

Input to the Sheehy Skeffington School April 2013

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I would like to thank the organisers of the Sheehy Skeffington School for inviting Equality and Rights Alliance to speak at today's event. ERA is a coalition of 171 civil society groups and individuals, established in 2008 to campaign for the protection and strengthening of the statutory equality and human rights infrastructure.

We have arrived at a key moment in the development of our statutory equality and human rights infrastructure. The legislation to merge the Equality Authority and the Irish Human Rights Commission is expected to be published shortly. There is an opportunity with this merger, to undo some of the damage that was done to both bodies when their respective budgets were disproportionately cut in budget 2009. There is an opportunity with this merger, to ensure that the new Irish Human Rights and Equality Commission (IHREC) that emerges, is stronger than the sum of its parts.

Merging equality and human rights bodies offers potential to address inequality and human rights concerns more coherently. There is the potential to support new policy and practice based on a combination of advancing equality and fulfilling human rights. There is also potential to deal with complex legal cases that involve both equality and human rights concerns. However, it is vital that the merger process, including the legislation to set up the new Commission, creates the appropriate conditions to realise this potential.

The Minister for Justice and Equality, Alan Shatter, has stated his commitment that the merged IHREC will be fully compliant with the UN Paris Principles. These are international best practice standards for the establishment and functioning of national human rights institutions. They 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. The Belgrade Principles, adopted in 2012, reflect a further development in stating that these bodies should be directly accountable to Parliament.

I would like to name four key things that we want from our merged IHREC and within that to raise some of the issues that will need to be addressed in the draft Bill to ensure that the Commission can deliver across these four areas and to ensure that the body is fully compliant with the UN Paris Principles.

1. An effective and independent voice for equality and human rights

The IHREC must be an effective and independent voice for equality and human rights, especially in this era of austerity. Effectiveness and Independence are the two key international standards recognised as critical in assessing national equality and human rights institutions. If we apply these two standards to what is proposed in the Heads of Bill for the merged body, there are shortcomings which must be rectified in the final enacted legislation if the new body is to realise its promise and potential.

In terms of Independence, there is a need to make the Commission directly accountable to the Oireachtas. The Bill, however, proposes a merely symbolic accountability to the Oireachtas and continued accountability to the Department of Justice. In addition, considerable control is ceded to the Minister for Justice regarding the resourcing of the IHREC and its financial accountability. These issues require amendment as they run counter to the independence of the body and the requirements of the UN Paris Principles.

The IHREC should have full autonomy to appoint its own staff at every level from the time of its establishment. This should be done through an open and transparent process and without reliance on civil service secondments. This is undermined by the naming of the first Chief Executive Officer of the IHREC as the current CEO of the Equality Authority (Head 17). It is further undermined by the transfer of all staff in the existing bodies to the IHREC, including seconded civil servants (Head 21).

In terms of effectiveness it is essential to ensure that the IHREC is sufficiently resourced to discharge on all of its functions. The Minister, however, has stated that no more than the combined decimated budgets of the Equality Authority and IHRC will be made available when they merge. It is widely recognised that both bodies have a seriously diminished capacity to implement their functions due to the severe budget cuts since 2009. The IHRC and the Equality Authority have seen their respective budgets reduced by 39% and 49% and their respective staffing levels have been reduced by 65% and 52% since 2009.

2. An integrated approach

It is essential that the IHREC adopts an integrated approach to equality and human rights and that there is a balance of work across the two areas. Joined-up equality and human rights is not the same as integrated equality and human

rights and the learning from other jurisdictions indicates that merged equality and human rights bodies that do not give attention to how they might integrate the two areas or ensure balance have resulted in one agenda dominating at the expense of the other and/or a situation where a human rights silo and an equality silo operate separately under the one roof.

3. Strong litigation strategy

The IHREC must pursue a strong litigation strategy which involves taking a critical mass of cases especially in regard to discrimination in access to key public services. A strong litigation strategy will involve the body utilising all of its powers. The powers of inquiry have been under-used to date by both bodies and serious consideration should be given to undertaking inquiries in areas such as : direct provision centres for asylum seekers; and institutions caring for people with disabilities including sheltered workshops.

An impediment to pursuing a strong litigation strategy lies in the Heads of Bill regarding the definition of human rights. A narrow definition of human rights set out in Head 30 is applicable to all of the enforcement and compliance functions of the Commission. The narrower definition 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.

4. Agent for social change

The IHREC must position itself as a key agent for change. There is potential for this to occur, for example, with the inclusion of a new proposal in the Heads of Bill for a public sector duty. This innovative and welcome duty requires 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 its functions. There is potential with such a duty, for the IHREC to drive real equality of outcome in how our key public services are delivered. However, the Bill defines 'due regard' in a very minimal way as 'giving consideration to' and additionally, there are no enforcement mechanisms to ensure compliance with the duty. Both of these issues need to be amended in the draft Bill.

A further element in ensuring that the IHREC is positioned as a key driver for social change is through regular strategic engagement with civil society. Again, the Bill is deficient in this regard.

To conclude: the Minister for Justice and Equality has stated his intention that the new Human Rights and Equality Commission will "*more effectively, efficiently and cohesively champion human rights and equality*". There are a number of amendments required to set the new body on a trajectory to achieving as an

effective and independent body. The legislation, however critical, is only the starting point. The other critical issues which will determine the success of this merger will be: the caliber of leader appointed to the Chief Commissioner role who will drive this process; the level of staff and financial resourcing the body will receive to discharge on all of its functions; the strategic consideration which the IHREC will need to give to ensuring it effectively integrates the equality and human rights functions; the openness of the IHREC to engage with civil society and the courage to take strong positions in this current context where levels of discrimination and inequality are growing.