</sup> This also includes no Department interference in reducing the budget of the NHRI, which would effectively stifle its work and have a censoring impact, or other administrative restrictions.

## ***Mandate***

A central component of human rights is equality and non-discrimination. On a substantive level, a merger between these two areas is possible. However, in order to comply with the Paris Principles, the mandate must cover all international human rights standards.

## ***Powers and Functions***

The merger should be used as an opportunity to enhance the functions of both bodies. The functions of the IHRC (HRC Act Sections 8-11) should be strengthened. The functions set out below are vital to the NHRI and produce considerable impact:

- Legislative Review;
- 'Shadow' Reporting to Treaty Bodies;
- Research<sup>6</sup>/ Policy;
- Joint Committee<sup>7</sup>;
- International engagement (including with other NHRIs<sup>8</sup>);
- Legal assistance;
- Representative actions;
- *Amicus Curiae*;
- Enquiries;
- Awareness Raising, Communications and Public Affairs;
- Human Rights Education, Training<sup>9</sup> and Development;
- Finance;
- Human Resources;

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<sup>6</sup> It should be noted that research is cross-functional as all sections may need to carry-out or commission research to inform their work.

<sup>7</sup> Continuation of work with the NIHRC through the Joint Committee structure.

<sup>8</sup> The project funded by Irish Aid to provide capacity building support to NHRIs in Irish Aid Programme countries should be continued.

<sup>9</sup> At present, human rights training is undertaken through external funding by the Human Rights Education and Training Project. This Project has an annual budget of around €200,000, including for two contractors. This Project should be retained in the work of the new body.

- IT and web media.

In order to ensure independence in accordance with the Paris Principles, it is for the new Board and Executive to decide on the internal structures and working areas of the IHREC.

However, having considerable collective experience of working for the IHRC, the staff consider that the following functions forming a substantive part of the work of the new body be grouped together: 1) Legislative Review, Shadow Reporting, Research, Policy; Joint Committee, International; 2) Legal Assistance, representative actions, amicus curiae, enquiries; 3) awareness raising, communications and public affairs; human rights education, training and development.

In relation to the IHREC's finance and human resources, we wish to highlight that this is a crucial component of an independent NHRI and cannot be linked to a Government Department. The Staff also consider that structures, approach and outputs of the new body should be impact and outcome driven.

### ***Additional Functions***

Being Paris Principles compliant, and in keeping with the role of an NHRI, the new body should be given the functions of the OPCAT National Preventative Mechanism and the Disability Convention National Monitoring Mechanism. It should also have the capacity to monitor and give advice on poverty, and racism in the absence of other independent statutory bodies to carry out these functions.<sup>10</sup> Adequate resources should be provided for the operation of such additional functions.

### ***The Board***

The Paris Principles require that NHRI board members are independently appointed through an open, transparent, demonstrably independent and broad consultative process.<sup>11</sup> They should be chosen primarily for their expertise in human rights and equality and reflect the pluralist nature of Irish society and gender balance.

In order to promote both actual and perceived independence, there should be no Government or Civil Servant membership on the Board.

Given the very small budget of the IHRC, and likely also of the future body, and given the size of the proposed board, the appropriateness and level of remuneration of board members should be considered.

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<sup>10</sup> Following the abolition of the Combat Poverty Agency and the dissolution of the National Consultative Committee on Racism there is a critical absence of independent statutory research and policy advice on these issues.

<sup>11</sup> For example, by a panel headed by a superior court judge and comprised of persons recognised for their independence and understanding of human rights and equality. There should be no automatic reappointments from previous boards as such a move is not in keeping with this Paris Principle requirement.

## **Staffing**

While the below issues of concern may be not be considered by the Working Group, we raise them with a view to future discussions.

Paris Principles compliance requires that between 50% and 75% of NHRI staff should be public servants and no senior staff should be seconded civil servants in the interest of maintaining independence and avoiding conflicts of interest. All NHRI employees should be recruited directly by the body, ensuring experience directly relevant to its work.

- **Staff Terms and Conditions:** IHRC staff have been appointed to particular roles based on their skills, experience and suitability. Thus, staff should continue to work in such positions and any changes to their contracts/terms and conditions are required to be negotiated first with the staff member, under the current terms of those contracts.
- **Appointments:** IHRC Staff have been independently recruited and on appointment are public servants. Direct recruitment by the new body of suitably qualified experienced staff should continue.
- **Contractors:** Due to budget cuts, the IHRC has had to use contracted personnel with ring fenced alternative funding to undertake some of its key work in the past number of years. This work and all contracts should remain valid with the new body.
- **Training and Development:** IHRC staff have had little to no training or development over the past four years. Opportunities for training/development must be budgeted for within the new body so that all IHRC/ EA staff can be up-skilled and trained in the functions of the new body.
- **Mobility and Promotion:** Staff have had no mobility or promotion opportunities for the past four years. Such prospects should be incorporated into the new institution.
- **Staff on Leave:** Staff on career break/maternity leave should be protected and ensured positions in the new body.
- **Protection of Superannuation Schemes:** All IHRC staff contribute to the IHRC Superannuation Scheme and IHRC Spouses and Children's Scheme. The protection of both pension schemes and benefits must be guaranteed.

## **Budget**

It is vital that the Government demonstrate its commitment to human rights and equality by adequately resourcing the new body with sufficient funding to cover staff, rent, administration and its programme of work.

## ***Stakeholders***

A NHRI should have as stakeholders<sup>12</sup>:

- the public;
- the National Parliament;
- Judiciary/Legal Professions;
- Statutory Bodies;
- the Government;
- NGOs;
- Civil Society;
- Media;
- International and regional human rights bodies;
- The international community of NHRIs.

## ***Location***

In order to promote accessibility, the new body should be centrally located in Dublin.

## ***Next Steps***

Staff recommend that there must be sufficient time given for the legislation to be considered and process of merging to take place.

- **Legislation:** There must be broad public consultation on the draft legislation and the Oireachtas must be given sufficient time to consider the draft legislation carefully and thoroughly. The International Coordinating Committee of NHRIs and the UN OHCHR should be invited to comment on the draft legislation to support its compliance with the Paris Principles.<sup>13</sup>
- **Building the new Irish Human Rights and Equality Commission:** Merging two organisations is not simply a matter of fitting two pieces together. At the centre of the merger are the people that work for both organisations: the committed

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<sup>12</sup> The Paris Principles suggest that prior consultation with stakeholders should take place before the establishment of a new NHRI.

<sup>13</sup> It should be noted that the new institution will be automatically examined by the ICC once it is established, to ensure that it is in compliance with the Paris Principles.

staff. Building a new body is a process that requires careful and skilled change management that results in an agreed merger process with sufficient funding to deal with ongoing work and the additional resources required to facilitate the merger.

The process requires effort to build a common vision, mission, and purpose through an inclusive strategic planning process. It necessitates the development of a common organisational culture that reflects both human rights and equality values.<sup>14</sup> It should be progressive and not be rushed.

- **Recent State Agency Reform Proposals:** We note recent proposals for ‘sunset’ clauses for new public bodies. Such a clause cannot attach to the merged institution, as to do so would severely impede its independence.

**Signed:**

IHRC Staff

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<sup>14</sup> It is also important that, in merging the two bodies, a sufficient transition period be afforded in order to transfer the administrative systems (e.g. IHRC casework database) of the respective organisations.