

**Submission on the Heads of Irish Human Rights and Equality Commission Bill 2012
to the Oireachtas Committee on Justice, Equality and Defence.**

About Equality and Rights Alliance (ERA)

ERA is a coalition of 171 civil society groups (NGOs, and trade unions), academics and individual activists working together to protect and strengthen the statutory equality and human rights infrastructure¹. ERA welcome the opportunity to comment on the Heads of Irish Human Rights and Equality Commission Bill 2012.

Response to Draft Bill

The Minister for Justice, Equality and Defence has committed to ensuring that the newly established Irish Human Rights and Equality Commission (IHREC) will be fully compliant with the UN Paris Principles (standards relating to the independent and effective status of national human rights institutions²) which is most welcome. The Minister further commits that the highest standard of accreditation under the Paris Principles would be sought from the UN in regard to the IHREC³. The Minister notes:

*"This (accreditation) is of crucial importance to ensure that the new body achieves the highest international standing and domestic credibility to its independence and remit"*⁴

The Draft Bill will require amendment in a number of key areas (set out below) if the IHREC is to meet the basic standards outlined in the Paris Principles and any subsequent accreditation as an A status institution. ERA has set out our response to the draft Bill under the two fundamental standards recognized internationally as the key benchmarks for human rights and equality institutions: independence and effectiveness.

Independence

¹ For a list of our member organisations : <http://www.eracampaign.org/about-us>

² See the full text of the Paris Principles here: <http://www2.ohchr.org/english/law/parisprinciples.htm>

³ The Irish Human Rights Commission (IHRC) was awarded A status accreditation by the UN in 2003. In 2008 the IHRC was reviewed for re-accreditation and while it retained it's A status, serious concerns were noted by the Accreditation Committee about likely budget cuts to the IHRC, something which would have meant non-compliance with the Paris Principles. Ireland's accreditation is officially due for review in 2013, however, the establishment of the new Human Rights and Equality Commission would have likely warranted a new application for UN accreditation in any event.

⁴ Press release by the Department of Justice, Equality and Defence, June 5th 2012.

The Bill requires amendment in a number of respects if it is to meet the standards for independent functioning required for compliance with the Paris Principles. Key issues in this regard are:

1. Membership of the Commission:

1.1 Head 13 outlines the procedure for appointments to the Board of the IHREC. The credibility of the IHREC will hinge on such key issues as the transparency and independence of the appointment process to the Board and the caliber of candidates selected.

1.2 There is insufficient detail in the Bill regarding the criteria for appointments. There should also be no representative of government or a government department on the Board. In 2008 a government representative was appointed to the Board of the Equality Authority for the first time which is contrary to the Paris Principles.

1.3 Clarity is required regarding the appointment of the panel of five experts who will have responsibility for selecting the new Board. It is essential that this panel be regarded as being sufficiently independent and as having expert knowledge in the field of equality and/or human rights. Gender balance should be a feature of this panel and there should be no representative of government or a government department on the panel.

Recommendation: Head 13 should be amended to provide more detail on the independence of the process for appointing the panel of experts. This panel should be appointed by the Oireachtas rather than the government. It should be gender balanced and there should be a prohibition on the appointment of government or government department representatives.

Recommendation: The criteria for appointments to the IHREC should be detailed in advance and the participation of all stakeholders, including civil society, should be secured in regard to establishing these criteria. There is need for an explicit prohibition on appointment of government or government department representatives to the Board of the IHREC.

2. Staffing of the Commission

2.1 Head 17 of the Bill stipulates that the first Director of the IHREC will be the current Chief Executive of the Equality Authority. This removes autonomy from the Commission to appoint its own Director as recommended by the working group reporting to the Minister on the merger. It also places a seconded civil servant at the head of the new body. Such a stipulation runs contrary to the Paris Principles.

2.2 Head 21 provides for the IHREC to enter into an agreement with the Department of Justice to utilize its pool of clerical and administrative staff to supplement the IHREC staffing levels. This suggests that specialisation and commitment to the mandate are not required at all levels. It is limiting in not allowing specialist support to be available to the IHREC from the wider public service if required.

Recommendation: Heads 17 and 21 should be revised to allow the IHREC to have full autonomy to appoint staff at every level from the start of its operations, through an open and transparent appointments process and without continued reliance on civil service secondments. This is necessary to ensure compliance with the Paris Principles.

3. Financial Independence

3.1 Head 28 provides that sufficient resources will be made available to the IHREC to ensure it can carry out each of its functions effectively. The inclusion of such a provision in the Bill is most welcome. No information is provided as to how this amount of resources is to be calculated and assessed.

3.2 Heads 26 and 28 cede considerable control to the Minister for Justice regarding the financial resourcing of the IHREC and its financial accountability. The Minister determines the annual grant to be made available to the body. The Director must submit annual estimates to the Minister on terms specified by the Minister and provide the Minister with any related information that might be required. This runs counter to independence and the Paris Principles. In addition, allowing such control by a parent Department would leave the IHREC vulnerable to another abrupt cut to its funding such as the situation that arose in 2008 when the budgets of both the IHRC and the Equality Authority were subject to wholly disproportionate cuts by the then Minister for Justice.

Recommendation: Financial accountability of the IHREC should be established as being to the Comptroller and Auditor General rather than the parent Department of Justice in order to ensure compliance with the Paris Principles.

Recommendation: The Bill should require the Department to produce a baseline figure of the resources required by the HREC to implement each of its functions effectively. This should be prepared with the full cooperation of the IHREC and should be subject to Oireachtas inspection.

Recommendation: The Bill should introduce a provision that any cuts to the budget of the IHREC beyond a nominal amount should be subject to approval of the Oireachtas.

4. Linkages to Government Department

4.1 It is regrettable that the Bill proposes a merely symbolic accountability to the Oireachtas. This is not the independence that has consistently been called for by ERA. There are minimal linkages to the Oireachtas outlined in Heads 12 and 27 regarding the presentation of annual reports and strategic plans to the Oireachtas. The IHREC will continue to be accountable to the Minister for Justice, which is contrary to the level of independence required under the Paris Principles.

Recommendation: In order to be compliant with the Paris Principles, the IHREC should have a real accountability to the Oireachtas rather than remaining accountable to a government department. This should be based on the presentation and debate of the strategic plans and annual reports of the new body to a specified Oireachtas committee.

Effectiveness (Powers and Functions)

The Bill requires amendment in a number of respects if it is to meet the standards for effective functioning required for compliance with the Paris Principles. Key issues in this regard are:

5. Definitions of equality and human rights

5.1 In Head 3 equality is defined as “all persons are equal in dignity, rights and responsibilities without regard to gender, civil status, family status, sexual orientation, religion or ultimate beliefs, age, disability, race (including colour, nationality, ethnic or national origin) or membership of the Traveller community”.

This definition is problematic for its narrow focus. It limits equality to the issue of dignity and to the exercise of rights and responsibilities. It fails to address equality in terms of participation in social, political, cultural and economic life. It fails to address issues of access to resources, representation, recognition and respect. This definition is also problematic for its failure to acknowledge the practical implications of diversity, the need to make adjustments for diversity if equality is to be progressed and the fact that same treatment in some instances can be discriminatory (in particular on the disability ground, but also on the race ground and possibly on other grounds).

Head 11 sets out the functions of the new body, including promotion of equality, in terms of this narrow definition of equality which could have the effect of actually diminishing the current functions of the Equality Authority. The current Equality Authority has always worked towards the more ambitious goal of equality of outcome in exercising its functions, and this ambition should not be curtailed for the IHREC.

Recommendation: The definition of equality in the Bill should be broadly defined in terms of parity of participation in the economic, political, social and cultural life of society which requires the elimination of discrimination, the reasonable accommodation of diversity and action to achieve full equality in practice.

5.2 The definition of human rights set out in Head 30 and which is applicable to the enforcement and compliance functions of the Commission (Heads 30-36) is a narrower definition than that set out in Head 3 (which applies to promotional functions of the Commission). The narrower definition that applies in Heads 30-36 requires that the human rights in question would only be those that are enshrined in law within the State or within the Constitution. Since a number of the UN instruments to which Ireland is a party have not been directly incorporated into domestic legislation, the IHREC is likely to be constrained in regard to its enforcement and compliance functions unless this definition is amended.

Recommendation: The definition of human rights as outlined in Head 3, or as currently set out in the Human Rights Commission Act 2000, should be consistently applied in the Bill to ensure no diminution of the current powers and functioning of the IHRC.

6. Purpose of the Commission

6.1 Head 9 in defining the purpose of the IHREC makes specific mention of promoting inter-cultural understanding and Head 11 notes a specific general function to promote awareness and understanding of and respect for the multi-cultural character of Irish society. This singular attention to the race (and possibly Traveller) ground is also referenced in Head 10 in relation to the principles for the type of society the IHREC should be promoting. This suggests a hierarchy of grounds has to be pursued by the IHREC as it implements its mandate. It runs counter to the integrated approach that the Commission will need to prioritise if it is to be able to fulfill its mandate effectively.

6.2 Head 9 makes no reference to a key purpose of the IHREC which is to hold the State to account on human rights and equality issues.

6.3 Head 9 makes no reference to the key purpose of the IHREC which is to stimulate change in society for greater equality and respect for human rights. The Equality Authority currently exercises such a purpose with its developmental function supporting good practice and change in public, private, and not for profit organizations.

Recommendation: Singular attention to one equality ground in defining the purpose and functions of the IHREC should be avoided as it will restrict or set a hierarchy of issues regarding the mandate of the IHREC.

Recommendation: The definition of the purpose of the IHREC should identify the core function of holding the State to account on human rights and equality issues.

Recommendation: The definition of purpose should include: to promote institutional change in public, private and not for profit sector organisations such that they better advance equality and human rights, adjust for diversity, and prevent discrimination and human rights abuses.

7. Coherence of Powers and Functions

7.1 Equality Grounds

The draft Bill usefully establishes a coherence of functions and powers between the human rights and equality mandate of the IHREC. This is reflected in the manner in which Head 11 is set out.

However, a fundamental incoherence exists where equality is governed by the nine grounds in contrast to the broad focus of human rights. This will diminish the effectiveness of the new body as it will not be possible to deploy a set of functions and powers with coherence. This runs the risk of the work of the IHREC separating into two silos: one for equality and one for human rights.

Coherence in the protection from discrimination and in the protection from human rights abuses requires that, at a minimum, socio economic status is included in the grounds protected from discrimination and, at best, that a ground of ‘any other status’ is included as a ground. This approach has been taken in a number of the Member States.

Recommendation: In order to achieve a coherence of function and powers for the IHREC, a ground of socio economic status and a ground of ‘any other status’ should be introduced in the protection afforded from discrimination.

7.2 Proceedings in own name

Head 30.B outlines the range of interventions open to the IHREC where there has been a breach of equality or human rights legislation. Section vii (1) refers to the Commissions power to institute proceedings in its own name. The wording of this section only refers to matters pertaining to the ‘human rights’ of persons. There does not appear to be any other provision set out for the Commission to take cases in its own name in relation to matters of equality and non-discrimination. This would reflect a significant diminution of the current powers of the Equality Authority and a serious diminution in a context of significant under-reporting of discrimination.

Recommendation: Head 30.B vii(1) should be amended to include specific reference to matters relating to equality and discrimination in order to accurately reflect the current powers of both the IHRC and the Equality Authority to instigate proceedings in their own name.

7.3 Equality Reviews and Action Plans

Head 32 refers to the current powers of the Equality Authority to conduct equality reviews within businesses and organisations. In terms of leveling-up the powers and functions of the IHREC across its equality and human rights functions, it is important that this power also extends to human rights law.

Recommendation: Head 32 should be amended to include the power to conduct equality and human rights reviews and action plans

7.4 Provision of legal assistance

Head 33 proposes to re-enact section 10 of the Human Rights Commission Act to ensure that the IHREC retains current powers regarding provision of legal assistance. The operation of the IHRC for a decade has highlighted a restriction in the Act at Sec 10(3)(a): the criterion for assessing whether the IHRC can grant legal assistance. This criterion has resulted in a barrier to taking cases and should be deleted.

Recommendation: Sec 10(3)(a) should be deleted.

7.5 Regulations

Head 5 notes that further consideration will be given to ‘provide power to make regulations in relation to anything that is stated in the Bill as to be prescribed, or where anything is stated as to be done by regulations’

Powers to enact regulations will compromise independence and could result in undue interference with the IHREC.

Recommendation: This section should be deleted or if it is included should stipulate that any regulations should only be introduced following agreement from the IHREC.

8. Public Sector Duty

8.1 Head 36 introduces a new public sector duty. This is a welcome evolution of the equality and human rights legislative framework. The introduction of a public sector duty enhances the State’s commitment to fulfilling the requirement for an equivalence of protection of rights with Northern Ireland established in the Belfast/Good Friday Agreement 1998.

The Bill refers to public authorities giving consideration to equality and human rights in planning and execution of their policies and actions, strategic plans and reporting. ‘Giving consideration’, however, is not defined. This is a significant absence when the detailed provisions of similar duties in Northern Ireland and Britain are considered. A further concern is the absence of any enforcement mechanism to ensure compliance with the duty.

The explanatory note in the Bill regarding Head 36 suggests that public bodies will only be required to set out their consideration of relevant issues in strategic plans and to report on issues and events in annual reports. This is far more limited than the requirements in the legislation in Northern Ireland.

The explanatory note in the Bill proposes a review of the duty after a period of three to five years to “assess the effectiveness of the public sector duty in securing improved human rights and equality outcomes and in assisting public bodies to preempt problems on an evidential basis”. Without an explicitly outcome-focused and enforceable duty, however, it is difficult to envisage how the duty could be reviewed from such a benchmark.

Recommendation: The public duty proposed should be strengthened by the inclusion of an enforcement mechanism to be implemented by the IHREC and sanctions that could be applied by the Equality Tribunal.

Recommendation: The proposed public sector duty should oblige public bodies to prepare an equality scheme setting out the equality and human rights environment for their work and identifying how they intend to respond to this as employers, service providers and purchasers of goods and services and to conduct an equality impact assessment on all new legislation, policies, plans and programmes.