

Submission to the European Commission  
against Racism and Intolerance (ECRI) of  
the Council of Europe on its interim  
follow-up with the Irish State (fourth  
monitoring-round)

Submitted by

The Equality and Rights Alliance

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## 1. About the Equality and Rights Alliance

The Equality and Rights Alliance (ERA) is a coalition of 171 Irish civil society groups (NGOs, and trade unions), academics and individual activists working together to protect and strengthen the statutory equality and human rights infrastructure in Ireland.

## 2. Focus of this submission

ECRI's report on Ireland (fourth monitoring cycle) was published in February 2013. ECRI is now conducting its interim follow-up with the Irish State, two years after the fourth report's adoption, to determine whether the priority recommendations contained therein have been put into effect.

This submission from ERA will focus on the priority recommendations concerning the statutory equality and human rights infrastructure and the legislation relevant to the remit of those bodies.

## 3. Discrimination against Black and minority-ethnic groups in Ireland

Research in 2004 and repeated in 2010, found that 12% of the Irish population (equating to approximately 389,000 people) over the age of 18 said that they had experienced discrimination in employment or accessing goods and services (within the previous two years).<sup>1</sup> The highest rates of discrimination reported was by people from non-White ethnic background (29%). However, the research found that less than 10% of people who had experienced discrimination took any formal action.<sup>2</sup>

An EU wide study by the European Fundamental Rights Agency (FRA) in 2009 on the experiences of people with an immigrant or ethnic minority background found that 54% of Sub-Saharan Africans living in Ireland had experienced discrimination in the previous twelve months (26% experienced discrimination in the workplace and 12% in accessing accommodation).<sup>3</sup> Subsequent research by FRA in 2010 found that 51% of Sub-Saharan Africans and 29% of Central and East Europeans living in Ireland were unaware of any law protecting them from discrimination in the three areas of employment, goods and services, or housing. The research also found that 61% of Sub-

<sup>1</sup> Central Statistics Office, Quarterly National Household Survey on discrimination, 2004 and repeated in 2010 : [http://www.cso.ie/en/media/csoie/releasespublications/documents/labourmarket/2010/qnhs\\_equalityq42010.pdf](http://www.cso.ie/en/media/csoie/releasespublications/documents/labourmarket/2010/qnhs_equalityq42010.pdf)

<sup>2</sup> 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. Page 63.

<sup>3</sup> EU FRA (2009) "EU MIDIS- European Union Minorities and Discrimination" [http://fra.europa.eu/sites/default/files/fra\\_uploads/664-eumidis\\_mainreport\\_conference-edition\\_en\\_.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/664-eumidis_mainreport_conference-edition_en_.pdf) (pages 37,43,44)

Saharan Africans and 90% of Central and East Europeans had never heard of the Equality Authority, and 63% of Sub-Saharan Africans and 88% of Central and East Europeans had never heard of the Equality Tribunal.<sup>4</sup>

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 against.<sup>5</sup>

An examination of the cases heard by the Equality Tribunal indicates that between 2006 and 2013 the most commonly reported ground for discrimination in the area of employment was the Race ground (with the exception of 2011 and 2013 when cases on the Race ground constituted the second highest category)<sup>6</sup>. 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 2013.

It is against this backdrop of significant levels of discrimination, together with significant levels of under-reporting, that the situation regarding the equality and human rights statutory infrastructure should be considered.

#### 4. ECRI recommendations: civil and administrative law provisions

**Rec 34. ECRI recommends that the Irish Government reviews, in consultation with NGOs, the Equality Act of 2004, drawing inspiration from its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.**

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. ECRI has, in its third report, advised the Irish Government to address these issues:

- 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

<sup>4</sup> EU Fundamental Rights Agency (2010), 'Data in Focus Report 3: European Union Minorities and Discrimination Survey 2010, Rights Awareness and Equality Bodies', page 12 [http://fra.europa.eu/sites/default/files/fra\\_uploads/854-EU-MIDIS\\_RIGHTS\\_AWARENESS\\_EN.PDF](http://fra.europa.eu/sites/default/files/fra_uploads/854-EU-MIDIS_RIGHTS_AWARENESS_EN.PDF) pp 6,10

<sup>5</sup> 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](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, page 46

<sup>6</sup> Information from the Annual Reports of the Equality Tribunal 2006 to 2013 inclusive  
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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”*.<sup>7</sup>

In addition to the above, the ECRI has also recommended that the remedies available under the equality legislation, particularly the Equal Status Act, should be ‘substantially increased’.

It is regrettable that the Minister for Justice and Equality did not use the occasion of the establishment of the merged Irish Human Rights and Equality Commission (via the Irish Human Rights and Equality Commission Act 2014) to amend the current equality legislation as per the issues outlined above.

One welcome and important addition to the Irish equality and human rights legislative framework, introduced in the IHREC Act (2014), however, is the introduction of an equality and human rights duty for public sector bodies. This duty requires public bodies to *“have regard to the need to (a) eliminate discrimination, (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and (c) protect the human rights of its members, staff and the persons to whom it provides services”*.<sup>8</sup> The Gardai (police) are prescribed as a public body for the purposes of the new duty, as are the Department of Justice and Equality. This will mean that the Gardai and immigration services will now be obliged to consider the elimination of discrimination, the promotion of equality of opportunity and the protection of human rights in regard to all of their functions.

## 5. ECRI recommendations: anti-discrimination bodies and policies

### 5.1 The Equality Tribunal

**Rec 39. ECRI recommends that the authorities, without neglecting the need to rationalise 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.**

The Equality Tribunal is about to be merged, with other employment redress forums, into a single body: the Workplace Relations Commission (WRC). The WRC will come

<sup>7</sup> Gogan, S (2005) “From the Equality Tribunal to the District Court” research for the Clondalkin Travellers development group. Page 5.

<sup>8</sup> Irish Human Rights and Equality Commission Act 2014 S42(1)

under the remit of the Minister for Jobs, Enterprise and Trade. The legislation to formally establish the WRC is currently before the houses of the Oireachtas (Parliament).

While we support the ambition of the Minister for Jobs, Enterprise and Trade for reform of the statutory employment redress framework, on consideration of the broad thrust of the Workplace Relations Bill 2014, we believe that insufficient consideration has been given to the unique nature of equality cases, the particular role of Equality Officers within the Equality Tribunal, and the need for an accessible, inquisitorial infrastructure that can reflect and respond to the high levels of under-reporting of discrimination in Ireland.<sup>9</sup>

The starting point for any consideration of the establishment and operation of the Workplace Relations Commission should be the issues of under-reporting of discrimination and the need to enhance accessibility to systems of redress in that regard. However, these issues do not appear to have been taken into account, as the Bill is devoid of any mention of discrimination claims, the unique nature of such claims or how they will be addressed within the new structures in a manner that is consistent with the State's obligations under the EU Charter of Fundamental Rights and the EU Equal Treatment Directives. ERA has been informed that "the Minister is satisfied that the new workplace relations structures and processes which will be given statutory effect by the legislation fully embody the spirit of the EU Charter of Fundamental Rights and the European Convention on Human Rights".<sup>10</sup>

In reality, it remains to be seen whether the operation of the WRC will replicate the unique features and expertise of the Equality Tribunal when dealing with claims of discrimination, or whether the operation of the WRC will further aggravate the current situation of under-reporting. At this point two particular concerns exist in this regard. Firstly, it has been confirmed that the specialist role of the current Equality Officers will not be maintained in the WRC structure. With WRC Adjudication Officers handling any claim that comes before them on an employment related issue, the specialist knowledge and expertise built up by Equality Officers will, therefore, gradually be lost. This is of particular concern regarding the handling of cases of discrimination in regard to accessing goods and services, which bear no relation to employment cases generally.

The second issue relates to a provision in the Bill allowing the Minister to introduce a fee, at any stage, for claimants using the services of the WRC.<sup>11</sup> This will act as a barrier to those without means and will serve as a disincentive to those already concerned about the risk of taking a case. This is particularly problematic in cases of discrimination relating to access to employment, dismissal and access to goods and services. The claimant may, for example, be a migrant worker who has not had their wages paid, or a

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<sup>9</sup> The ERA observations on the Workplace Relations Bill 2014 as submitted to the Minister for Jobs, Enterprise and Trade can be accessed here:

<http://www.eracampaign.org/uploads/Equality%20&%20Rights%20Alliance%20Observations%20on%20the%20Workplace%20Relations%20Bill%202014.pdf>

<sup>10</sup> Letter from Minister of State at the Department of Jobs, Enterprise and Trade, to ERA , Nov 2014

<sup>11</sup> Workplace Relations Bill 2014 S72

person from a minority ethnic group who has been denied access to employment and has no income other than social welfare.

## 5.2 Equality Authority and Irish Human Rights Commission

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

**Rec 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 fulfil its terms of reference.**

### Status of the IHREC vis-a-vis the UN Paris Principles and ECRI's GPR Nos. 2 and 7

The Irish Human Rights and Equality Commission (IHREC) was formally established in November 2014, under the Irish Human Rights and Equality Commission Act (2014).

The UN Paris Principles require national human rights institutions to:

1. Have a mandate which is "as broad as possible",
2. Be independent from government,
3. Reflect the pluralism of society including through membership and/or effective cooperation, and
4. Have adequate human and financial resources.

The UN ICC Sub-Committee on Accreditation states that "financial systems should be such that the NHRI has complete financial autonomy. There should be a separate budget line over which it has absolute management and control".<sup>12</sup>

The UN Belgrade Principles developed in 2012, are also of relevance as they outline how the relationship between NHRIs and Parliament should be constituted. The Belgrade Principles state that NHRIs should report directly to Parliaments, and that Parliaments should have a role in agreeing the annual budgets of NHRIs and "should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law".<sup>13</sup>

<sup>12</sup> UN Sub Committee on Accreditation General Observations 2.6 on Adequate Funding.

<sup>13</sup> Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments (Belgrade 22-23 February 2012) sec B (9)

The ECRI GPR No. 2 for specialised national bodies to combat racism, xenophobia, anti-Semitism and intolerance, echo the core criteria set out in the UN Paris Principles. The ECRI GPR No. 7 calls for the independence of specialised national bodies to combat racism, xenophobia, anti-Semitism and intolerance.

### 1. Broad mandate

While the mandate of the IHREC is broad in scope, there is however, a concern regarding the application of a narrower definition of human rights (in the founding legislation) to a number of functions and powers of the Commission.

There are two definitions of human rights in the IHREC Act 2014.<sup>14</sup> A narrower definition applies to Part 3 of the Act dealing with all of the enforcement powers and functions of the Commission and some other powers not of an enforcement nature. The narrower definition, confines human rights to those rights guaranteed by the Constitution or enshrined in law within the State. While it is appropriate that this narrower definition would apply to enforcement powers such as: the provision of legal assistance and instituting legal proceedings in its own name, it is regrettable that this narrower definition also applies to the operation of the new public sector duty and to the inquiry and codes of practice functions of the Commission. In this regard, we do not believe that the IHREC has been given the broadest mandate possible to protect and promote human rights in the State.

### 2. Independence from Government

When the General Scheme of the IHREC Bill was published in 2012, the UN Office of the High Commissioner submitted observations to the Minister for Justice and Equality, drawing attention to the need for the provisions of the Bill to have coherence with standards set out in both the UN Paris Principles and the UN Belgrade Principles.<sup>15</sup> The correspondence from the UN OHCHR in particular noted concern that “*some provisions of the General Scheme may undermine the financial autonomy of the new IHREC*”.<sup>16</sup>

The IHREC Bill was not amended to take account of these concerns and the IHREC Act 2014 cedes considerable financial control to the Minister for Justice and Equality regarding the financial resourcing of the IHREC and its financial accountability. The Act provides that: “*In each financial year, the Minister (for Justice and Equality) may, after consultation with the Commission, advance to the Commission out of moneys provided by the Oireachtas such sums as appear to the Minister, with the consent of the Minister for Public Expenditure and Reform, to be reasonably sufficient for the purposes of expenditure by the Commission in the performance of its functions*”.<sup>17</sup>

Much attention has been given to the Irish Government recently agreeing to allocate the IHREC a separate vote in the annual budget, as if this somehow amounts to the

<sup>14</sup> The Irish Human Rights and Commission Act 2014 : <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0025.pdf>

<sup>15</sup> Correspondence from the Deputy High Commissioner for Human Rights, to the Minister for Justice, July 16 2012, obtained under the Freedom of Information Act.

<sup>16</sup> Correspondence from the Deputy High Commissioner for Human Rights, to the Minister for Justice, July 16 2012, obtained under the Freedom of Information Act.

<sup>17</sup> IHREC Act 2014 S26

Commission now having financial control over its budget. In reality, however, the amount of money allocated annually to the Commission will still be decided by the Minister for Justice and Equality, rather than the wider Parliament. This leaves the IHREC vulnerable to another abrupt and significant cut to its funding such as occurred in budget 2009 following a unilateral decision by the then Minister for Justice and Equality.

The UN Belgrade Principles note that “*NHRIs should report directly to Parliament*”<sup>18</sup> and that “*Parliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to Parliament, in compliance with the Principles related to national institutions (Paris Principles) and taking into account the General Observations of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and best practices*”.<sup>19</sup>

The IHREC Act, regrettably, proposes a merely symbolic accountability of the IHREC to the Oireachtas (Parliament). There are minimal linkages to the Oireachtas regarding the presentation of annual reports and strategic plans to the Oireachtas. As outlined previously, the Oireachtas will have no role in agreeing the annual budget to the IHREC or, crucially, being consulted regarding any proposed budget cuts to the IHREC. This control will remain with the Minister for Justice and Equality. The former Irish Human Rights Commission has, on several occasions in the past, noted its concern at remaining under the control of a parent Department such as Justice and Equality, which is likely to come under the scrutiny of a human rights institution, given its remit in the areas of policing, prisons and immigration.

### 3. Pluralism of Membership

It is regrettable that there is no provision for representation of the social forces as part of the appointment process to the IHREC. This was not the case in relation to the former Equality Authority.

### 4. Adequate human and financial resources

In addition to the Paris Principles and ECRI GPR No2, the UN Belgrade Principles also state that that Parliaments should have a role in agreeing the annual budgets of NHRIs and “*should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law*”.<sup>20</sup>

While the IHRC and the Equality Authority were not formally merged until the end of 2014, a combined budget for both bodies was allocated in budget 2014, amounting to €6.29m. This represented a welcome increase of €1.9 million to the combined budgets of both bodies from the previous year. The budget allocation to the IHREC for 2015 is €6.19m.

<sup>18</sup> BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS (Belgrade, Serbia 22-23 February 2012) para 16

<sup>19</sup> IBID para 2

<sup>20</sup> Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments (Belgrade 22-23 February 2012) sec B (9)



However, this budget increase in 2014 cannot be viewed in isolation to two significant issues. Firstly, the current annual budget of €6.19m remains €1.5 million less than the combined budgets of the Equality Authority and the Irish Human Rights Commission prior to the disproportionate cuts in their budgets in 2009. Secondly, the merged IHREC has been given additional functions, most significantly, to ensure the operation of the new public sector duty. A broader mandate, however, has not been matched with the additional funding required to discharge on those additional functions.

The staffing levels of the precursor bodies have also been significantly reduced (as noted previously) and significant investment is required by the Government in this regard. Also required is that the IHREC would be allowed to recruit sufficient senior level staff with the requisite skills and experience to allow the Commission to adequately discharge on all of its powers and functions.