

EQUALITY & RIGHTS ALLIANCE

**Submission to the Oireachtas Committee on Justice, Equality and
Defence
on the issue of :
Integration, Multi-Culturalism and Combatting Racism**

Submitted by:
Equality and Rights Alliance
September 2013

1. Equality & Rights Alliance

Equality & Rights Alliance (ERA) is a coalition of over 170 civil society groups and activists campaigning to defend and strengthen the Irish equality, anti-poverty and human rights infrastructure¹. ERA was established in August 2008 to protest significant cuts to the statutory equality and human rights infrastructure. ERA is now working for an effective and independent equality, human rights and anti-poverty infrastructure.

2. Scope of ERA submission to the Oireachtas Committee

This submission is confined to an examination of the statutory equality and human rights infrastructure and the current situation regarding the capacity of this infrastructure to effectively combat racism and discrimination and promote interculturalism. The equality and human rights infrastructure comprises four key interlinked elements: laws, institutions, policy instruments and policy strategies.

3. Summary and Recommendations

The effectiveness of the statutory infrastructure to promote equality, promote and fulfil human rights, and combat discrimination has been seriously undermined over the past five years. This is particularly so in relation to the institutions that form part of this infrastructure. However, it is also true in relation to policy strategies to combat racism and promote interculturalism.

Concerns have been raised by the UN and Council of Europe with the Irish Government regarding the erosion of the institutions that form part of the Irish statutory equality and human rights infrastructure and regarding the need to ensure that the merged Irish Human Rights and Equality Commission (IHREC) is fit for purpose².

There is an opportunity, with the establishment of the IHREC, to rebuild the statutory equality and human rights infrastructure and ensure that the merged body is sufficiently independent and effective to address all forms of discrimination, including racism and xenophobia.

There is also a need to strengthen the legislative and policy framework on equality and human rights to offer greater protection to migrants and people from minority ethnic groups, including Travellers³.

3.1 Recommendations

ERA recommends the following, to ensure that the equality and human rights infrastructure can operate effectively to combat discrimination, racism and xenophobia and promote interculturalism:

¹ List of ERA member organisations: <http://www.eracampaign.org/about-us>.

² ERA has compiled a summary of the various concerns and recommendations noted in these reports : <http://goo.gl/H5wcjj>

³ Throughout this paper we use the term minority ethnic group/background to be inclusive of members of the Traveller community (unless otherwise stated)

- The equality legislation should be amended and human rights law should be strengthened (as outlined in paragraph 5.1 below)
- The legislation to establish the IHREC, which will be before the Houses of the Oireachtas in autumn 2013, requires amendment in a number of key areas in relation to the Heads of Bill already published (as outlined below in paragraph 5.2.5).
- The new Workplace Relations Commission should protect and maintain the unique functions and approach of the Equality Tribunal (as outlined below in paragraph 5.2.3).
- Sufficient financial and staffing resources should be made available to the IHREC from its establishment. Staffing and funding levels should, at a minimum, revert to 2008 levels enjoyed by both precursor bodies (as outlined below in paragraph 5.2.5).
- The proposed public sector duty in head 36 of the Heads of the IHREC Bill should be strengthened by further clarity in its definition, the inclusion of an enforcement mechanism to be implemented by the IHREC, and sanctions that could be applied through the Equality Tribunal (as outlined below in paragraph 5.3).
- The practice of equality and human rights impact assessment by public bodies needs to be invested in by Government and adequately supported by the IHREC (as outlined below in paragraph 5.3).
- A national action plan to combat racism and promote interculturalism should be developed with civil society stakeholders involved in the development of this action plan (as outlined below in paragraph 5.4).

4. Discrimination against Minority Ethnic Groups

Levels of discrimination against people from minority ethnic groups are significant, as the following data illustrate:

- An examination of the cases heard by the Equality Tribunal indicates that between 2006 and 2011 the most commonly reported ground for discrimination in the area of employment was the Race ground (with the exception of 2011 when Race was the second highest)⁴. An examination of cases heard in the Equality Tribunal under the Equal Status Acts, indicate that the Traveller and Race grounds consistently featured in the four highest reported grounds of discrimination between 2006 and 2011.
- An examination of legal cases supported by the Equality Authority indicates that between 2000 and 2011 the protected ground of Membership of the Traveller Community dominated the casework activity of the Equality Authority under the

⁴ Information from the Annual Reports of the Equality Tribunal (figures for 2012 not yet available)

Equal Status Acts. Each year from 2000 to 2005 inclusive, the Traveller ground constituted the highest number of cases supported in terms of discrimination in accessing goods and services. An examination of employment equality cases supported by the Equality Authority indicates that between 2000 and 2011 the Race ground has consistently featured in the highest four grounds under which cases were supported⁵.

- The CSO Quarterly National Household Survey 2010 data on levels of discrimination in Ireland, found the highest rates of discrimination reported are by people from non-White ethnic backgrounds (29%). The most common grounds people identified under which they experienced discrimination were: race/skin colour/ethnicity/ nationality (22%)⁶. The CSO QNHS on discrimination was initially conducted in 2004 and repeated in 2010. Comparing both data sets there was a “*significant increase*” of risk of serious discrimination for Black minority ethnic people between 2004 and 2010. During this period discrimination under the race/skin colour/ethnicity/nationality ground increased from 15% to 22%⁷.
- An EU-wide study on the experiences of people with an immigrant or ethnic minority background found the following in relation to experiences of discrimination (**in the previous twelve months**) amongst people living in Ireland: 54% of Sub-Saharan Africans had experienced discrimination (26% experienced discrimination in the workplace and 12% in accessing accommodation); 26% of Central and East Europeans had experienced discrimination ; 30% of Sub-Saharan Africans and 15% of Central and East Europeans had experienced ‘serious harassment or assault or threat of assault’⁸.
- The Traveller All Ireland Health Survey of over five thousand Travellers in the Republic found that 42% reported that they often or very often felt discriminated against⁹.

5. The Equality and Human Rights Infrastructure

The equality and human rights infrastructure comprises four key, interlinked elements:

- **Laws**, to establish the necessary standards to promote equality, prohibit discrimination and protect and fulfil human rights,

⁵ Information from the Annual Reports of the Equality Authority (figures for 2012 not yet available)

⁶ Frances McGinnity, Dorothy Watson and Gillian Kingston (2012) “Analysing the Experience of Discrimination in Ireland Evidence from the QNHS Equality Module 2010” joint publication for the Equality Authority and the ESRI

⁷ IBID

⁸ EU Fundamental Rights Agency (2009) “EU MIDIS- European Union Minorities and Discrimination”, the survey asked about discrimination in relation to looking for work and accessing key services such as : housing, health, education, shops and restaurants, and banking. http://fra.europa.eu/sites/default/files/fra_uploads/664-eumidis_mainreport_conference-edition_en.pdf

⁹ Kelleher, Cecily et al (2010) All Ireland Traveller Health Study: Our Geels Summary of Findings report:

http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1. School of Public Health, Physiotherapy and Population Science, University College Dublin , pg 46

Equality & Rights Alliance, c/o OPEN, 7 Red Cow Lane, Smithfield, Dublin 7, Ireland contact rachel@eracampaign.org

- **Institutions** with a specific remit to promote equality, prohibit discrimination and protect and fulfil human rights, and ensure that the laws are effectively enforced,
- **Policy instruments** (such as equality and human rights impact assessment) to bring the objectives enshrined in the laws into other legislation, policy making and programme development, and
- **Policy strategies** to promote positive action for groups experiencing inequality and disadvantage to expand the scope and reach of the political commitment to equality and human rights beyond what is required in law.

5.1 Deficits in equality law and human rights standards

There are exemptions in equality legislation which pose particular barriers for migrants and people with a minority ethnic status who experience discrimination in the areas of employment and the provision of goods and services:

- In 2004 the Employment Equality Acts were amended, providing some protection for people in domestic employment (an area where large numbers of migrant women are employed). The recruitment of people into private households, however, continues to be exempt.
- The scope of the Equal Status Acts 2000-2011 do not cover the functions of the State, which means that areas like immigration control and policing are exempt from the legislation.
- While the definition of the Race ground, in equality legislation, includes nationality and national origin, an exemption in the Equal Status Acts allows public authorities to treat certain non-Irish nationals differently where they are outside the state or unlawfully present in the state (for the purposes of the Immigration Act 2004).

Equal Status hearings against licensed premises are heard under the Intoxicating Liquor Act 2003. This Act transferred the hearing of such cases from the Equality Tribunal to the District Court. Members of the Traveller community face particularly high levels of discrimination in accessing licensed premises. When such cases moved to the District Court, it became much more difficult for Travellers to access redress given such issues as the risk of having costs awarded. Research on the impact of this transfer of power to the District Court found that “*the changes in Jurisdiction have resulted in an almost complete reduction in complaints taken under the law in relation to prohibited acts of discrimination*”¹⁰. Between September 2004 and February 2005 only nine claims of such discrimination were lodged¹¹ compared to an average of 514 claims annually taken with the Equality Tribunal between 2000 to 2003¹².

¹⁰ Gogan, S (2005) “From the Equality Tribunal to the District Court” research for the Clondalkin Travellers development group. Pg 5.

¹¹ Sunday Tribune, ‘Travellers pub claims fall to nine’ by Michael Clifford 19th June 2005.

¹² Gogan op cit pg 6

While Ireland has ratified the International Convention for the Elimination of all forms of Racial Discrimination (ICERD), successive governments have failed to give full effect to the Convention through its incorporation into domestic law.

Ireland's failure to ratify the UN International Convention on the Protection of Migrant Workers 1990 is also of concern. This convention would offer protections for migrant workers in an irregular situation.

Recommendations:

1. The Employment Equality Acts should be amended to give full protection to domestic workers.
2. The Equal Status Acts should be amended to: broaden the scope to encompass the functions of the State, remove the exemption in relation to the treatment of non-Irish nationals, and ensure cases of discrimination by licensed premises are heard by the Equality Tribunal and its successor body.
3. The Convention for the Elimination of all forms of Racial Discrimination should be fully incorporated into domestic law.
4. The Irish Government should ratify the International Convention on the Protection of Migrant Workers.

5.2 National equality and human rights institutions

Specialised equality and human rights institutions are essential drivers in regard to the protection of rights and promotion of equality for minority ethnic groups. The key Institutions in this regard are: the Equality Authority, the Irish Human Rights Commission, the Equality Tribunal, and prior to its abolition in December 2008, the National Consultative Committee on Racism and Interculturalism.

The dismantling of the statutory infrastructure to address discrimination, racism and human rights abuses has occurred precisely at a time when robust systems of redress from discrimination are most urgently required. The worsening economic crisis that has unfolded since 2008 has given rise to increasing levels of employment based discrimination¹³ and increasing levels of xenophobia and racism¹⁴. In such a context, a diminished statutory equality and human rights infrastructure gives cause for much concern.

5.2.1 Diminished capacity of the Equality Authority

The Equality Authority, established under the Employment Equality Act 1998, has a specific mandate to address discrimination in employment and access to goods and services on the nine grounds covered by the equality legislation, including the grounds of Race and Membership of the Traveller Community. The Equality Authority is a specialised equality

¹³ In 2010, for example, the Equality Authority noted a significant increase in employment rights queries to its public information service (a 60% increase on the previous year): Equality Authority Annual Report 2010, page 15.

¹⁴ The Immigrant Council of Ireland recently reported that in the 12 months (July 2012 to July 2013) they received 120 reports of racist incidents (11% of which involved physical violence). The figure for the previous 12 months was 50 incidents.

body for the purposes of the European Council Directive 2000/43/EC, the 'Race Equality Directive'.

In 2009 the budget of the Equality Authority was reduced by 43% (from €5.897m to €3.33m) and since that time its staffing levels have steadily decreased, with outgoing staff not replaced due to the public service embargo. It is estimated that by the time the Authority merges with the Human Rights Commission at the end of 2013 there will be approximately 12 staff remaining (down from 58 in 2008).

The Equality Authority has, through its legal remit, supported a significant number of legal cases on the Race and Traveller grounds since its establishment. The capacity of the Authority to undertake legal work has, however, greatly diminished with the departure and non-replacement of key legal staff. An examination of the annual reports of the Equality Authority indicates a significant drop in the number of legal cases supported, since the budget cuts imposed in 2009. In 2009, the Equality Authority had 878 legal cases in-hand. This figure dropped significantly to 332 cases in 2010 and to 289 cases in 2011¹⁵.

In addition to its legal work, the Equality Authority has traditionally played a coordinating role in regard to the 'anti-racist workplace week' initiative. The Equality Authority, however, no longer has capacity to fund and adequately participate in this initiative (now titled 'Workplace Diversity Initiative').

5.2.2 Diminished capacity of the Irish Human Rights Commission

The Irish Human Rights Commission (IHRC), established in 2000, has a mandate to promote, protect and fulfil human rights.

In budget 2009, the IHRC had its funding reduced by 32% (from €2.342m to €1.596m). Since that time, the staffing levels of the IHRC have also declined significantly, with outgoing staff not replaced due to the public service embargo. The IHRC currently has 6 staff (down from 13 in 2008). The annual reports of the IHRC indicate that subsequent to the cuts in 2009, there has been no funding available to support its legal and enforcement work, with all legal assistance being offered on a pro-bono basis, a situation which is unsustainable in the longer-term.

5.2.3 The Equality Tribunal

While the Equality Tribunal did not suffer a funding cut in the 2009 budget, nevertheless, it has experienced an ongoing whittling away of personnel (who have not been replaced due to the public service embargo). Previously the Equality Tribunal had made significant inroads into the backlog of cases under equality legislation. However, this backlog is now growing again, particularly in regard to employment equality cases, which now represent approximately 85% of the Tribunal's casework. Currently, cases referred to the Tribunal under the Employment Equality Act are taking up to three years to reach hearing stage. This situation is a significant deterrent to people considering taking cases.

¹⁵ Between 2000 and 2009 the Authority had on average 950 legal cases in-hand each year. Figures for 2012 are not currently available.
Equality & Rights Alliance, c/o OPEN, 7 Red Cow Lane, Smithfield, Dublin 7, Ireland contact rachel@eracampaign.org

Recommendation:

1. The Equality Tribunal is about to be merged with other employment redress bodies, to form the Workplace Relations Commission. It is essential that the unique functions and approach of the Equality Tribunal are maintained in this larger structure, and that the capacity of the WRC is sufficient to address the backlog of discrimination cases.

5.2.4 The National Consultative Committee on Racism and Interculturalism

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body on racism and interculturalism. The NCCRI worked as a partnership body bringing government and non-government organisations together to develop an inclusive and strategic approach to combat racism and promote Interculturalism and contribute to policy development in these areas.

In budget 2009 the NCCRI had its funding cut by 100% which led to its closure in December 2008¹⁶. The Minister announced that the work of the NCCRI would be subsumed within the Office of the Minister for Integration. Since that time, however, there is no longer a Minister with responsible for integration and there is a significant gap in relation to the independent monitoring of incidents of racism and xenophobia and in relation to the delivery of anti-racism training to the Gardai and other front-line service providers. In its latest report on Ireland, the European Commission against Racism and Intolerance recommended that the functions of the NCCRI should move to the merged IHREC¹⁷.

5.2.5 Merger of the IHRC and Equality Authority

The IHRC and the Equality Authority are about to be merged to form the Irish Human Rights and Equality Commission (IHREC). The legislation to establish the IHREC is expected to go before the houses of the Oireachtas in autumn 2013. The Heads of the IHREC Bill were published in June 2012.

The Minister for Justice, Equality and Defence has stated his commitment to ensuring that the merged IHREC will be fully compliant with the UN Paris Principles¹⁸. The Paris Principles require that the body: is given as broad a mandate as possible; is independent of government; is given adequate funding; and has a pluralist representation of all social forces. Proposals in the Heads of the IHREC Bill, however, fall short in a number of respects regarding compliance with the Paris Principles. ERA has submitted a number of recommendations to the Minister for Justice, regarding areas where the Heads of the IHREC

¹⁶ The yearly core funding to the NCCRI was €500,000.

¹⁷ ECRI REPORT ON IRELAND (fourth monitoring cycle) Adopted on 5 December 2012 Published on 19 February 2013 <http://eracampaign.org/uploads/ECRI%20Report%20on%20Ireland%20Feb%202013.pdf>

¹⁸ The UN Paris Principles are the international standards against which national human rights institutions are measured to assess their independent and effective functioning and to determine the accreditation rating of the body. The IHRC currently hold an A status rating and the merged IHREC is due to be assessed for accreditation once merged.

Bill will require amendment to ensure that the merged body is sufficiently independent and effective to meet the international standards¹⁹.

If the merged IHREC is to operate as an effective and independent institution to combat discrimination, promote equality and protect and fulfil human rights, and if it is to be fully compliant with the UN Paris Principles, the following issues will require attention. Items 1 to 4 inclusive can be addressed by way of amendments to the forthcoming IHREC Bill:

Recommendations:

1. To safeguard the IHREC from government interference, the IHREC should be directly accountable to the Oireachtas (through the Oireachtas Committee on Justice, Equality and Defence) rather than to a government department (the Heads of IHREC Bill propose that the IHREC will continue to be accountable to the Minister for Justice).
2. To enhance the independence of the IHREC financial accountability of the body should be established as being to the Comptroller and Auditor General rather than the parent Department of Justice as envisaged in the Heads of the IHREC Bill.
3. A levelling-up of the powers and functions of the IHRC and the Equality Authority is required if there is to be a coherence of approach from the IHREC²⁰.
4. A definition of equality is proposed in Head 3 of the Heads of IHREC Bill which is unduly narrow. This narrower definition will constrain the promotional work of the IHREC. There is no definition of equality in the current equality legislation and this has meant that the promotional work of the current Equality Authority has not been curtailed and the Equality Authority has been able to advance a range of good practice models that have served policy makers, employers and service providers. It is recommended that this narrow definition of equality in Head 3 be removed.
5. The IHREC should be given adequate financial and staff resources to allow it to effectively discharge on all of its functions. At a minimum these resources should revert to 2008 levels, before the wholly disproportionate budget cuts were enforced.

5.3 Policy Instruments

In order to mainstream a commitment to equality and human rights across all levels and areas of policy-making, key policy instruments such as legal duties on public sector bodies (to give due regard to equality and human rights) and a practice in public sector

¹⁹ see ERA submission on the Heads of IHREC Bill for more detail in this regard: <http://goo.gl/AgfO5H>

²⁰ This should include: expansion of the equality grounds to include 'socio-economic status' and 'any other status' ; amendment of Head 32 of the Heads of Bill to ensure that the current power of the Equality Authority to conduct equality reviews within businesses and organisations is extended to the area of human rights.

bodies of implementing equality and human rights impact assessment (on all policies and programmes) are essential.

One valuable proposal in the Heads of the IHREC Bill is to introduce a duty on public bodies to have due regard to the elimination of discrimination, the promotion of equality of opportunity and the protection of human rights in the exercise of their functions. This is to be welcomed. Such a legal duty has significant potential to enhance systems and practices within public sector organisations to reflect a commitment to advancing equality and human rights. However, “due regard” is not defined in the Heads of Bill and there is no enforcement mechanism for this duty in the Heads of Bill. Both of these issues render the duty ineffective.

Recommendations:

1. The proposed duty in head 36 of the Heads of the IHREC Bill should be strengthened by the inclusion of an enforcement mechanism to be implemented by the IHREC with sanctions that could be applied through the Equality Tribunal and its successor body.
2. The requirement to have due regard to equality and human rights should be defined clearly in the forthcoming legislation. It should require public bodies to conduct an equality impact assessment on all new policies, programmes and plans. This should have to be done in a participative manner with the relevant stakeholders and its results should have to be published.
3. The development of equality and human rights impact assessment needs to be invested in by public sector bodies and adequately supported by the IHREC. Public sector bodies should allocate staff to lead this work and should develop the necessary skills and knowledge to implement it. The IHREC should have resources to allocate to developing templates for implementing such impact assessments, setting and monitoring standards in relation to their implementations; and applying for sanctions through the Equality Tribunal where this impact assessment has not been carried out or not carried out to the required standard.

5.4 Policy Strategies

National policy strategies play a valuable role in:

- creating and communicating a political commitment to advancing equality and human rights,
- establishing and pursuing an ambition for advancing particular equality and human rights issues that is shared across different Government Departments, different levels of government and between government and civil society,
- creating a coordinated commitment across different Government Departments, and different levels of government behind specific equality and human rights objectives,

- identifying and implementing a planned and systematic approach to advancing equality and human rights issues and to the deployment of resources to achieve shared and agreed objectives,
- advancing necessary positive action to enable groups to overcome legacies of disadvantage and discrimination, and to secure equality outcomes for their members²¹.

Alongside the abolition of the NCCRI, in January 2009 the Government announced that it would not be continuing implementation of the National Action Plan Against Racism²². In the final report of the National Plan Against Racism, the Chair of its Steering Committee stated noted:

“I am extremely concerned that in the midst of an economic crisis..... organisations working in the area of integration and interculturalism are the first victims of Government cutbacks. A decision has clearly been made that we can no longer afford to confront the potential for racism, precisely at the time when many immigrants living in Ireland are at their most vulnerable²³”.

Recommendation:

1. The Government should develop and implement a national action plan to combat racism and promote interculturalism and should strategically engage with civil society stakeholders in developing and implementing this action plan.

²¹ Crowley, Niall (2010) “A Roadmap To A Strengthened Equality And Human Rights Infrastructure In Ireland” Equality and Rights Alliance, Ireland.

²² The first National Action Plan Against Racism was operational from 2005 to 2008

²³ NPAR Final report, Jan 2009, foreword by Chairperson, Lucy Gaffney pg 2

[http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/\\$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf)