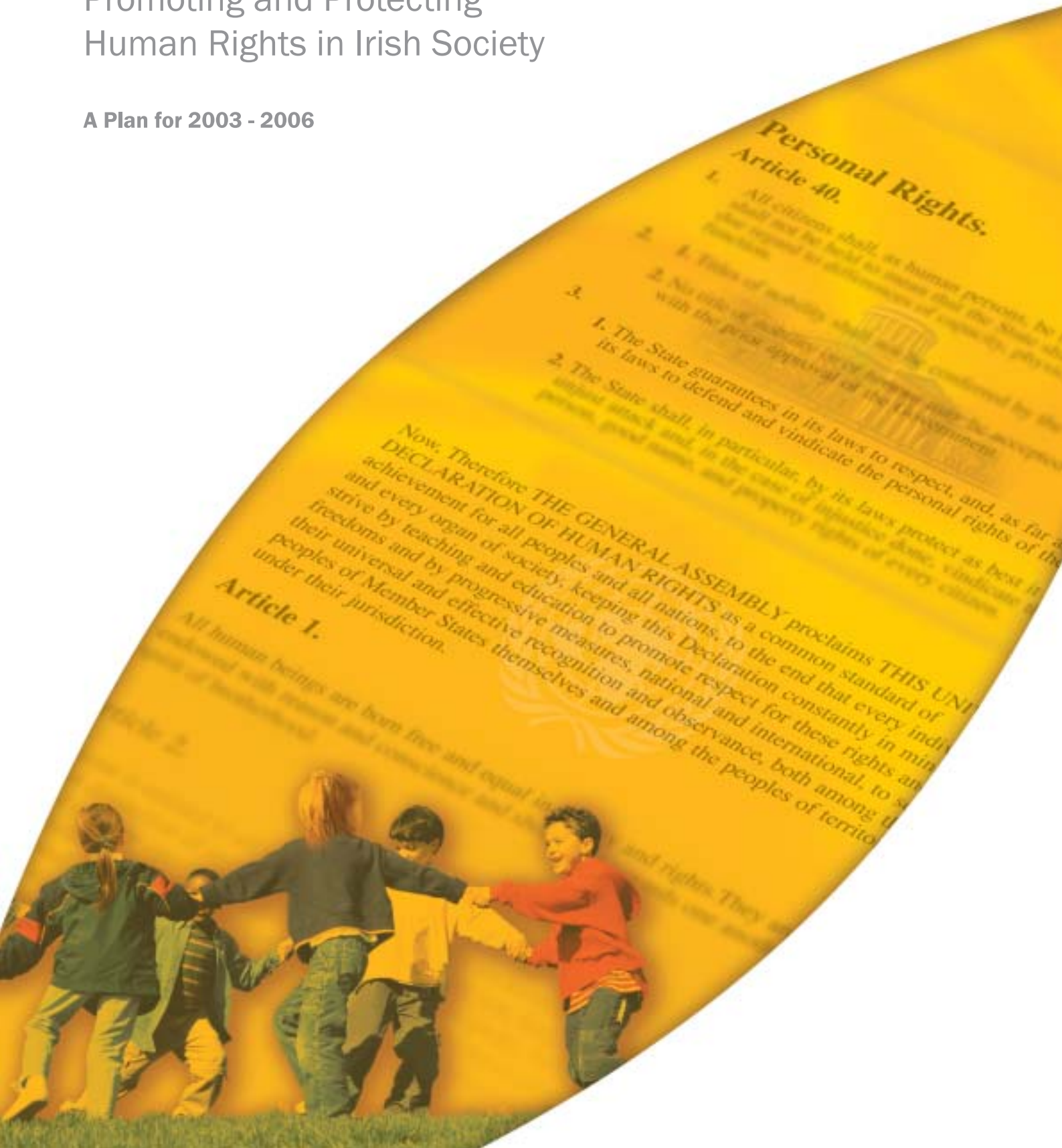




HUMAN RIGHTS COMMISSION

Promoting and Protecting Human Rights in Irish Society

A Plan for 2003 - 2006



Personal Rights. Article 40.

1. All citizens shall, as human persons, be equal in the eyes of the law and shall not be held to answer for a crime which they have not committed.
2. No one shall be subjected to arbitrary arrest, detention or exile.
3. The State shall, in particular, by its laws protect as best it can:
 1. The State guarantees in its laws to respect, and, as far as possible, to enforce, the right of every citizen to:
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Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.



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Dr. Maurice Manning,
President of the
Commission



**Professor William
Binchy**



Ms Olive Braiden



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**Dr Katherine
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**Dr Alpha Connelly,
Chief Executive**

1 INTRODUCTION

The Establishment of the Human Rights Commission

This document, devised by the Human Rights Commission of the Republic of Ireland, outlines the guidelines under which the Commission operates and offers a Plan for specific areas of work.

The Human Rights Commission was established in July 2001. It was created by the Human Rights Commission Acts 2000 and 2001, which set out the functions and powers of the Commission.

The Commission was set up as a direct result of the Good Friday Agreement, which provided for the establishment of Human Rights Commissions in this jurisdiction and in Northern Ireland. Under the Agreement, the Commissions are charged with promoting and protecting human rights in their respective jurisdictions and working together to improve the protection of human rights on the island of Ireland. The establishment of a Commission in Ireland was also recommended by the Constitution Review Group in 1996.

National human rights institutions have now been established in many countries worldwide. The trend to establish national institutions was given a major impetus in 1993 with the endorsement of the idea by the United Nations (UN) World Conference on Human Rights and the adoption by the UN of a set of principles concerning national institutions known as 'the Paris Principles'. Since that date, the Office of the UN High Commissioner for Human Rights has supported and assisted the development of national institutions in every region of the world. Among the countries where highly effective Human Rights Commissions have been established are Australia, Canada, Denmark, India, New Zealand and South Africa. Throughout this document it will be noted how valuable the experience of other Commissions is, when considering and informing human rights issues in this jurisdiction.

The Members of the Human Rights Commission

The Human Rights Commission has 15 members. The members are:

Dr Maurice Manning, President of the Commission
 Professor William Binchy
 Ms Olive Braiden
 Mr Martin Collins
 Professor Robert Daly
 Ms Suzanne Egan
 Mr Michael Farrell
 Ms Nuala Kelly
 Ms Jane Liddy
 Ms Clodach McGrory
 Professor Fionnuala Ní Aoláin
 Mr Tom O'Higgins
 Professor Gerard Quinn
 Mr Mervyn Taylor
 Dr Katherine Zappone

All members apart from the current President formally assumed office on 25 July 2001. Judge Donal Barrington served as President of the Commission from 25 July 2001 to 31 July 2002. His successor, Dr Maurice Manning, assumed office on 1 August, 2002. The term of office of the current Commissioners is a period of five years, 2001 - 2006.

The Purpose of this Plan

The Human Rights Commission has a very broad mandate to promote and protect human rights in Ireland. The purpose of this Plan is to describe the functions of the Commission and the activities it intends to undertake to fulfil its mandate. The Plan sets out key areas of work on which the Commission proposes to focus over the next four years, and provides information on what the Commission has done to date.

The Commission's mission statement, values and criteria informing choices it will make regarding its work during the lifetime of this Plan are presented. Information on how the Commission will operate in practice is also provided.

Human Rights

Section 2 of the Human Rights Commission Act, 2000, contains a definition of the human rights which the Commission is mandated to protect and promote. The definition is:

- "(a) The rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and
- (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party."

Constitution

Articles 40 - 44 of the Constitution of Ireland set out the fundamental rights which must be guaranteed to persons. These rights have been elaborated upon in the case law of the Irish courts.

International agreements

The best known international agreements to which Ireland is a party are: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Ireland is also a party to the Statute of the International Criminal Court.

At European level, the best known international agreements are: the European Convention on Human Rights, the Revised European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities.

Human Rights Standards

In its work, the Commission will also take account of developing national jurisprudence and international human rights standards. Such standards and new jurisprudence may provide a source of additional human rights protection and/or provide protections for groups and individuals who may not receive adequate protection under existing legal standards.

Consultation and Dialogue

The Commission aims to use this Plan as a key document in its consultation and dialogue with various bodies, agencies and individuals throughout the lifetime of this Plan. Since its inception, the Human Rights Commission has met with a number of groups, participated in several regional, national and international conferences and seminars, and has attended meetings at the request of agencies and representative groupings. It has worked closely and collaboratively with the Northern Ireland Human Rights Commission. The Human Rights Commission has benefited from this initial phase of dialogue that has taken place during the preparation of this Plan and has sought to take account of and include many of the concerns and issues raised. The Commission has been encouraged by the widespread concern for the protection and promotion of human rights and by the anticipation of other human rights and equality bodies of its own unique contribution to this process.

With the launch of this document, the Commission intends to initiate a phase of structured consultation and dialogue throughout the life of the Plan. The Commission will take a flexible approach in the Plan's implementation in the light of this ongoing consultation. It views dialogue as essential to its activities over the next four years, and is planning a number of key activities to regularly involve a high degree of public consultation in its work.

These will involve a series of targeted discussions with non-governmental organisations, Government Departments, local and thematic groups, and political parties to hear their views and to provide specific information on the work programme of the Commission. The Commission also intends holding public meetings, using local radio and local newspapers to bring the Plan, and indeed the Commission, to the attention of as wide a general public as possible. Consultations will be periodic, and particular effort will be made to ensure the participation of those who are most at risk of their human rights not being adequately protected. The Commission will actively seek to hear how the protection of human rights can be improved upon through a range of enforcement options and through implementation of Government commitments. The Commission will build into its work programme a process of dialogue and review as a key component of forward planning for the next period.

The Commission intends to be as open and flexible as possible in this process, balancing the views and concerns expressed in the dialogue with the goals and achievement of targets that it sets for itself within the parameters of this Plan and its resource limitations. The Commission welcomes suggestions on its Plan, and looks forward to building relationships with all others working to protect and promote human rights both in specialist organisations and among the general public.

2 MISSION STATEMENT

The mission of the Human Rights Commission is to endeavour to ensure that the human rights of all people in the State are fully realised and protected, in law, in policy and in practice.

The Commission will pursue its objectives vigorously and independently. It will do its best to ensure that Irish law and practice is in line with the highest international standards, measuring our law and practice against the standards set out in the Constitution and in international human rights agreements to which Ireland is a party.

Where the Commission believes human rights are not being adequately protected, it will say so clearly and strongly, and will actively seek change in the law, policy or practice concerned.

In carrying out its functions, the Commission will operate in an independent, fair, open, accessible and accountable manner and will seek to use to the full the powers conferred upon it.

The Commission will seek to increase awareness of human rights protections and how to access them, striving to create a strong, pervasive culture of human rights at all levels within the State.

The Commission will work closely and, where appropriate, collaboratively with statutory bodies, Government Departments, non-governmental organisations and all involved in human rights issues. The Commission will work closely too with other National Human Rights Commissions, the UN and the Council of Europe to endeavour to ensure a high standard of human rights protection.

The Commission takes particularly seriously its participation in the Joint Committee with the Northern Ireland Human Rights Commission, as provided for by the Good Friday Agreement. The Commission will work collaboratively to strengthen the protection of human rights in both jurisdictions and work to establish a charter "reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland", as proposed by the Agreement.

3 VALUES

Core Values

The protection and promotion of human rights is the core value of the Human Rights Commission. In pursuit of this commitment, the Commission will work to ensure the protection of civil, political economic, social and cultural rights in recognition of the universal, indivisible, interdependent and inter-related nature of all human rights.

Operational Values

In carrying out its functions, the Commission will act independently and in a transparent and fair manner. The Commission will be as accessible and accountable as possible.

A commitment to consultation and dialogue will be at the heart of the Commission's work. The Commission will co-operate closely with other bodies at home and abroad.

The Commission will work in support of other agencies active in the field of human rights. The Commission's aim will be to work in harmony with such bodies and avoid any unnecessary duplication of work. In this respect, the Commission will be guided by the need to deploy its limited resources as effectively as possible.

In developing its work, the Commission will seek to exercise its unique statutory powers in a manner which will bring 'added value' to work already being undertaken in the State to promote and protect human rights.

The ability to respond effectively to situations as they arise will be a central operational value for the Commission.

The Commission will be motivated by respect for the inherent equality and dignity of all individuals and a commitment to promote and protect the rights of the most vulnerable members of society.

The Commission will review and evaluate its own work in order to ensure that it exercises its mandate to promote and protect human rights as effectively as possible.

4 A STRATEGIC APPROACH: CRITERIA FOR SELECTING KEY AREAS OF WORK

Introduction

The Human Rights Commission acknowledges that it has a wide array of powers to investigate and comment on human rights issues and violations (these are outlined in Chapter 6). In discharging its mandate - through legislative review, research, the conduct of enquiries and awareness-raising - the Commission strives to be aware when and where the law and practice of the State could be improved so as to protect individual and group rights more fully.

The Commission is aware that the kinds of issues likely to come to its attention through the exercise of its functions will be extensive. The Commission anticipates that people who have concerns about human rights protections, either the adequate protection of their own rights or the rights of others, may seek its assistance in vindicating these rights. This means that a vast array of human rights issues and concerns are likely to be presented to the Commission over the next four years. As an organisation with limited staff and resources, the Commission will not be in a position to respond to each issue of concern, and must identify key areas in its work.

The Commission operates from a consistent set of criteria upon which to make hard choices between pressing human rights issues. This is necessary in order to work effectively, and to ensure that resources are used in a manner which best protects human rights overall. This will sometimes mean that there are genuine and real human rights issues and violations that the Commission will be unable to respond to during the period covered by this Plan. The Commission's lack of ability or resources to respond to a particular issue does not mean that the issue is unimportant or that a human rights violation had not been experienced.

In setting out these criteria, the Commission and its staff will do their utmost to ensure that all applications are undertaken sensitively and thoroughly. The Commission will communicate fully with individuals, organisations and Government when decisions are made based on the application of these criteria. The Commission believes that the criteria used in selecting its priorities should be a matter of public knowledge and they are set out below.

Criteria

Category 1

The criteria listed below are the minimal set of requirements which generally will be satisfied before the Human Rights Commission will act on a human rights issue.

An issue will:

- Fall within the scope of the Commission's statutory functions as set out in Chapter 6 of this Plan. This means that the Commission must have the legal powers necessary to examine, report or act upon the human rights issue concerned.
- Concern a right that is not adequately protected in the State. If other bodies are already addressing the issue, the Commission must ensure that its actions do not unnecessarily duplicate existing efforts to address the issue.
- Be consistent with the core value of the Commission: the protection of human rights. This means that the Commission must be sure that work on the issue would advance the further protection of human rights in the State.

Category 2

In addition to fulfilling all of the criteria set out above, the issue will generally meet at least two of the following criteria.

An issue will:

- Be urgent. This means that the Commission must be satisfied that there is a pressing need to address the issue concerned, for example, if there is a threat of any (further) violation of rights or a threat to a person a group. Long-standing issues are not excluded under this criterion.
- Concern a right or address a need that the Commission could effectively work to protect, to the benefit of a significant number of people. This means that the Commission should be satisfied that work undertaken by it would address systemic experiences of human rights violations and would have the potential for wide effect.
- Be an issue of fundamental principle in which human rights appear to be violated or blatantly unresolved.
- Involve allegations of credible serious and/or widespread human rights abuse.
- Concern a right, in respect of which the Commission, because of its particular powers and expertise, could make a distinct and positive contribution to the enhancement of human rights protection in Ireland.

Category 3

A number of other considerations will also influence the selection of priorities.

In taking a strategic approach to its work, the Commission will always consider what it hopes to achieve by its actions. In particular, the Commission will consider whether work by it on an issue would enhance a culture of rights in Ireland, contribute to any reform processes which may be underway, act as a symbolic beacon highlighting what can be achieved in the realm of human rights protection or address long-standing issues which may have been a source of frustration for individuals or groups.

The Commission will be particularly sensitive to those groups and individuals who have been historically marginalized in Irish society and who find it particularly difficult to access formal means to address their human rights concerns.

In addition, the Commission's work will reflect the diverse spectrum of human rights issues falling within its mandate.

The Commission will seek to work during the period of this Plan on issues which will contribute to its own knowledge and understanding of human rights problems and its ability to address them and which will ultimately increase its effectiveness both within Ireland and internationally.

Finally, it is important to note that it is not possible to anticipate all the human rights issues that may require attention and include them in this Plan. Often, issues will arise suddenly, like, for example, when the Government refers a new piece of legislation to the Commission or when a case of relevance to human rights protection reaches the courts. Furthermore, during the Commission's process of dialogue and consultation with other bodies and individuals, issues may arise that the Commission deems critical to address. Whilst remaining faithful to its overall strategy, as outlined in this Plan, the Commission needs to retain the operational capacity to react flexibly to such developments.

5 KEY AREAS OF WORK

The Commission has discussed issues of policy at plenary sessions of the Commission and within committees of the Commission (see page 33). In addition to these internal discussions, the Commission has met with other bodies in the human rights field to discuss how the Commission can best work together with existing organisations in a mutually supportive way. The Commission has also met with non-governmental organisations and individuals who have informed it both of their concerns and of their expectations of the Commission.

In the light of these discussions, the Commission's statutory functions (as described in Chapter 6) and the criteria for selecting key areas of work (set out in Chapter 4), the Commission proposes to adopt a number of key areas of work on which to focus during the lifetime of this Plan.

The key areas of work set out in this Chapter do not constitute an exhaustive list. The Commission will continue to apply the criteria set out in Chapter 4 to identify new or urgent areas of work during the lifetime of this Plan and to develop its work under the key areas set out below.

The specific activities that the Commission is committed to undertake in respect of its key areas of work are included in Chapter 6.

A Civil and Political Rights

Administration of Justice

The need for action

The Commission will keep law, policy and practice relating to the administration of justice under constant review. In particular, during the lifetime of this Plan, the Commission means to focus on three main areas: review of legislation in the field; accountability of law enforcement officers; and review of practice in the field. The activities which the Commission envisages undertaking to pursue these three main areas are set out in Chapter 6, under the headings General Activities and Activities to pursue Key Areas of Work.

The opportunity for action

The Government is currently reviewing the need for the Offences Against the State Acts, 1939-1998 following a commitment in the Good Friday Agreement. Alongside this, there have been proposals for new EU-wide legislation to counter international terrorism and the Government introduced the Criminal Justice (Terrorist Offences) Bill, 2002, in December of that year. The Commission will monitor closely the development of any such proposed legislation. It will, where appropriate, make recommendations to the Government where it perceives these developments to run counter to established international human rights standards.

The Government is also discussing new criminal justice legislation with implications for the right to silence, periods of detention, the establishment of a DNA databank and the retention of electronic communications data (mobile phone and e-mail records, etc). While the Commission recognises the need to modernise and adapt the criminal law, it will also be alert to see that important safeguards developed over the years to prevent injustice are not undermined in the process.

New Garda complaints legislation will be introduced in 2003. The Commission has already urged the establishment of a Garda Ombudsman, similar to the Police Ombudsman in Northern Ireland and it will monitor the proposed legislation closely to ensure it makes An Garda Síochána fully transparent and accountable. New Prison Rules (to replace those of 1947) are also expected and are long overdue. Their publication may coincide with the release of the Report by the European Committee for the Prevention of Torture on its visit to Irish prisons and places of detention in 2002. The Commission will take an active part in the debate on conditions in our prisons and the rules by which they should be governed and will urge the establishment of an independent mechanism for dealing with complaints within the prison system as well as for the Garda.

The Commission must also be concerned about the conditions of detention of children and young persons in custody and the provision of appropriate secure facilities for disturbed or distressed young people who have not been charged with any offence. The Commission will co-operate with other interested bodies to monitor this area with a view to ensuring that international human rights standards and best practice are observed.

The Commission supports the strongest possible incorporation of the European Convention on Human Rights into Irish law. Incorporation will have significant effects on our courts, criminal justice and penal systems. The Commission will monitor the process of incorporation for its effects in this area and will seek to ensure that it results in stronger protection for the human rights of all concerned.

B Economic, Social and Cultural Rights

The need for action

Through international and constitutional obligations, Ireland is committed to ensuring a comprehensive range of substantive rights including, for example, equal rights for women and men, the right to work, the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, the right to education, the right to just and favourable conditions of work, the right to adequate accommodation. The Human Rights Commission is concerned about the ways in which the State upholds its obligations with regard to these rights. Concluding observations on Ireland's protection of these rights by the UN Committee on Economic, Social and Cultural Rights identified a number of areas that require considerable further action and enforcement. Central to these is the adoption of a human rights framework for the Government's National Anti-Poverty Strategy. This reflects the widespread understanding that poverty and inequality are inextricably linked.

The opportunity for action

The Combat Poverty Agency and other national bodies are working to ensure the protection of the economic, social and cultural rights of various groups within Ireland. The Commission hopes to work with them and find ways in which its particular functions and powers can assist in the protection and fulfilment of these rights. In particular, the Commission seeks to advance an understanding of the nature of these rights and to focus on appropriate means of giving them practical effect. This will necessarily involve an examination of whether legal means of enforcement are required under international law and would make a meaningful difference in Ireland. The Commission will also advocate the use of various enforcement mechanisms in policies and practice especially with regard to anti-poverty and equality commitments.

In the light of relevant international developments, the Commission will seek to disseminate information concerning the enforceability of economic, social and cultural rights, particularly amongst decision-makers and the judiciary.

The Commission will also work to review and to disseminate the concluding observations of the UN Committee on Economic, Social and Cultural Rights to the groups whose rights are most affected and also to relevant authorities, civil servants and politicians.

Attention to economic, social and cultural rights will be part of the Commission's concern in work it undertakes within other priorities. The Commission believes, however, that there exists scope for work that will highlight better ways to enforce these rights and encourage an awareness of these rights within the public at large. The Commission will actively seek thematic and local group input in order to define these rights in practice.

The Commission aims to develop an understanding of the relationship between human rights and poverty reduction, which has not yet been fully explored in Ireland. This will involve the challenge of how to incorporate human rights norms in the shaping and framing of Government policy. A particular task will be to participate in defining indicators of progress against which the protection of human rights may be measured. Progress indicators could be developed for a limited number of economic and social rights in conjunction with other interested groups, so that monitoring of progress with the use of these indicators could be carried out on a pilot basis by local or thematic groups and, indeed, by civil and public servants also.

C Cross Cutting Issues

Racism

The need for action

The Commission believes that racism is a very serious concern in contemporary Irish society. Racism is not a new phenomenon; it has existed for many years against the Travelling community and there have also been attacks at times on Jews and on the small number of black Irish people. Whilst racism has not yet become as violent and pervasive as in other countries, there are worrying signs that it is currently on the increase in the Republic of Ireland. With the increase in inward migration into Ireland there have been worrying indications of new forms of racism in Ireland experienced by groups such as refugees, asylum-seekers, Irish citizens of diverse backgrounds and migrant workers.

Much excellent work in this area is already being done by the Equality Authority, the National Consultative Committee on Racism and Interculturalism, the Know Racism Campaign and a number of NGOs. Important work has also been done by Government Departments, the Garda Racial and Intercultural Unit and other public bodies. The Commission believes that still more needs to be done, however, to cope with this major challenge and recognises the need to work together with other cognate bodies to meet this challenge.

The opportunity for action

The Commission has already been active in opposing all forms of racism and discrimination and has been actively involved in the Steering Group working on the Government's proposed National Action Plan Against Racism. The Commission aims to work closely with Traveller organisations and others in opposing the provisions criminalising trespass in the Housing (Miscellaneous Provisions) Act, 2002 and in pressing for the full implementation of the recommendations of the Report of the Task Force on the Travelling Community.

Some important activities will take place in 2003: the Government is committed to adopting the National Action Plan Against Racism and Ireland's first report under the Convention on the Elimination of All Forms of Racial Discrimination will be submitted to the UN. In addition, a review of the prohibition of incitement to hatred legislation is currently being carried out. The Commission intends to contribute to and comment on all three of these processes and has already published its submission on the National Action Plan Against Racism setting out what it wishes to see included in such a plan.

The Commission will work to promote the rights of asylum-seekers, refugees and migrant workers and also Irish citizens of diverse ethnic backgrounds. In particular, the Commission is aware of the increased susceptibility of refugees and asylum-seekers to mental health problems, either because of the often harrowing and possibly violent circumstances that have led them to claim asylum in the State, or because of the stressful situations that they may experience during the asylum process within the State. The Commission aims to monitor asylum and immigration law and practice to ensure that the highest international human rights standards are observed. The Commission has already called on the Government to ratify and implement the UN and European Conventions on Migrant Workers and their Families and will work with other interested groups to bring this about.

Persons with Disabilities*The need for action*

It is estimated that there are at least 360,000 persons with disabilities in this jurisdiction. People with disabilities are commonly described as 'the forgotten citizens of Ireland'. They are much more likely to live in poverty and to be trapped in vicious circles of social exclusion. The rights-based perspective is now almost universally acclaimed as the appropriate one in the context of disability. Achieving the equal effective enjoyment of all human rights for people with disabilities is now the main challenge facing Irish society in common with most other countries in the world in this sector.

The opportunity for action

The move to the human rights framework of reference in the context of disability is now accepted at the United Nations level. The treaty-monitoring bodies established under the six core UN treaties on human rights are becoming much more attuned to the problems facing people with disabilities with respect to their rights. Indeed, the United Nations is now actively working toward the elaboration of a new thematic human rights treaty on the rights of persons with disabilities. The Human Rights Commission has agreed with a variety of National Human Rights Institutions in Europe to co-ordinate their efforts on this issue before the next session of the relevant drafting body in the UN, in particular by crafting an agreed common position paper and by co-ordinating their activities at the next drafting session.

Closer to home, the European Union has equipped itself with the legal capacity to combat discrimination based on disability under Article 13 of the Treaty of Amsterdam. A Framework Directive on Combating Discrimination on the grounds, inter alia, of disability in the employment sector has already been adopted under Article 13 and must soon be transposed into Irish law. It includes an apparently much stronger guarantee of 'reasonable accommodation' than exists under the current law. Furthermore, the blueprint for reform contained in the Report of the Commission on the Status of People with Disabilities (1996) remains highly relevant to the process of reform underway in Ireland. EU law provides the legal imperative for change. But the moral imperative for change comes from the imposed inferior status of people with disabilities in Irish society.

At national level, a consultation process concerning the new Disability Bill was launched by the Disability Legislation Consultation Group, which is co-ordinated by the National Disability Authority, in September 2002. The Group has published a document entitled 'Draft Proposals for Core Elements of Disability Legislation'. The Commission will actively contribute to the process of consultation concerning new disability legislation. In particular, the Commission will aim to ensure that recent developments at international level towards a rights-based approach to the issue of disability are reflected in our domestic legislation.

Mental Disability

The Human Rights Commission acknowledges the special human rights issues in the mental health context, including the right to liberty, the right to due process, the protection of persons in a variety of enclosed and open institutions which heightens their vulnerability, the right to health care, the right to consent, the right against certain forms of treatment, the positive right to treatment, etc. Yet, in common with trends throughout the world, it does not want to ghettoize mental disability issues in one stream and general disability issues in another. Rather, it wishes to draw the overall situation of such persons closer to the mainstream equality agenda that affects all persons with disabilities. Persons with mental disabilities also have their place within the community and the Human Rights Commission will ensure that advances in this respect are to the equal advantage of all persons with disabilities, which include those with mental disabilities.

Gender

The need for action

The Government has made a number of commitments to eliminate discrimination against women and to promote women's equality both in its EU and international obligations and in its domestic legislation and policy documents. Despite this, gender inequality still exists in Ireland as demonstrated by such facts as: women's gross under-representation in political life and on public boards, that more women than men experience poverty, that domestic and other violence against women is an everyday reality in Irish society and that women are still paid less than men.

Several national organisations and networks of women's groups throughout the country are working to ensure a rights-based perspective in the implementation of Government commitments to eliminate discrimination against women and to promote women's equality. The Human Rights Commission wishes to contribute to this work, especially with regard to strengthening and protecting the human rights of women who, because of their social, economic or cultural status, or their membership of ethnic minorities, are most vulnerable in Irish society.

The opportunity for action

The Commission has already pointed out its gender-specific concerns with regard to racism in its submission on the National Action Plan Against Racism, and has noted its rejection of any 'cultural' justifications for violating women's human rights, especially in the case of women refugees, asylum-seekers and migrant workers. The Commission will continue to highlight the experience of multiple discrimination by women in all of its work against racism.

Women are at a higher risk of poverty than men and the Government's revised National Anti-Poverty Strategy has identified women as one of the vulnerable groups at risk of poverty. The Commission will bring a gender analysis to its work on economic, social and cultural rights, particularly with regard to enforcement and its participation in the monitoring of the National Anti-Poverty Strategy.

In the Commission's work to promote and protect the rights of people with disabilities, it will pay particular attention to women's access to services.

The Government is currently preparing a progress report to the UN Committee on the Elimination of Discrimination Against Women and a National Plan for Women by way of fulfilling its commitment to implement the Beijing Platform for Action. The Human Rights Commission will contribute to this process by making a submission to the UN CEDAW to shadow the Government's report. When the Government submits reports to other human rights monitoring bodies in fulfilment of its international obligations, the Commission will track the gender dimension in these also.

Equality and Human Difference

The need for action

With the enactment of recent equality legislation there are now a number of social groups in Irish society that have legal protection against discrimination in employment and in the provision of goods and services. The Employment Equality Act, 1998 and the Equal Status Act, 2000 outlaw discrimination on nine distinct grounds. These are: gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Travelling community. The Equality Authority, along with other national organisations and bodies, have worked together to promote and defend the rights established in this legislation and to encourage the development of a broad equality agenda reflecting the human rights of all protected social groups. There are several outstanding issues for all of these groups, especially those who have been less visible such as lesbians, gays, bisexuals and transsexuals.

There are also other social groups, not currently protected by legislation, who experience discrimination in Irish society.

The opportunity for action

The Human Rights Commission wishes to work closely with the Equality Authority and other national bodies in support of the implementation of their agendas. The Commission is particularly concerned with those experiencing inequality who face the additional barriers of poverty and social exclusion. The Commission will seek to conclude a Memorandum of Understanding with the Equality Authority setting out a commitment to complement each other's work and to seek out areas where action by the Commission could bring added value. The Commission welcomes consultation and seeks ongoing contact with groups established to promote the equality and human rights concerns of their members and with national representative organisations and networks. The Commission will also continue to participate in the work of the Joint Equality and Human Right Forum of which it is a member. As the Commission implements its functions and uses its powers it will acknowledge the difference between groups in Irish society and the diverse needs of individuals.

Children

Ireland has recently ratified the UN Convention on the Rights of the Child. The Commission intends to monitor Ireland's compliance with its obligations under the Convention and to review its role when a Children's Ombudsman with appropriate powers has been appointed. The Commission has had preliminary discussions about the situation of children under 18 years of age who, being homeless, addicted to drugs or vulnerable to peer pressure, are particularly open to exploitation and enter into the world of prostitution. The Commission strives to ensure that children's rights are not regarded as second-class rights in the absence of direct pressure for their protection.

Older People

The Commission will be publishing research concerning the treatment of older persons in public and private nursing homes to monitor compliance with their rights to freedom from inhuman and degrading treatment and to physical and moral integrity. The Commission will evaluate reactions to this research from concerned bodies, such as Health Boards, with a view to taking further action during the lifetime of this plan.



6 Functions and Activities

This Chapter describes the statutory functions of the Commission and the activities the Commission intends to undertake to carry out its functions. The functions of the Commission are set out in Section 8 of the Human Rights Commission Act, 2000 (hereafter the Act). The exact text of Section 8 (a - k) is set out in the headings, which follow below.

In this Chapter, the functions of the Commission are listed in the order in which they appear in Section 8 of the Act. Although each of these functions is described individually, there may in practice be an overlap between the various functions. For instance, as regards a single issue, the Commission may conduct an enquiry (under Section 8 (f)) and undertake research (under Section 8 (e)).

A list of activities is set out under each of the Commission's functions below. This list includes both general activities and specific activities aimed at pursuing the Commission's key areas of work set out in Chapter 5 of this Plan.

The Commission will seek to exercise all its statutory functions during the lifetime of this Plan. If, as a result of this, the Commission becomes aware of any major gaps in its powers and functions, it will recommend appropriate amendments to the Human Rights Commission Acts as part of the review provided for by Section 24 of the principal Act or any future reviews.

In exercising its functions, the Commission will be guided by the need to deploy its limited resources as effectively as possible.

Keeping law and practice under review

Section 8 (a) of the Human Rights Commission Act, 2000:

"To keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights"

The Commission will examine laws or sections of laws relating to the protection of human rights as defined in Section 2 of the Human Rights Commission Act, 2000 and also the way in which these laws and protections operate in practice, in order to determine whether or not they are adequate or effective. If the Commission considers that they are not adequate or effective, it will say so to the Government and the public, and will suggest changes to make them more effective.

It would not be feasible for the Commission to conduct an audit of all laws or practices containing some element of protection of human rights, so the Commission will concentrate on areas highlighted by complaints, communications or representations to it, areas that come to the attention of the Commission through other aspects of its work, or areas where the Commission becomes aware that there is widespread concern that human rights are inadequately protected.

General Activities

The Commission plans to:

- Conduct several reviews of specific aspects of law and practice in the State. These specific aspects will be selected with reference to the Commission's Key Areas of Work set out in Chapter 5.
- Examine, on an ongoing basis, the operation of the law in key areas such as criminal law, asylum and immigration law and equality law.
- Monitor the level of protection of human rights in respect of vulnerable groups.
- Engage with international treaty-monitoring processes in respect of Ireland: in particular, make submissions to international treaty-monitoring bodies concerning the adequacy and effectiveness of law and practice in the State and follow closely the compilation of State reports and the examination of those reports by international treaty-monitoring bodies.
- Develop effective channels of communication with the Oireachtas and make submissions to relevant Oireachtas Committees and, where appropriate, to political parties.
- Where appropriate, advocate the incorporation of international instruments into Irish law.
- Press for the implementation of judgments of the European Court of Human Rights and recommendations of international treaty-monitoring bodies, as appropriate.
- Call for the adoption of new legislation where the Commission identifies a gap in existing human rights protections.
- Convene seminars to advance new thinking on the development of human rights standards.
- Keep under review the manner in which law and practice may impact upon people differently depending on their gender, age, membership of the Travelling community, membership of ethnic minorities, membership of linguistic communities, sexual orientation and their physical or intellectual disability.

Activities to pursue Key Areas of Work

The Commission plans to:

- Monitor compliance by Ireland with its obligations set out in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, the European Convention on Human Rights, the Revised European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities.
- Press for the full integration of a human rights approach into the National Anti-Poverty Strategy, through participation in the Social Inclusion Consultative Group and Forum, and by advocating the use of poverty indicators to monitor outcomes.
- Keep practice in the field of administration of justice under review and use its powers of investigation and enquiry to examine matters brought to the Commission's attention or of which it has become aware.
- Contribute actively to the Government's planned review of the Offences Against the State Acts, 1939-98 and work to ensure a speedy end to emergency law and the normalisation of security arrangements, including a return to jury trial for all serious offences.
- Continue to contribute to the development of the National Action Plan Against Racism and monitor the implementation of its provisions.
- Contribute to the review of the Prohibition of Incitement to Hatred Act, 1989.
- Review law and practice in relation to asylum-seekers and refugees.
- Contribute actively to the debate on a new Immigration Act and policy in relation to immigration.
- Press for the ratification of the UN Convention on Migrant Workers and their Families.
- Contribute to the planned review of the Equal Status and Employment Equality legislation and support the Equality Authority's proposals for the expansion of the grounds upon which discrimination is prohibited between persons to include political opinion, criminal conviction, socio-economic status and trade union membership.
- Press for the establishment of an independent complaints mechanism to deal with complaints against members of An Garda Síochána and an independent complaints mechanism to deal with complaints against members of the Prison Service.
- Examine the report of the European Committee for the Prevention of Torture on its visit to Ireland when published, and monitor the implementation of recommendations set out in the report.

- Work to ensure compliance with international standards as regards the detention of persons in prisons and juvenile detention centres, in particular:
 - Press for the introduction of new prison rules to replace the 1947 Prison Rules.
 - Seek to ensure the right of access to adequate health services for prisoners and staff, especially as regards intellectual disability and mental health.
 - Press for the provision of appropriate facilities for disturbed/distressed young people.
 - Examine release procedures for long-term prisoners.
- Contribute to the re-drafting of the Disabilities Bill currently underway.

Reviewing legislative proposals on request

Section 8 (b):

"If requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights"

The Commission expects to receive requests from Government Ministers to examine legislative proposals and comment on their human rights implications. This will help to strengthen such legislation and avoid conflict and legal challenges at a later date. The Commission will review legislative proposals by reference to constitutional and international human rights standards.

The Commission has already received two such requests from the Minister for Justice, Equality and Law Reform. One concerns the Criminal Law (Insanity) Bill, 2002, the other the Criminal Justice (Terrorist Offences) Bill, 2002.

It should be noted that the Commission also has the power to make recommendations to the Government of its own volition (see Section 8(d)).

General Activities

The Commission plans to:

- Develop effective channels of communication with Government Departments in order to facilitate the engagement of the Commission in the development of legislative proposals with a view to ensuring that the human rights dimension of the legislation is noted.
- Be available for consultations at the drafting stage of any legislation to ensure that the human rights implications of that legislation are noted.
- Evaluate the response of the Government to recommendations prepared by the Commission.
- Consult as appropriate with other bodies or individuals with relevant expertise when reviewing legislative proposals.

Consulting with national and international bodies

Section 8 (c):

"To consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit"

At national level, the Commission will continue to liaise closely with other bodies already operational in the human rights field in Ireland. The Commission will seek to encourage greater dialogue and develop relationships between national bodies and organisations concerned with human rights issues and international bodies in the human rights field. At international level, the Commission will work together with the Office of the UN High Commissioner for Human Rights, the Council of Europe's human rights agencies and the bodies that monitor compliance with a whole series of European and UN human rights treaties and conventions.

General Activities

The Commission plans to:

- Conclude 'Memoranda of Understanding' with other relevant statutory bodies in Ireland with mandates similar to that of the Commission.
- Co-operate with relevant non-governmental organisations (NGOs) at national and international level and develop lasting channels of communication with them.
- Engage and dialogue with all international human rights treaty bodies to which the State is obliged to submit periodic reports and, in particular, make submissions to those treaty bodies.
- Contribute to the development of relevant standards and standard setting by international human rights bodies.
- Continue to contribute (as a member) to the activities of the International Co-ordinating Committee of National Human Rights Institutions (ICC)¹ and the European Regional Group of National Institutions.²
- Pending the appointment of a Children's Ombudsman, monitor and support international developments in the area of children's rights, specifically through supporting the adoption of *A General Comment* by the UN Committee on the Rights of the Child on the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child.
- Co-operate with established Human Rights Commissions.
- Participate at international conferences and events of importance to the development of standards for human rights protection at domestic level and/or internationally.
- Through consultations with international bodies, keep abreast of developments in international law and standards relating to human rights.
- Engage with official missions of international human rights treaty bodies to Ireland and visits of representatives of international human rights bodies or other national human rights institutions.
- Contribute, as invited, to deliberations concerning the establishment of a Human Rights Commission in Scotland and the possible establishment of Human Rights Commissions in England and Wales, or the UK.

- Press for recognition of the status of national human rights institutions at international conferences and events, and advocate they are granted full accreditation at these events.

Activities to pursue Key Areas of Work

The Commission plans to:

- Continue to participate in the activities of the European Regional Group of National Institutions concerning the reform of the European Court of Human Rights.
- Meet with the Prisons Inspector to advocate the protection of the rights of prisoners, prison conditions and issues related to the transparency of the operation of the Prison Service.
- Work in support of the European Committee for the Prevention of Torture, the United Nations Human Rights Committee and the UN Committee Against Torture and seek to ensure that their recommendations concerning the administration of justice are implemented in the State.
- Comment on and contribute to Ireland's first report under the Convention on the Elimination of All Forms of Racial Discrimination and the subsequent examination of the report by the UN.
- Contribute to the process of elaborating a United Nations treaty on the human rights of persons with disabilities.
- Contribute to the process of consultation on new disability legislation led by the Disability Legislation Consultation Group.

¹ The ICC has 41 member national institutions deemed by the ICC to comply with the UN Paris Principles. The ICC co-ordinates the contribution of national institutions to the annual session of the UN Commission on Human Rights and other international events and its work is supported by the Office of the High Commissioner for Human Rights. The ICC meets once a year, usually in Geneva.

² The European Regional Group of National Institutions co-ordinates the contribution of national institutions to activities and events at European level. The work of the European Regional Group is supported by the Council of Europe and the Group has been accorded observer status to the Council of Europe's Steering Committee for Human Rights. The Group meets once every two years and its work is managed by a co-ordinating Group currently composed of four national institutions - Denmark, France, Greece and Sweden respectively.

Making recommendations to Government

Section 8 (d):

"Either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State"

The Commission will, of its own volition, make recommendations to Government arising out of complaints or communications addressed to it, issues that come to its attention through other aspects of its work or through public sources and/or areas where it is aware of widespread concern that human rights are not properly protected. The measures recommended may include ratification of international human rights conventions, new legislation, repeal of existing legislation, or changes in existing policies, practices or procedures.

The Commission also expects to receive requests from the Government to make recommendations on measures to strengthen, protect and uphold human rights in Ireland and will endeavour to respond to such requests speedily and comprehensively.

General Activities

The Commission plans to:

- Develop constructive working relationships with Government Departments in order to facilitate serious engagement with recommendations of the Commission.
- Prepare recommendations to Government concerning the Commission's Key Areas of Work as set out in Chapter 5, and other issues as they arise.
- Monitor and evaluate the effectiveness of all recommendations made to the Government by the Commission.
- Call for the ratification of international human rights instruments, as appropriate.

Promoting awareness of human rights and undertaking research and educational activities

Section 8 (e):

"To promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities"

Promoting an understanding and awareness of human rights is considered by the Commission to be central to its objective to engender a culture of human rights. The Commission wishes to encourage an approach to promoting human rights understanding and awareness in the widest possible sense. This will include education and training, research, information and dissemination efforts. Above all, the Commission wishes to work in partnership with groups and bodies already effectively engaged in human rights education.

The Commission will seek to encourage Government officials, public representatives and others engaged with the public to be informed by a human rights culture in their everyday activities. In its promotional and other work, the Commission will act as an advocate for the broadest understanding of human rights protections, with particular concern for under-enforced rights, such as economic, social and cultural rights and the rights of vulnerable groups.

General Activities

The Commission plans to:

- Develop and implement a programme to promote understanding and awareness of human rights in the State.
- To survey the range of existing materials and courses on human rights education and training both in the formal and informal education and training sectors and in thematic, professional, statutory and voluntary arenas.
- On the basis of the survey, to assess the educational and training needs in various selected sectors.
- Consult widely with other bodies active in the field of education including the Department of Education and Science (including Curriculum Development Units), the Garda Human Rights Group, NGOs, university departments, colleges of education, community education organisations.
- Engage in active outreach with local, thematic, national and international bodies that have an interest in human rights in Ireland.
- Encourage the appointment of and maintain contact with human rights officers in Government Departments, NGOs and other bodies.
- Prepare and disseminate accessible materials to increase awareness of national and international human rights standards and mechanisms.
- Encourage public awareness of human rights issues by organising conferences, seminars, campaigns and other public events.
- Support the human rights training carried out by other entities.
- Identify topics for research on the basis of the Commission's Key Areas of Work, on the basis of the Commission's review of the law and practice relating to the protection of human rights, and on the basis of casework undertaken by the Commission.
- Communicate the work of the Commission to general audiences and to specific communities of interest through ongoing consultations, public broadcasting and publishing on the internet as well as in print, including Annual Reports.
- Provide training in human rights work to local and community groups.
- Discuss with other relevant bodies the establishment of a Human Rights Forum to facilitate exchanges of views between bodies engaged in various areas.
- Encourage awareness of the need to search for balance between individuals' rights and the interests of the community as a whole, while stressing that certain human rights protections must not be deviated from in any circumstances.

Activities to pursue Key Areas of Work

The Commission plans to:

- Host a national conference on economic, social and cultural rights within the lifetime of this Plan. The conference will examine Ireland's record on protecting these rights and put forward recommendations on a range of enforcement mechanisms in order to propel more substantive protection of these rights.
- Continue to support and encourage An Garda Síochána to integrate human rights training into basic and advanced training courses for new and existing recruits.
- Conduct information programmes aimed at enhancing awareness and understanding of economic, social and cultural rights.
- Promote and support education activities concerning economic, social and cultural rights.
- Co-host with Amnesty International (Irish Section) a series of seminars on racism.

Conducting enquiries

Section 8 (f):

"To conduct enquiries under and in accordance with section 9"

The Commission has the power to conduct enquiries into issues connected with the protection of human rights, either of its own volition or at the request of someone who has a sufficient interest in the matter. Such enquiries must be connected with the Commission's functions of reviewing the adequacy and effectiveness of law and practice relating to the protection of human rights, making recommendations for measures to strengthen that protection, promoting understanding and awareness of the importance of human rights, or consulting with national or international bodies with human rights expertise.

The Commission cannot hold an enquiry into a complaint that is trivial, vexatious or manifestly unfounded, or where all the issues have been determined by a court or a tribunal. The Commission may also decline to hold an enquiry if it thinks that the complaint could be more appropriately dealt with by a court or tribunal, or it may defer dealing with the complaint while the person concerned takes the issue to a court or tribunal.

When it does decide to hold an enquiry, the Commission has very extensive powers to compel the attendance of witnesses and the production of documents.

The details of what the Commission may or may not do in relation to holding enquiries are set out in Section 9 of the Human Rights Commission Act, 2000 (as set out in Appendix 2).

Enquiries may be held in public or in private and may be formal or informal in character, but it must be stressed that the Commission is not a court and does not have the power to overturn decisions or award remedies or compensation to individual complainants. It can only make recommendations to the Government about measures to strengthen, protect and uphold human rights and/or publish reports of its enquiries.

As noted in the introduction to this Chapter, there may be an overlaps in the exercise of the various functions of the Commission in practice. For example, in respect of a single issue, the Commission may decide to exercise its enquiry function in conjunction with a number of other functions, such as promoting human rights awareness or making recommendations to Government. In such instances the Commission will seek to ensure that the multiple use of its functions will serve to reinforce the effective operation of each individual function.

In addition, the Commission may decide to deal with a request for an enquiry under its function to provide legal or other assistance as set out in Section 8 (j) of the Act. This function and the limits to its operation are described later on in this Chapter.

General Activities

The Commission plans to:

- Produce a 'communications form' to facilitate the communication of 'complaints' to the Commission.
- Process all communications received by the Commission expeditiously.
- Develop a strategic approach to undertaking enquiries. This will involve focussing on issues which affect a large number of people, have wider implications for the protection of human rights, concern urgent or very grave human rights abuses, or which relate closely to other areas of the Commission's work. This approach will be developed in line with the criteria for the selection of Key Areas of Work set out in Chapter 5 of this Plan. However, the Commission will always retain the right to take action on cases which do not fit exactly into these criteria, but which raise other important human rights issues.
- Adopt and keep under review criteria concerning the operation of the Commission's enquiry function.
- Use the enquiry function to assist, support or inform other areas of the Commission's work.
- Monitor the impact of enquiries undertaken by the Commission, including identification of the outcome for any individual or group which may have lodged a complaint and record and report the extent to which any changes have been secured in law and practice on foot of an enquiry.
- Assess which of the communications received would be appropriate for the provision of legal or other assistance under sections 10 or 11 of the Human Rights Commission Act, 2000.

Publishing research

Section 8 (g):

"To prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it under paragraph (e) or in relation to enquiries referred to in paragraph (f)"

The Commission will both undertake its own research and commission research from experts to inform its own work and to make available informed and critical analysis of key human rights concerns in Ireland to both Government and the public. As appropriate, the Commission will seek to participate in collaborative research projects together with other bodies or groups.

Research undertaken or commissioned by the Commission will particularly seek to identify areas of human rights concern upon which there is limited or out-of-date information. Where possible and relevant, the Commission will seek to inform its research output by empirical data. All research and work taken by or on behalf of the Commission will be informed and governed by the standards relevant to constitutional and international human rights law. Notably, the Commission will seek to access and provide comparative legal and policy analysis of other jurisdictions experiencing similar human rights concerns.

General Activities

The Commission plans to:

- Develop a research programme related to the functions of the Commission.
- Develop a register of researchers with appropriate expertise and interest in undertaking work instigated by the Commission.
- Pursue research on, among other topics -
 - the use of emergency powers in Ireland, including in regard to any proposed legislation which may be developed in response to the events of 11 September 2001 at a European and international level.
 - the negative effects on the Travelling community of the law of trespass.
 - asylum and immigration law and practice.
- Advance the Commission's research concerning the treatment of older persons in institutions.

Activities to pursue Key Areas of Work

The Commission plans to:

- Consider carrying out thematic studies into the actual situation of certain vulnerable categories of persons with disabilities including those in residential or other institutional settings.
- Instigate research to examine implementation by Ireland of its obligation to protect economic, social and cultural rights. The aim of the research will be to identify specific measures that the Commission could address under its mandate.

Acting as *amicus curiae*

Section 8 (h):

"To apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, *amicus curiae* in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an *amicus curiae* on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion)"

The Commission is empowered to apply to the High Court and Supreme Court to appear as an *amicus curiae* (friend of the court) in cases that involve human rights issues. This is an innovative procedure in this jurisdiction, though it is already employed internationally. The Commission will be required to obtain leave from the court to appear before it as an *amicus curiae*. The Commission anticipates that the courts will come to see this as a useful and helpful development.

The idea of an *amicus curiae* is someone who will bring to the court's attention in an unbiased way legal principles or considerations that are relevant to the case before the court. The Commission's role as an *amicus curiae* would be to raise human rights standards or principles based on the Constitution or international agreements which the court ought to take into account in its consideration of a particular case. The *amicus curiae* does not take sides on the actual facts of the case.

General Activities

The Commission plans to:

- Apply to intervene as *amicus curiae* in court proceedings concerning the Commission's Key Areas of Work set out in Chapter 5.
- Employ this function as a means to encourage the Irish courts to take due account of international human rights standards.
- Use this function strategically as a means to develop awareness about violations of rights, which are hidden or affect a particularly vulnerable or excluded group.

Participating in the Joint Committee

Section 8 (i):

"To take whatever action is necessary to establish and participate in the joint committee of representatives referred to in paragraph 10 of the section entitled "Rights, Safeguards and Equality of Opportunity" of the Agreement reached in the Multi-Party Talks"

A Joint Committee, composed of representatives of the Human Rights Commission and the Northern Ireland Human Rights Commission as provided for by the Good Friday Agreement of 1998, has already been established. The Joint Committee has met approximately every two months since its establishment in November 2001.

The Joint Committee provides an opportunity for the two Human Rights Commissions on the island of Ireland to consider cross-border issues such as migration and racism. It also facilitates consideration by the Commissions of the implementation and enforcement of common human rights standards throughout the island of Ireland.

General Activities

The Commission plans to:

- Work towards the realisation of equivalent protection of human rights in both jurisdictions on the island of Ireland as provided for in the Good Friday Agreement: in particular, work to ensure the raising of standards in both jurisdictions.
- Work with the Northern Ireland Human Rights Commission, through the Joint Committee, to develop a Charter of Rights for the island of Ireland in line with the provisions of the Good Friday Agreement and engage in an inclusive consultation process on the Charter.
- Maintain a database of international human rights commitments entered into by both Governments.
- Co-ordinate the work of the two Human Rights Commissions on the island of Ireland in relation to European and UN human rights conventions and monitoring bodies.



The Joint Committee, 2001, as provided for by the Good Friday Agreement.

Activities to pursue Key Areas of Work

The Commission plans to:

- Continue to develop the work of the Joint Committee Sub-Committee on Racism, which addresses issues of racism with a cross-border dimension. In particular, monitor National Action Plans to be produced by the Irish and UK Governments.
- Seek to encourage the normalisation of law in Northern Ireland and in this jurisdiction, with an emphasis on the repeal of emergency powers.

Providing legal and other assistance

Section 8 (j):

"To provide assistance of the kind referred to in section 10 to persons under and in accordance with that section"

The Commission may provide legal advice and/or representation to persons wishing to take legal action involving law or practice relating to the protection of human rights, or who want to rely on human rights protection in legal proceedings. However, the Commission can only provide such assistance if it is not available through the civil or criminal legal aid schemes and if the matter involves an issue of principle, or it would be unreasonable to expect the person concerned to deal with it without such assistance, or if there are other special circumstances.

The details of what the Commission can or cannot do by way of granting legal assistance are set out in Section 10 of the Human Rights Commission Act, 2000. It should be noted that the Commission may also provide other assistance to persons or groups in connection with legal proceedings, such as research or practical assistance (see Appendix 2).

The Commission will not have the resources to provide assistance to everyone who seeks it. Priority will have to be given to cases that raise broader issues that may affect a significant number of people, or cases of great urgency or those that involve particularly grievous human rights abuses.

General Activities

The Commission plans to:

- Expeditiously process all requests for legal advice and/or representation received by the Commission.
- Formulate, and keep under review, criteria for individual applications for legal assistance and/or representation.
- Provide legal assistance and/or representation in line with the Commission's strategic Key Areas of Work set out in Chapter 5.
- Provide other assistance in connection with legal proceedings, for example, research or practical assistance.
- Provide assistance to persons/groups in respect of proceedings before international bodies on issues arising from Irish law or practice.

Instituting legal proceedings

Section 8 (k):

"To institute proceedings under and in accordance with section 11"

The Commission is empowered to take legal actions in its own name to vindicate the human rights of individuals or groups of persons. However, the Commission can only take such action where the human right concerned is protected by the Constitution or by an international treaty or convention, or by a provision thereof, which has been given the force of law within the State.

International treaties or conventions must be incorporated into (or made part of) the law of Ireland before they have the force of law in the State. To date, the State has not incorporated most of the major international human rights treaties or conventions into Irish law.

General Activities

The Commission plans to:

- Develop a strategic approach to the use of the power to institute proceedings in line with the Commission's Key Areas of Work set out in Chapter 5.
- Keep under consideration the possible institution of proceedings in the Commission's own name to challenge the constitutionality of Acts of the Oireachtas.
- Keep under consideration the possible institution of proceedings further to a request or communication received from an individual or group.
- Press for incorporation of major international human rights treaties into Irish law in order to broaden the range of arguments that can be used in this type of litigation.
- Monitor and evaluate the impact of any proceedings instituted by the Commission on the protection or promotion of human rights in the State.

7 ORGANISATION OF WORK AND RELATED MATTERS

Commission and Committees

The Commission meets in ordinary session once a month and from time to time in special session to address a particular issue or matter.

The Commission has established a number of Committees and Advisory Groups in furtherance of its functions. There have been 15 Committees and Advisory Groups to date.

They are:

- Ad Hoc Committee on the Offences Against the State Acts, 1939-1998
- Ad Hoc Staffing Committee
- Advisory Group on Children with Disabilities
- Advisory Group on Research concerning the Treatment of Older Persons in Institutions
- Committee on Approach to Work
- Committee on Racism
- Committee on Rules of Procedure
- Committee on the Appointment of the Chief Executive Officer to the Irish Human Rights Commission
- Committee on the Website, Logo and Computer Network
- Committee to Draft Submission on the Incorporation of the European Convention on Human Rights into Irish Law
- Committee to Negotiate with the Department of Finance
- Communications Committee
- Finance Committee
- Premises Committee
- Research Committee

The nature and range of the Committees reflect the fact that the Commission is in a start-up phase; and, during the period of this Plan, the Commission will be reviewing their number and operation. Once the Commission has recruited its first round of staff (see below), it is expected that the system of Committees and Advisory Groups will be revised and rationalised in light of the work undertaken by the staff. This system will be designed to process the work in an efficient manner and to allow staff to have an input into matters of policy, while utilising the expertise of the Commission members and respecting the decision-making power of the Commission itself.



The composition and terms of reference of Committees are determined by the Commission. While Committees normally comprise members of the Commission, the Commission may invite a person or persons other than a member of the Commission to be a non-voting member of a Committee. The Advisory Group on Children with Disabilities and the Advisory Group on Research concerning the Treatment of Older Persons in Institutions include persons with particular knowledge of these matters who are not members of the Commission, and the Commission intends to continue this practice, as appropriate, during the period of the Plan. The Chief Executive is also a member of several Committees and it is likewise intended to continue this practice.

Committees are subordinate to the Commission; and each Committee has a convener who reports regularly to the Commission on the work of the Committee.

The Commission also participates in the Joint Committee of Representatives of the Commission and the Northern Ireland Human Rights Commission, as provided for in the Good Friday Agreement. The Joint Committee meets approximately 6 times a year, and has presently two Sub-Committees: the Sub-Committee on Racism and the Sub-Committee on the Development of a Charter of Rights for the Island of Ireland. The Commission attaches great importance to the work of the Joint Committee and will continue to participate actively in it over the period of this Plan.

Staff

The Commission has recently appointed a Chief Executive and is recruiting additional members of staff to enable it to fulfil its statutory functions. The additional members of staff will be:

- Senior Caseworker
- Senior Legislation and Policy Review Officer
- Senior Human Rights Awareness Officer
- Assistant Caseworker
- Assistant Legislation and Policy Review Officer
- General Administrator
- Administrator (Finance and Human Resources)
- Desk Officer
- Clerical Officers (2)

The proposed organisational structure of the Commission when the additional staff members are recruited is illustrated in Appendix 3.

Training

It is intended that, during the period of this Plan, a training programme will be introduced for both Commissioners and staff, as appropriate, on aspects of the promotion and protection of human rights. Since the human rights which the Commission is mandated to uphold are those guaranteed to persons by the Constitution and by any agreement, treaty or convention to which the State is a party, particular attention will be paid in the training programme to increasing the knowledge and understanding of Commissioners and staff of these rights. In addition, it will be sought to heighten awareness of the need to respect these rights in the organisation and work of the Commission itself.

Funding

The legislation establishing the Commission provides that the Minister for Justice, Equality and Law Reform may pay annually to the Commission a grant of such amount as the Minister, with the consent of the Minister for Finance, determines towards the expenses of the Commission in the performance of its functions. The Commission's grant in 2002 was €1,292,000.

In 2003 the Commission intends to draw up estimates of what funding is necessary, in its view, to fulfil the many functions it has been given and to seek agreement with the Minister for Justice, Equality and Law Reform on its budget for future years.

APPENDIX I

The work of the Commission to date (September 2001 - December 2002)

The work listed here is illustrative of the range of the Commission's work to date. It is not intended to be comprehensive.

Keeping law and practice under review [Section 8 (a)]

- A public statement was issued on 21 February 2002 regarding: the Twenty-fifth amendment of the Constitution (Protection of Human Life in Pregnancy) Bill, 2001.
- A public statement was issued on 16 May 2002 expressing concern at the reported degree of force used by members of An Garda Síochána during a 'Reclaim the Streets' parade on 6 May 2002.
- On 10 December 2002 the Commission published its submission on the National Action Plan Against Racism.
- On 17 December 2002 the Commission published "A Proposal for a New Garda Complaints System".
- The Commission has undertaken and intends to publish a review of the Housing (Miscellaneous Provisions) (No.2) Act outlining its concerns regarding the Act.

Consulting with national and international bodies [Section 8 (c)]

- The Commission was represented at a number of significant international events including: the UN World Conference on Racism in South Africa in 2001, UN Commission on Human Rights in Geneva in April 2002, the 6th International Conference of National Human Rights Institutions in Copenhagen and Lund in April 2002 and the UN Special Session on Children's Rights in New York in May 2002.
- The Commission has met with a number of NGOs and statutory bodies.
- The Commission co-sponsored with the Department of Foreign Affairs and the National Disability Authority a conference on a United Nations Convention on the Human Rights of Persons with Disabilities in February 2002.
- The Commission, along with the Equality Authority and the National Consultative Committee on Racism and Interculturalism, co-sponsored a Consultative Conference on the National Action Plan Against Racism in March 2002, organised by the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs.
- Commission members met with a delegation of the European Committee for the Prevention of Torture when they made one of their periodic monitoring visits to Ireland in May 2002.

- The Commission co-hosted a Conference with the Law Society of Ireland on the European Convention on Human Rights Bill, 2001 in October 2002.
- The Commission co-hosted, together with the Northern Ireland Human Rights Commission, a Round Table conference with the Council of Europe and a meeting of the European Group of National Human Rights Institutions in Belfast and Dublin in November 2002.
- The Commission contributes to meetings of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.
- The Commission is a member of the Steering Group on the National Action Plan Against Racism and of the Joint Equality and Human Rights Forum.

Making recommendations to Government [Section 8 (d)]

- The Commission has published its observations on the National Action Plan Against Racism, which were submitted to the Steering Committee on a National Action Plan in September 2002.
- The Commission presented a submission on the European Convention on Human Rights Bill, 2001 to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights in October 2001. This submission was later published and is available on the Commission's website. The Commission appeared again before the Committee in December 2002 regarding the incorporation of the Convention into Irish law.
- The Commission has recommended that the Government ratify the International Convention on the Protection of Migrant Workers and their Families.
- The Commission has recommended the repeal of Section 24 of the Housing (Miscellaneous Provisions) (No 2) Act 2002.

Promoting awareness of human rights and undertaking research [Sections 8 (e) and 8 (g)]

- Preliminary research concerning the treatment of older people in institutions has been commissioned, and it is intended that a report, which is currently being prepared, will be published shortly.
- An information booklet on the Commission has been produced. The booklet is available on the Commission's website.

Participating in the Joint Committee [Section 8 (i)]

- Work to develop a Charter of Rights for the island of Ireland has commenced and the Joint Committee has written to all political parties on the island in this connection.
- The Joint Committee Sub-Committee on Racism has engaged in a process of consultation with statutory bodies in Northern Ireland and the Republic of Ireland concerning its future work in this area.
- It is intended that the Joint Committee will publish a 'Users Guide' to the UN Convention on the Elimination of All Forms of Racial Discrimination of relevance to the situation in Northern Ireland and the Republic of Ireland shortly.
- The Joint Committee has commenced a review of emergency legislation in Northern Ireland and in the Republic of Ireland.

APPENDIX 2

Section 9 of the Human Rights Commission Act 2000

Enquiries by Commission

9. (1) The Commission may -
- (a) of its own volition, if it considers it necessary or expedient to do so for the purpose of the performance of any of its functions under *paragraph (a), (c), (d) or (e) of section 8*, or
 - (b) subject to *subsections (2) to (5)*, at the request of any person who considers the conducting of such an enquiry to be necessary or expedient for the performance of any of those functions, conduct an enquiry under this section into any relevant matter (and such an enquiry is referred to in this section as "an enquiry").
- (2) The Commission may refuse to conduct an enquiry at the request of any person if it is of opinion that the matter to which the request relates could more appropriately be dealt with by the institution of legal proceedings or the making of an application to a tribunal or other person in whom are vested powers to award redress or grant relief in respect of the matter.
- (3) The Commission shall refuse to conduct an enquiry at the request of any person, or shall discontinue any such enquiry which it has commenced, if it is of opinion, or, as the case may be, it becomes, during the course of the enquiry, of the opinion, that -
- (a) the matter to which the request relates ("the matter concerned") is trivial or vexatious or any alleged violation of human rights concerned is manifestly unfounded, or
 - (b) the person making the request has an insufficient interest in the matter concerned.
- (4) If the Commission considers that the matter in relation to which it is requested under *subsection (1)(b)* to conduct an enquiry relates to or is concerned with an application to a tribunal or other person referred to in *subsection (2)* or legal proceedings that, in its opinion, is or are likely to be made or instituted or that has or have been made or instituted, the Commission shall postpone the making of a decision as to whether or not to accede to the said request until that application or those proceedings has or have been finally determined.
- (5) If the Commission considers that each issue relating to human rights which arises in connection with a matter in relation to which it is requested under *subsection (1)(b)* to conduct an enquiry has been addressed and properly determined in an application that has been made to a tribunal or other person referred to in *subsection (2)* or legal proceedings that have been instituted, being an application or proceedings that has or have been finally determined, the Commission shall refuse to conduct an enquiry into the matter.

(6) For the purposes of an enquiry, the Commission -

(a) may require a person who, in the opinion of the Commission, is in possession of information or has a document or thing in his or her power or control that is relevant to the enquiry, to furnish that information, document or thing to the Commission, and

(b) where appropriate, may require such person to attend before the Commission for that purpose, and that person shall comply with the requirement accordingly.

(7) A requirement under *subsection (6)* shall specify a period in which the requirement is to be complied with and, as appropriate -

(a) the place at which the person, the subject of the requirement, shall attend to give the information concerned or to which he or she shall deliver the document or thing concerned, or

(b) the place to which the said person shall send the information, document or thing concerned.

(8) A person required to attend before the Commission under *subsection (6)* -

(a) shall answer fully and truthfully any question put to him or her by the Commission (other than a question the answer to which might incriminate the person), and

(b) if so requested by the Commission, shall sign a declaration of the truth of his or her answers to any such question.

(9) If it appears to the Commission that a person has failed to comply with a requirement under *subsection (6)*, the Commission may apply to the Circuit Court for an order under *subsection (10)*.

(10) Subject to *subsection (11)* if, on an application under *subsection (9)*, the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement in question, the Circuit Court may make an order requiring that person to comply with the requirement.

(11) If, on an application under *subsection (9)*, the Circuit Court is of the opinion that the requirement in question purports to require the person concerned -

(a) to produce any document or thing, or

(b) to furnish information, for which that person is entitled to claim legal professional privilege, the Circuit Court shall set aside the requirement.

(12) An enquiry may be conducted in public or in private as the Commission, in its discretion, considers appropriate.

(13) Subject to the provisions of this Act, the procedure for conducting an enquiry shall be such as the Commission considers appropriate in all the circumstances of the case.

(14) Information obtained by the Commission in the course of conducting an enquiry or by virtue of the performance by it of any of its other functions under this Act, being information which has not otherwise come to the notice of members of the public, shall not be disclosed by any person, save in accordance with law or under and in accordance with an authorisation under *subsection (15)*.

(15) The Commission may authorise the disclosure of information referred to in *subsection (14)* and such an authorisation may be without any conditions or subject to such conditions as the Commission considers appropriate and specifies in the authorisation.

(16) If a person furnishes any information, document or thing to the Commission, pursuant to a requirement made under *subsection (6)*, the furnishing of that information, document or thing shall not give rise to any civil liability in contract, tort or otherwise and nor shall the information, document or thing be admissible as evidence against that person in any civil or criminal proceedings.

(17) A person who fails to comply with a requirement made under *subsection (6)* or with *subsection (14)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both.

(18) An application under *subsection (9)* to the Circuit Court shall be made to the judge of the Circuit Court for the Circuit in which the respondent resides or ordinarily carries on any profession, business or occupation.

Section 10 of the Human Rights Commission Act 2000

Legal and other assistance

10. (1) This section applies to -

(a) legal proceedings involving law or practice relating to the protection of human rights which a person has instituted or wishes to institute, and

(b) legal proceedings in the course of which a person relies or wishes to rely on such law or practice.

(2) A person (in this section referred to as "the applicant") may apply under *subsection (3)* to the Commission for assistance of the kind referred to in relation to legal proceedings to which this section applies.

(3) If an application is made under *subsection (2)* to the Commission, then, unless in the opinion of the Commission -

(a) the assistance sought could be obtained by the applicant-

- (i) under the Civil Legal Aid Act, 1995,
- (ii) under the Criminal Justice (Legal Aid) Act, 1962, or
- (iii) by any other means, whether or not provided for by or under any enactment,

or

(b) powers to award redress or grant relief in relation to the matter to which the proceedings relate stand vested in any tribunal or other person and the matter could, in the opinion of the Commission, be more effectively or conveniently dealt with by that tribunal or other person, the Commission may decide to grant to the applicant such assistance of the kind referred to in *subsection (5)* as is appropriate on any of the grounds referred to in *subsection (4)*.

(4) Each of the following is a ground referred to in *subsection (3)*, namely -

(a) the matter to which the legal proceedings concerned relate ("the matter concerned") raises a question of principle,

(b) it would be unreasonable to expect the person to deal with the matter concerned without assistance of the kind referred to in *subsection (5)* because of its complexity or for any other reason,

(c) there are other special circumstances which make it appropriate for the Commission to grant such assistance.

(5) The assistance referred to in the preceding provisions of this section is -

(a) the provision, or the arranging for the provision of, legal advice to the applicant,

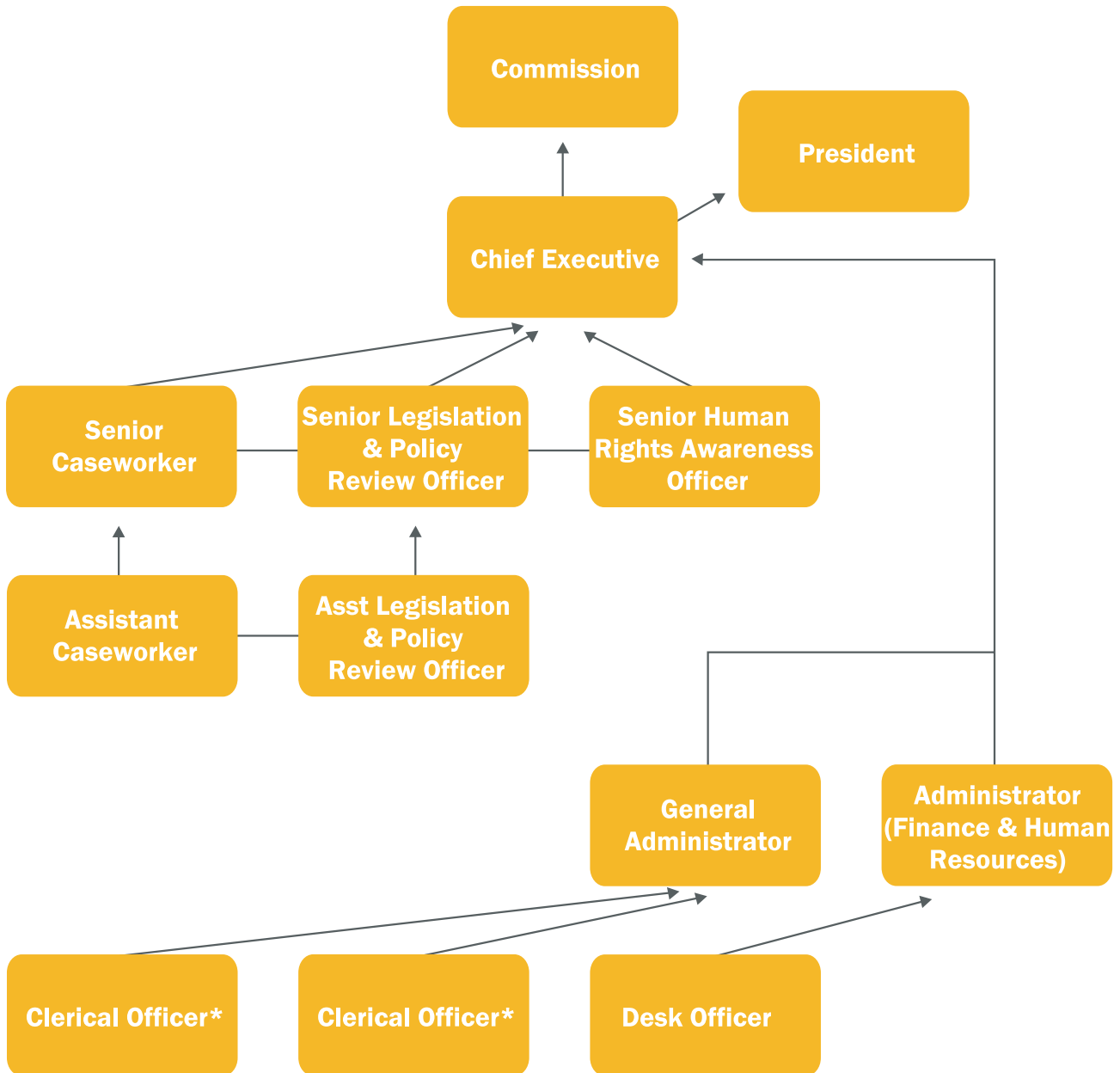
(b) the provision, or the arranging for the provision of, legal representation to the applicant,

(c) the provision of such other assistance to the applicant as the Commission deems appropriate in the circumstances.

(6) Any arrangements made by the Commission under this section for the provision of legal advice or representation to the applicant may include provision for the recovery of expenses incurred by or on behalf of the Commission in that behalf from the applicant in specified circumstances.

APPENDIX 3

Organisational structure of the Commission



* In addition to general clerical duties, one of the clerical officers has special responsibilities to the President and one to the Chief Executive

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