

**Proposed Human Rights &
Equality Commission**

Submission to Working Party



I. Introduction

This document is a formal submission to the Working Group (WG) established on 6 October, 2011, by the Minister for Justice, Equality and Defence to advise on the creation of a Human Rights and Equality Commission (IHREC). It is written on the basis that the Working Group already has significant background knowledge of key options and issues to be resolved in terms of the proposal to merge the Equality Authority and the Irish Human Rights Commission. Key IHRC proposals are highlighted in bold text.

II. Suggested principles which should underlie merger

1. That the process leading to merger should involve consultation with all key stakeholders including civil society and the staff of both existing bodies.
2. That the new body is to be Ireland's national human rights institution (NHRI) and is therefore to be established in a manner that will ensure it is accredited with "A" status as an independent NHRI under the UN "Paris Principles" as interpreted by the International Coordinating Committee of National Human Rights Institutions Sub-Committee on Accreditation and that structural issues address this imperative.
3. That there is adherence to both the PP and the architecture of the Good Friday/Belfast Agreement through ensuring that the resources for "output" match the "input" functions of the new body – both re human rights and equality.
4. That the founding legislation should be strong particularly regarding legal powers and that it reflect PP/ GFA priorities.
5. That important new functions be accorded the new body (in particular it should - as in many other countries - become the national preventative mechanism to be established under the UN's Optional Protocol to the Convention against Torture – OPCAT - and/or the national monitoring mechanism under the UN Convention on the Rights of Persons with Disabilities - CRPD). However, these functions must be accompanied by a political commitment to resourcing inspectors etc. and that internally the mission statement of the body reflects its multifaceted roles.

What do the Paris Principles require from a National Human Rights Institution (NHRI)?

Key criteria set out in the Paris Principles for the establishment of an NHRI are the following; independence guaranteed by statute or national constitution, pluralism, including in membership, independent expert staff, secure budget and a broad mandate covering universal human rights standards. Currently the IHRC is regarded as meeting these criteria.

III. Major issues for consideration

- **Independence**

To guarantee independence, **the IHRC has called for the new body to be made accountable to the Oireachtas.** While linkage to an Oireachtas committee may occur, it should also be clearly stated at a minimum that any continued linkage to the Department of Justice and Equality is limited to budget provision and administrative information provision only. In fact international best practice would suggest that the NHRI should not be linked in any manner to a Government Department, but that it report to parliament. In particular it would be preferable that its budget would not be administered by a government department.

- **Commissioners**

It has already been announced that the new body will have a Board of twelve.

The International Coordinating Committee of National Human Rights Institutions' Sub-Committee on Accreditation states that, in order to comply with the Paris Principles, the appointments and organisational infrastructure processes must have the following: *a transparent process, broad consultation throughout the selection and appointment process, advertising vacancies broadly, maximising the number of potential candidates from a wide range of societal groups, selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.*

The Paris Principles state that appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured and that appointment has taken place via the correct procedure. **There must be a credible, open, transparent, independent appointments process to the new body.** Further, it is clear that to meet the Paris Principles a body should not have government representatives on its board nor should persons serve in a representative capacity as such.

The gender balance requirement in the current IHRC legislation should be maintained for the new body.

It is proposed that the Chair/Board Members of the new Body be called President and Commissioners which would underline the independent and expert nature of the new body.

The President of the Commission should be of high profile and high standing but the role could be a part-time one.

At the same time certain decision-making (e.g. casework) should be delegated to the Chief Executive to ensure volume of case processing does not drop and customers' needs can be met.

- Executive

NHRIs must be able to recruit their own staff. Where there are seconded staff, ideally these should not be those dealing with policy or substantive caseload issues of the Commission.

The ICC Sub-Committee on Accreditation have stated clearly that in order to guarantee the independence of the NHRI, the number of state secondees should not exceed 25% and should never be more than 50% of the total workforce of the NHRI. **Senior staff must always be independently recruited directly by the NHRI.**

Formulating a new senior management team and instilling good practices under firm leadership of an independent (i.e. board-appointed) CEO will be key in the first year of the new body and would suggest that having the CEO in situ from early on would be preferable. **The CEO should be independently recruited by the new board.**

In general it will be necessary for the IHRC template of self-recruitment of public servants to become the norm. A separate paper on this issue has been submitted to the WP.

While the organogram of the new body should be left for the executive and President/ Commissioners of the new body to agree it is recommended that a tight senior management team involving a CEO at Assistant Secretary General level and Divisional Heads at Principal Officer level be put in place.

This is necessary both because of the size of the new organization and the need for the executive to be able to deal effectively at senior levels with the senior civil and public service.

While in principle agreeing to back-office efficiencies where proposed, the IHREC should seek to ensure that it retains independence in the support of all its functions. In most cases this will mean administrative independence, for example, maintaining its current IT, payroll and office management operations. This is important to ensure PP compliance.

The statute that establishes the new body should state clearly that the Chief Executive is the Accounting Officer and practice from the outset must reflect this.

The statute should also make clear that if there is any linkage to a Government Department that is to be administrative in nature only and does not compromise the independence of the new body.

The IHREC should continue a scheme akin to the IHRC's current internship and professional placement programme.

- **Functions and Powers**

The remits of the IHRC and EA are very different. The EA has its genesis in EU law while further to the Good Friday Agreement, the IHRC's remit derives from the Constitution and UN and Council of Europe human rights conventions (i.e. international law). Whereas the EA deals with a large volume of cases concerning discrimination by public/private actors in the provision of goods and services and in employment under 9 prohibited grounds, the IHRC's primary focus is on State responsibility. Whereas much (although not all) of the EA legal work occurs before the Equality Tribunal, the IHRC's legal work is primarily before the Superior Courts.

Before any final decisions are taken on functions and powers, it is suggested that a full review of the powers and functions of both bodies be undertaken. There should also be a full analysis of the outputs of both bodies over recent years to assess what they have been doing.

It is however proposed that the breadth of mandate and powers of the merged body should be based primarily on the structure of Section 8 of the HRCA 2000 (essentially legal cases, legislative analysis and promotion work) with perhaps some strengthening of legal powers e.g. IHRC legal powers to include pre-enquiry and pre-litigation powers and with the significant addition of case-taking powers in the equality area. The IHRC's section 8 powers are also those listed in the Paris Principles as the powers required by a NHRI. A separate submission on current IHRC powers and functions has been provided to the WP.

- **Budget**

There is particular emphasis placed by the international community on the need for an adequate and independent budget for the NHRI. This is more than a mere administrative formality, but is viewed as a key component in the assessment of independence. It is of note that the International Coordinating Committee's Sub Committee on Accreditation Sub Committee on Accreditation highlighted this issue in its 2008 review of the IHRC.

Therefore, there should be an adequate net budget post-premises, salaries and administration to permit substantive human rights and equality work. In allocating resources to the new body it will be key to consult with the body itself and take an evidence-based approach with a sense of the real cost of executing the body's functions and powers the major principle to be considered.

If the new body is OPCAT/CRPD designated, there must be concomitant budgeting.

Given the current (and likely for the short term at least) importance of philanthropic funding to the effective functioning of the IHRC the founding

legislation should allow the possibility of same, perhaps with some criteria or threshold included as it is a principle of NHRIs that they be core-funded by the State. At a minimum, there should be no explicit exclusion of the possibility of same.

In this context current externally funded projects must be continued by the IHREC.

- Location

Ideally the new body will have State-backed security of tenure in Dublin city in an OPW building attracting no rent and which is easily accessible to the public.

In any event the new body should have no legacy debts from the IHRC or the EA and the Department of Justice and Equality should have the IHRC lease assigned to it. An alternative is the possibility of reduced rent offices in Jervis House (with additional space contracted).

The issue of the Roscrea based EA premises must be addressed in the short term.

IHRC

16 November, 2011