

# EQUALITY & RIGHTS ALLIANCE

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## **International concern regarding the erosion of the Irish statutory equality and human rights infrastructure**

Concerns regarding the erosion of the Irish statutory equality and human rights infrastructure and regarding the proposed establishment of the Irish Human Rights and Equality Commission have been consistently raised by the UN and Council of Europe with the Irish Government since 2008.

Set out below are the concerns, recommendations and requests for further information raised in twelve separate reports/correspondence, following the wholly disproportionate cuts to the Equality Authority, the Irish Human Rights Commission and the National Consultative Committee on Racism and Interculturalism in 2008.

If the IHREC is to be fully compliant with the UN Paris Principles, it is vital that these issues are addressed both in the legislation to establish the Commission and in terms of the operation of the IHREC.

### **1. List of issues (for the Irish Government to respond to<sup>1</sup>) in relation to the fourth periodic report of Ireland under the ICCPR in July 2014**

#### **3. Please provide updated information concerning:**

(a) The merger of the Irish Human Rights Commission and the Equality Authority into a new Irish Human Rights and Equality Commission (IHREC), including details of how the new IHREC will be in compliance with the Principles relating to the Status of National Institutions (the Paris Principles), in particular with regard to financial autonomy, independent and transparent procedures for the recruitment and election of the Chief Commissioner and the members, and direct accountability to Parliament;

(b) The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency. In particular, please clarify how complaints and appeals in relation to the Equal Status Acts 2000–2011 will be dealt with by the new agency; and

(c) The measures adopted to ensure the effective transfer of the mandates and responsibilities of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency into new or existing bodies, given their abolishment in 2008 and 2009 respectively. Please also indicate any plans to adopt a successor to the National Action Plan Against Racism 2005–2008.

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<sup>1</sup> For Ireland's scheduled examination under the ICCPR by the Human Rights Committee between 7 and 25 July 2014.

## **2. Council of Europe Secretary-General, Thorbjorn Jagland, remarks on visit to Ireland, May 2-3 2013**

“Ireland has also initiated a major reform of its human rights institutions, by merging the Irish Human Rights Commission and the Equality Authority. Appropriate legislation is being progressed and the relevant new appointments made. I underlined the importance of the necessary funding and human resources, so as to secure the efficiency and independence of the new institution”.

## **3. European Convention against Racism and Intolerance Fourth report on Ireland February 2013<sup>2</sup> :**

Recommendations:

### Equality Tribunal

39. ECRI recommends that the authorities, without neglecting the need to rationalize the various procedures for dealing with complaints concerning employment, ensure that there is an independent authority (other than the courts) competent to deal with all cases of discrimination.

### Equality Authority

44. ECRI regrets to note that as part of the Government’s response to the economic crisis, there have been severe cuts to the budget of the Equality Authority. In 2008 the budget was reduced by 43% to €3,333,000 which led to concerns that further cutback could curtail its work, led to the resignation of the CEO of the Authority and a campaign by an alliance of NGOs against the cuts. The budget was reduced also in 2010 to €3,200,000 and in 2011 to €3,057,000.

### IHRC

50. It is regrettable that due to the current economic crisis, the Commission’s budget was significantly cut. According to the Commission’s Annual Report, its “financial situation remains bleak”. Following the 32% reduction in grant in aid in 2009 to €1,596,000 the figure was further reduced to €1,523,000 in 2010.

### Recommendations regarding the Equality Authority and IHRC

55. ECRI recommends that the authorities make sure that the merger of the Human Rights Commission and the Equality Authority will result in the setting up of a body that will comply with the Paris Principles and ECRI’s GPR Nos. 2 and 7 in terms of independence and having a comprehensive monitoring function in the field of discrimination on grounds of ethnic origin, colour, citizenship, religion and language

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<sup>2</sup> ECRI 4<sup>th</sup> report also makes a number of recommendations regarding enhancing provisions of Irish equality legislation to better protect victims of discrimination.

(with data from the police, the criminal justice system, the tribunals and courts, local authorities and NGOs).

56. ECRI recommends that, notwithstanding the current economic difficulties, the authorities ensure that sufficient financial and human resources are available to the new body to allow it to fulfill its terms of reference.

NCCRI

59. ECRI recommends that the reporting procedure and the monitoring mechanism established by the NCCRI is continued by the body established by the merger of the Human Rights Commission and the Equality Authority.

**4. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, following her visit to Ireland Nov 2012:**

44. During the Special Rapporteur's visit, she was assured that an interim body would be appointed early in 2013 to ensure the full operation of the (Human Rights) Commission. The Special Rapporteur stressed the need that the Commission's mandate be broad and that adequate resources be allocated to it to ensure its independence and effective functioning. She also encouraged the swift introduction of draft legislation.

45. With regard to the scope of the mandate of the new (IHRE) Commission, while the Special Rapporteur is pleased to note the broad definition of human rights contained in head 3, she is concerned at the somewhat narrow definition enshrined in head 30, which requires that such rights be "conferred on or guaranteed by the Constitution" or have "the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such a force".

46. In connection with the above, and taking into account the fact that the automatic incorporation of international treaties into domestic law is hampered under article 29.6 of the Constitution together with the fact that Ireland is neither a signatory of nor party to all international human rights treaties, the Special Rapporteur is concerned that the narrower definition of human rights contained in head 30 could potentially reduce the scope of the Commission's mandates. She recommends that the heads of bill have only one definition of human rights, and that the one contained in head 3 be the one applicable to the new Commission.

48. While the Special Rapporteur acknowledges the increased links of the Human Rights and Equality Commission with Parliament established by the heads of bill (heads 12, 14, 20 and 27), she notes that heads 17, 19, 21, 26 and 27 seem to strengthen the connection of the institution to the Ministry of Justice and Equality by, inter alia, limiting what information the Director may convey to the Public Accounts Committee (head 19) and requiring ministerial consent for the appointments of the Director of the Commission and its staff (head 26). The Special Rapporteur underlines the importance for a national

institution to be able to recruit its own staff, and she also recommends that no secondment from civil service be allowed.

49. The Special Rapporteur also brings to the attention of relevant authorities a concern expressed by various stakeholders during her visit relating to the cumulative budget cuts suffered by the Commission since 2008. She was informed that the Commission has been subject to a reduction by 40 per cent in funding since 2007. Together with an embargo on recruitment, this has resulted in significant constraints for the institution.

50. While the Special Rapporteur notes that the heads of bill provide for the appointment of Advisory Committees (head 16), she regrets that there is no specific provision regarding the engagement of the new institution with civil society actors. She strongly recommends that the Government consider including a specific reference to the importance of the interaction between the Commission and civil society actors, including human rights defenders.

## **VI. Conclusions**

108. The Special Rapporteur notes with concern the situation of the national human rights institution as a result of the planned merger with the Equality Authority. She hopes that the draft legislation will be enacted shortly in order to establish a strong, independent and adequately resourced institution capable of a credible and impartial scrutiny of the State's human rights activities.

## **Recommendations**

The Special Rapporteur recommends that the Government of Ireland: Expedite the introduction of legislation on the establishment of the Irish Human Rights and Equality Commission to provide for an autonomous and independent institution; and, in the meantime, appoint, as soon as possible, an interim body to oversee the functioning of the Irish Human Rights Commission and the Equality Authority;

## **5. Letter from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to the Minister for Justice, Equality and Defence, Alan Shatter, Nov 2012:**

“I highly appreciate the active involvement of the Parliament and strongly recommend its further participation in the process of setting up the new (Human Rights and Equality) Commission, establishing a dialogue with the Commissioners and ensuring adequate funding for the reformed Commission. I believe that the Parliament's involvement should be formally strengthened in the legislation which will regulate the procedures for establishing future selection panels. The Belgrade principles on the relationship between national human rights institutions and parliaments (Belgrade, 22-23 February 2012) can provide useful guidance for ensuring a fruitful interaction between the Commission and the Oireachtas.

The independence of the new Commission should be clearly reflected in the way its members are appointed, the manner in which its staff is selected and recruited and in the arrangements for the allocation of its budget.

I was pleased to learn that the new body will have a full-time Chief Commissioner. The Chief Commissioner will have a key role in creating a culture of independence for the Commission, both externally and internally. The diversity of the members of the Commission and their expertise in human rights and equality will also be essential for the Commission's success. The Paris Principles should guide the legislation to be drafted as well as the operations of the new Commission. The Opinion of the Commissioner for human rights on national structures for promoting equality, a copy of which is attached, provides further guidance on the matter from a European perspective and with a particular emphasis on equality. It will also be important to ensure that the Equality Tribunal dealing with individual complaints under equality legislation be able to continue to fulfill its quasi-judicial function in an independent manner"

#### **6. Letter from the Office of the High Commissioner for Human Rights, Geneva, 13 July 2012:**

##### Regarding the Heads of IHREC Bill:

"It would (therefore) be important to include in the new legislation a broad definition of human rights, as well as provide the new IHREC with all the functions set out in the Paris Principles, to be performed in an independent manner".

"We (therefore) suggested that the Bill include provisions that set out clear and transparent appointment and dismissal procedures"

"Some of the provisions of the General Scheme (Heads of IHREC Bill) may undermine the financial independence and autonomy of the new IHREC. In this regard we would like to refer to UN General Assembly resolution 66/169 of 19 December 2011 and UN Human Rights Council resolution 17/9 of 6 July 2011, which "*stress the importance of financial and administrative independence and the stability of NHRIs, and also note(d) with satisfaction the efforts of those States that have provided their NHRIs with more autonomy and independence*". According to the Paris Principles, an NHRI should have an infrastructure that is suited to the smooth conduct of its activities, in particular adequate funding, in order to be independent from Government and not be subjected to financial control which might affect its independence. In addition General Observation 2.6 on Adequate Funding issued by the Sub Committee on Accreditation states that "*financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control*". The inclusion in the Bill of provisions that set out a procedure of budget allocation ensuring the financial autonomy of the new institution in accordance with the above mentioned provisions would therefore be critical.

## **7. UN Report of the Working Group on the Universal Periodic Review, December 2011:**

### **II. Conclusions and/or recommendations**

106.7. Reinforce the independence and the capacity of the Irish Human Rights Commission to fulfill its mandate effectively in accordance with the Paris Principles (Moldova), by endowing it with adequate and sufficient resources (Ghana);

106.8. Ensure and strengthen the independence of its national human rights infrastructure (Egypt);

106.12. Ensure that the current budget cuts do not result in stifling the activities of human rights bodies (Turkey);

106.13. Work with all sectors to ensure the Human Rights and Equality Commission is an effective agent for enhancing the country's commitment to human rights (Australia);

## **8. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ireland from 1 to 2 June 2011:**

The Commissioner reiterates the particular importance of national human rights structures in financial crisis periods, since such bodies assist the government in assessing the consequences of budget decisions. Thus, they provide for a balance by protecting the human rights of vulnerable groups and ensuring social cohesion within society. In view of this crucial function, the Commissioner strongly believes that weakening such national bodies through budget cuts will have detrimental effects, which will be more costly to resolve in a long-term perspective. In order to avoid such undesired results, the Commissioner calls upon the government to make an exemption for the national human rights structures from the current moratorium on recruitment in the public sector.

## **VII. Conclusions and recommendations**

43. Enhancing the effectiveness and independence of existing human rights bodies is core to human rights protection in times of budget cuts, in particular if no human rights action plan is in place to provide guidance for decision makers and society alike. As such bodies provide for a balance, ensuring social cohesion, they should be exempted from the current moratorium on recruitment in the public sector.

44. Recalling the Paris Principles, the Commissioner recommends promoting the independence of the Irish Human Rights Commission (IHRC) by detaching it from the executive and submitting it to direct parliamentary control, including as regards its budget.

45. The Commissioner notes with concern the cuts made to the budget of the Equality Authority and calls upon the government to carefully assess the impact of current and

future budgetary and structural decisions on the core functions of this body as well as on public participation and the need for stable long term planning.

**9. Concluding observations of the UN Committee against Torture June 2011:**

C Principal subjects of concern and recommendations

Reduction of financial resources for human rights institutions

8. While welcoming the commitment by the State party to provide resources to human rights institutions, the Committee expresses concern at information received over the disproportionate budgets cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission (IHRC) in comparison to other public institutions. Furthermore, while noting the decision to move the IHRC from the Department of Community, Equality and Gaeltacht Affairs to the Department of Justice, the Committee regrets that the IHRC does not have direct accountability to Parliament and lacks financial autonomy. (article 2)

The Committee recommends that the State party should ensure that the current budget cuts to human rights institutions particularly the Irish Human Rights Commission do not result in the crippling of its activities and render its mandate ineffective. In this regard, the State party is encouraged to strengthen its efforts in ensuring that human rights institutions continue to effectively discharge their mandates. Furthermore, the Committee recommends that the State party should strengthen the independence of the IHRC by, inter alia, ensuring its direct accountability to Parliament and financial autonomy in line with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights adopted by General Assembly resolution 48/134 (Paris Principles).

**10. Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, May 2011:**

11. The independent expert is concerned that recent budgetary cuts have affected the Irish Human Rights Commission (IHRC), the Equality Authority (the main statutory body tasked with monitoring the implementation of equality legislation, the Ombudsman for Children and the National Disability Authority. These cuts have substantially reduced Ireland's capacity to protect the most disempowered segments of Irish society at a time when they are particularly susceptible to violations of their rights, and will have a negative impact on their enjoyment of economic, social and cultural rights in the long-term. The Government should take all measures to provide these institutions with adequate resources to enable them to efficiently and effectively exercise their duties and functions, which become even more significant during times of crisis



12. The independent expert is also concerned about the dismantling of the Combat Poverty Agency, which played a key role in increasing awareness and understanding of poverty, and influencing government policies.

**11. Concluding observations of the Committee on the Elimination of Racial Discrimination on Irelands third and fourth reports, March 2011:**

The Committee expresses grave concern over the disproportionate budgets cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission, the Equality Authority and the National Consultative Committee on Racism and Interculturalism (article 2)

The Committee recommends that the State party should ensure that, notwithstanding the current economic recession, enhanced efforts are made to protect individuals from racial discrimination. In light of this, the Committee recommends that budget cuts for human rights bodies should not result in the stifling of their activities to effectively monitor the protection of human rights and particularly racial discrimination. The State party should ensure that the functions of the bodies that have been closed are fully transferred and subsumed by the existing or new institutions.

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Even prior to the damaging budget cut of 32% to the IHRC (announced in budget 2009) the UN had observed that the funding of the IHRC was insufficient and that its independence should be strengthened:

**12. UN International Covenant on Civil and Political Rights, Concluding observations of the Human Rights Committee 30 July 2008 CCPR/C/IRL/CO/3:**

7. While welcoming the establishment of the Irish Human Rights Commission, the Committee regrets the limited resources of the Commission as well as its administrative link to a Government department. (art. 2).

The State party should strengthen the independence and the capacity of the Irish Human Rights Commission to fulfill its mandate effectively in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134), by endowing it with adequate and sufficient resources and linking it to the Oireachtas (Parliament).