



Submission to the Working Group on the establishment of the new Human Rights and Equality Commission

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Amnesty International Ireland (AI) welcomes the invitation extended by the Working Group to present inputs and ideas to inform its consideration of the functions, features and priorities of the new Human Rights and Equality Commission (the Commission). AI's contributions are presented under each of the three key questions posed by the Working Group.

a. What do people want the new body to do?

It is important that the Commission not only be charged with the promotion of human rights and the assessment of government's proposed legislative and policy measures for human rights compliance, but that it retains the competence to appear before the High Court and Supreme Court as *amicus curiae* in respect of the interpretation of human rights law and standards in specific cases, that it be statutorily empowered to carry out enquiries into whether law, policy or practice in a given area complies with the state's national and international human rights obligations, and also provide individuals who feel their human rights have been violated with legal advice/representation/assistance. Mainly as a result of persistent underresourcing, the Irish Human Rights Commission (IHRC) has been unable to fully perform those functions, and therefore their potential utility as tools for wider human rights protection remains untested in many ways. The Commission should also continue with the IHRC's other functions, such as supplying treaty monitoring bodies with submissions during Ireland's periodic reviews.

In the context of the Commission's equality functions, it will be important that the government reconciles the differences between a human rights approach to non-discrimination where the grounds are non-exhaustive and the scope wider than the more limited approach taken in Ireland's current equality legislation. The opportunity should be taken to look afresh at how Ireland's nine grounds of discrimination might be expanded, how this equality legislation might be extended beyond the spheres of employment or goods/services, and how positive action measures could be further provided for in law. The Equality Authority¹ and IHRC have both set out where and

¹ In 2003, the EA submitted 51 recommendations to Government on how three EU Directives should be transposed into Irish law, and how existing anti-discrimination protections could be enhanced. It recommended that it should be given a statutory role to establish, maintain and enforce standards in relation to equality action plans. It had also recommended that the 2004 Act place a statutory duty on the public and private sector to promote equality across all of the nine grounds in areas covered by the 1998 and 2000 acts, but this was not adopted in the 2004 Act. Disappointingly, the then Government chose to ignore many of its recommendations.

how equality legislation should be expanded.

The new Commission should be adequately resourced to promote Ireland's obligations under international human rights law on human rights education and the right to education. It can play a critical role in supporting and promoting the development of a national human rights education action plan for Ireland as recommended in a recently published overview on human rights education by the IHRC. This report identified serious gaps in the provision of human rights education across primary, post primary and higher education as well as continuous professional development and training and the new body can play a critical role in ensuring these gaps are addressed.

The new Commission can make a significant contribution to ensuring that education reform is compatible with the human rights obligations the State has committed itself to. The IHRC has made important statements on pressing issues such as school admission policies and their consultation on the role of religion in the education of children in the State in its report *Religion and Education: A Human Rights Perspective* made an important contribution to the Forum on Patronage and Pluralism in the Primary Sector.

In addition, the new Commission should:

- ⇒ Play a key role in promoting Ireland's expeditious signature and ratification of UN and Council of Europe human rights treaties, and Ireland's implementation of treaty bodies' recommendations.
- ⇒ Continue the work started by the IHRC on exploring the challenges and opportunities presented by enhanced domestic legal enforceability of economic, social and cultural rights.
- ⇒ Play a key role in advising government on the designation of the National Preventive Mechanism required under the Optional Protocol to the UN Convention Against Torture, which Ireland has signed but not yet ratified.
- ⇒ Act as the focal point within government for the national monitoring and implementation of the Convention on the Rights of Persons with Disabilities under Art 33.2 of that Convention, and ensure that people with disabilities participate in this monitoring and implementation.²
- ⇒ Complement the role of the Mental Health Commission by promoting the compliance of mental health legislation and policy with the evolving understanding of human rights standards, most particularly the Convention on the Rights of Persons with Disabilities.
- ⇒ Within its equality brief, identify and eliminate the barriers experienced by certain groups, such as people with mental health problems³, in achieving equality and equal opportunity, and exercising their rights under Irish equality legislation to challenge discrimination and seek redress.
- ⇒ Engage as a key stakeholder in the Constitutional Convention to consider comprehensive constitutional reform promised in the 2011 Programme for

² See *Survey of National Human Rights Institutions on Article 33.2 of the Convention on the Rights of Persons with Disabilities*, Prepared for the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights by the Canadian Human Rights Commission, August 2011.

³ In contrast to the high level of reports of discrimination by people with mental health problems in access to employment in a study AI Ireland commissioned from Dublin City University in 2010 (*Hear my Voice*), it is marked that few cases based on mental health disability come before the Equality Tribunal under the Employment Equality Acts. This would seem to indicate that people with mental health problems who experience discrimination are not consistently accessing the redress mechanism available to them under employment equality law.

Government, in order to promote better constitutional incorporation of Ireland's international human rights obligations.

- ⇒ Encourage the development of a National Human Rights Actions Plan and play a leading role in fostering political and public debates on the merits of this process.⁴
- ⇒ Explore the degree to which equivalence of rights with Northern Ireland as required under the 1998 Belfast (Good Friday) Agreement has been achieved.⁵
- ⇒ Progress work with the Northern Ireland Human Rights Commission towards an all-island charter of human rights.⁶
- ⇒ Continue to play a key role in the European and International Coordinating Committees of NHRIs.

b. What features and functions does it need to do these things?

- ⇒ It is important that its establishment, role, composition, status and functions comply with the Paris Principles⁷ to the fullest extent.
- ⇒ In order to comply fully with the Paris Principles, the Commission should be given statutory independence from any government department – it should be resourced by and accountable to the Oireachtas.
- ⇒ Its independence should be further protected by government's providing it with an "infrastructure, which is suited to the smooth conduct of its activities, in particular adequate funding" in line with the Paris Principles, which clarify: "The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence." In this regard, the underfunding of the IHRC, as highlighted in the concluding observations of a number of treaty monitoring bodies, must not be repeated.
- ⇒ There will need to be a careful calibration of functions and resources so that this new body can successfully combine the detailed legal advice, guidance and support work of an equality/anti-discrimination body with the broader, more policy-focused strategic work of an NHRI.
- ⇒ It must have a mandate to promote human rights education and training and be adequately resourced to ensure it can implement this in a meaningful way.

⁴ International human rights standards address each of the issues of equality, poverty and social inclusion, and such an action plan could provide a unifying framework for understanding and addressing these issues. It is clear that, alone or in combination, laws, plans and strategies so far adopted do not provide an adequate framework in which these (and other human rights issues) have been resolved. At the 1993 World Conference on Human Rights, the Vienna Declaration and Programme of Action was agreed by Ireland and 170 other states, where a recommendation was adopted that each State would "consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights". It was not required that such a National Human Rights Actions Plan would be a legally binding instruments, but that it should have a strong persuasive character.

⁵ The Good Friday Agreement requires the Irish Government to ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland. A 2006 report commissioned by the EA and the Equality Commission of Northern Ireland, *Equivalence in Promoting Equality*, found that, in a number of key areas, there is a greater degree of equality protection in Northern Ireland than exists in Ireland, and where no action has been taken by the Irish Government to ensure equivalence.

⁶ The Good Friday Agreement requires the Joint Committee of the Irish and Northern Ireland Human Rights Commissions to consider the possibility of establishing a charter, open for signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland. In June 2011, they presented *The Advice of the Joint Committee on a Charter of Rights for the Island of Ireland* to the UK and Irish governments, recommending that human rights standards currently signed up to by them should be used as the minimum protection structure from which a Charter could be established.

⁷ United Nations Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles) endorsed by the UN General Assembly in 1993 (resolution A/RES/48/134).

- ⇒ Cooperation and support from Government Departments, ministers and state agencies will be important – for instance, they should provide clear reasons for rejecting its conclusions/recommendations on legislation, policy, etc..
- ⇒ As mentioned above, it will require a broad legislative base for equality protection, preferably one that would allow ratification of Protocol 12 to the European Convention on Human Rights.⁸

c. How should it be structured and what working methods should it use to achieve the above?

- ⇒ It should engage cooperatively, effectively, openly and transparently with stakeholders, both governmental and nongovernmental, while maintaining its separate NHRI status.
- ⇒ It should engage in rigorous and comprehensive data collection, research and analysis. Accurate, disaggregated data is vital to identifying and addressing discrimination. It is particularly important in identifying any indirect discrimination that arises from laws and practices that on the face of it appears neutral. Statistical monitoring is also essential for designing and monitoring the implementation of policies and measures to combat discrimination and promote full equality. To adequately identify and address the true scale of the problem of discrimination, research and evidence is required.
- ⇒ It should advise state agencies that adequately disaggregated data-gathering and monitoring is essential in identifying and combating discrimination.

ENDS//

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⁸ Protocol 12 to the ECHR prohibits discrimination in the enjoyment of “any right set forth by law” and is not limited to particular grounds. While Protocol 12 entered into force on 1 April 2005, Ireland has signed but not yet ratified it.