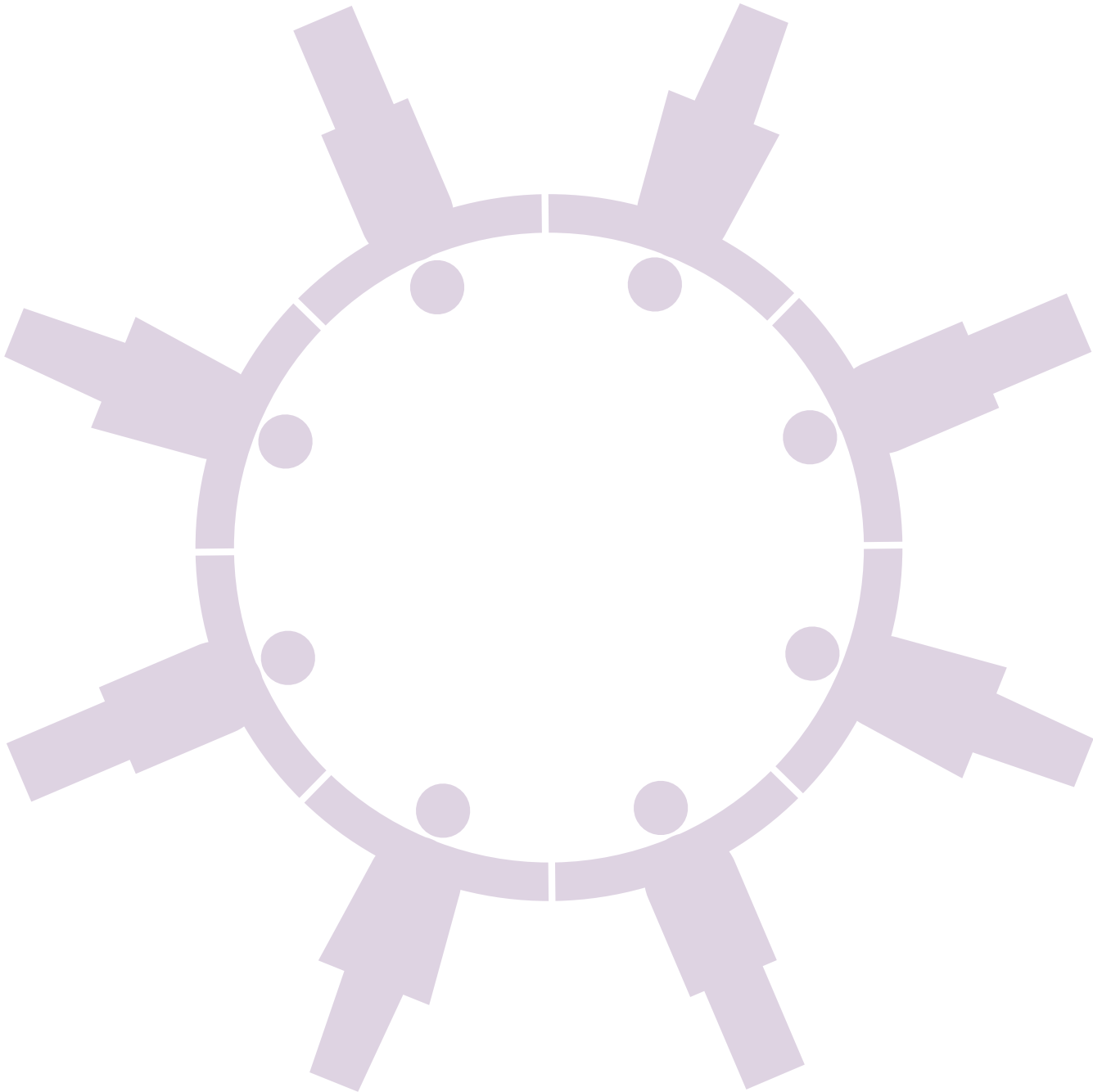


Equality and Human Rights: An Integrated Approach

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1. Introduction

The purpose of this paper is to put forward ideas and practical proposals to initiate debate on the potential in and manner of integrating human rights and equality and on the implications of any such integration for practice across the broad infrastructure concerned with these issues. The paper does not propose a definitive position on the issue of integration but offers a number of possible frameworks within which to progress and test out such an approach.

This paper, firstly, explores the different traditions in work on human rights and on equality before establishing the potential and pitfalls in integrating these traditions. It examines the literature available on integrating human rights and equality, particularly at the level of institutional integration. It then sets out three possible frameworks for developing a practice that integrates equality and human rights.

This work is stimulated by concern at the lack of progress being made on equality and human rights issues over the current period. This challenges all concerned with human rights and equality to review the work being done on these issues, to assess the potential in new concepts and approaches, and to innovate.

The recent establishment of the Irish Human Rights and Equality Commission (IHREC), following the merger of the former Equality Authority and Irish Human Rights Commission, gives one focus to this work. This merger raises the potential in taking an integrated approach to equality and human rights and challenges us to explore this potential and how it might best be approached to enable new energy and invention in our work.

2. Background

The **Irish Human Rights and Equality Commission (IHREC)** is a new element in the human rights and equality infrastructure. It suggests a new approach to equality and human rights work with its combined mandate to combat discrimination, promote equality and protect, respect and fulfil human rights. This creates the potential for an integration of equality and human rights in its work and challenges the wider equality and human rights infrastructure to explore, test out, and possibly pursue such an integration.

The **Equality and Rights Alliance** identifies a range of institutions that constitute the equality and human rights infrastructure.¹ They include civil society organisations, government departments with a coordination function in this field, the Oireachtas and statutory bodies such as the IHREC.

Civil society includes a broad range of organisations concerned with equality and human rights: NGOs, community groups and trade unions. These generally tend to be fragmented communities of expertise, specialising in, and working on, specific equality or human rights issues.

The **Department of Justice and Equality** has a policy remit in relation to both human rights and equality. This includes responsibility for reporting on the Universal Periodic Review, to the United Nations Human Rights Council, under its 'Other Regulatory Functions' and for reporting on the UN Convention Against Torture and Other Forms of Cruel, Degrading and Inhuman Treatment under its 'Prisons and Probations Functions'.

In relation to equality, the Department identifies itself as having the aim of promoting a fair, tolerant and caring society. This remit is, however, fragmented. It is progressed by a Disability Policy Division, an Equality and Diversity Division, a Gender Equality Division, a Traveller Policy Division, and an Office for the Promotion of Migrant Integration. The Equality and Diversity Division is now also responsible for human rights.

The Political Division of the **Department of Foreign Affairs and Trade** plays a role in the protection of human rights. The Department links with other government departments in relation to human rights and a Human Rights Unit coordinates Ireland's reporting under international human rights instruments. The Department of Foreign Affairs and Trade convenes the Standing Committee on Human Rights that includes NGOs and organises an annual Forum on Human Rights.

The **Oireachtas Committee on Justice and Equality** played a proactive role in the legislation to establish the IHREC. It has recently established a sub committee to examine human rights matters. As Oireachtas Committees more generally assume a greater role in the legislative process, the Oireachtas Committee on Justice and Equality could become a more important actor in the equality and human rights infrastructure. The **Seanad Public Consultation Committee** has taken on an oversight role in relation to international human rights obligations.

Background

This paper explores the issues around integrating equality and human rights with particular attention to the IHREC and the manner in which it implements its mandate. It includes some consideration of how civil society, the Department of Justice and Equality, the Department of Foreign Affairs, and the Oireachtas could pursue their mandates on equality and human rights in a more integrated manner. First, it explores the different traditions of work on equality and work on human rights to establish the starting point for this exploration of the challenge of integration.

1. 'A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland', Equality and Rights Alliance, 2010.

3. Two Traditions

3.1: Equality

The promotion of equality in Ireland has traditionally lent towards a focus on activism to mobilise, politicise and organise people who experience inequality and discrimination. Litigation against discrimination is a key tool in this tradition. Partnership initiatives, involving organisations of people disadvantaged by inequality and public and private sector institutions, to introduce equality and diversity systems into those institutions are another key tool.

Work on equality has focused on specific groups within society that experience inequality and discrimination on the basis of their identity, status and standing in society. This tradition is rooted in national equality legislation that currently covers nine grounds of discrimination and on equal treatment directives at EU-level.² It has a broad focus on engaging with employers, service providers and policy makers in the public sector, the private sector and civil society. It has a particular engagement with people who experience inequality and their organisations.

There is a concern within this tradition about institutional and structural sources of inequality in society. This has involved a focus on social change and developing alternative forms of society. It includes an ambition for a more equal distribution of resources (including income, wealth, jobs, and social goods such as education, health and accommodation), status and standing, power and influence, and relationships of love, care and solidarity between groups.

3.2: Human Rights

The protection and fulfillment of human rights in Ireland has traditionally lent towards a focus on employing a watchdog and monitoring role. Monitoring, reporting and seeking legal remedies to protect human rights, are key tools in this regard.

The approach draws from international and European human rights instruments, which set out basic standards that have been internationally agreed. States and their organs (duty bearers) are legally bound to deliver on their obligations to individuals (rights holders) and the approach is, therefore, primarily concerned with holding the State to account. To this end there is a significant focus on utilising the UN reporting mechanisms as well as national and European courts, to compel the State to adherence to protecting, respecting and fulfilling human rights. This approach of seeking a legal remedy to secure the rights of the individual can point to watershed cases: *Norris V Ireland* (resulting in the decriminalisation of homosexuality),³ *Airey V Ireland* (resulting in the State being obliged to introduce civil legal aid),⁴

and the Lydia Foy case (resulting in the Government introducing gender recognition legislation).⁵ This tradition has focused on protecting and respecting rights and, arguably, to a lesser extent, on fulfilling the rights of individuals.

There is another tradition of human rights practice with significant roots in the Irish context, which is more activist-based. This approach emphasises participation and the empowerment of people experiencing human rights abuses. Participation and Practice of Rights based in Belfast have articulated a body of conceptual work on this approach and the Rialto Rights in Action initiative in Dublin is one exemplar of this approach in practice.⁶ However, it is in community-based and NGO-based legal centres that it has found the most widespread expression.

3.3: Integrating Two Traditions

Each of these traditions has much to offer the other. This is the source for the most immediate gains from integrating equality and human rights. There is the potential for a greater gain from an integration that could stimulate the emergence of a new tradition that can prove more effective in achieving equality and fulfilling human rights. At the same time, there are risks to this integration and it is important that the potential in the two current traditions is not lost or lessened by any integration.

The human rights tradition has much to offer equality. It allows an extension of the equality agenda beyond the nine grounds set out in the Irish equality legislation, in particular to the ground of socio-economic status. This has been a significant gap in the equality tradition in Ireland to date. Non-discrimination is at the heart of all human rights instruments and is defined in terms of a broad, and sometimes open, set of grounds that includes a strong focus on socio-economic status.⁷ International human rights instruments cover a broad spectrum of issues in embracing the civil, political, economic, social and cultural fields. These instruments serve to open up the equality agenda to a broader range of concerns that go beyond the areas currently covered by equal treatment legislation. International human rights instruments and processes offer clear and well developed standards that can be called upon in seeking change. They also provide tried and tested channels of intervention at the international level.

The equality tradition has much to offer work on human rights. Concepts such as indirect discrimination, reasonable accommodation, and harassment as a form of discrimination have been developed within this tradition. These concepts can be usefully applied across the full spectrum of human rights concerns. Equality can bring a diversity perspective to bear on the implementation of human rights. This diversity perspective can differentiate the experience of different groups of individuals in the field of human rights. It can support a better capacity to take account of the practical implications

of diversity in human rights work and there are already valuable instances of such work in Ireland. The equality tradition has developed a significant presence in both the private sector and the civil society sector. The human rights tradition is at an earlier stage in this regard. A stronger focus on human rights in the policies, procedures and practices of these sectors could be enabled by an integration of equality and human rights work.

Work on human rights is, in instances, challenged to deepen its focus beyond protecting human rights, to engaging more broadly with the challenge of fulfilling rights, if this field of work is to realise its transformative potential. The ambition for social change inherent in the equality tradition can stimulate this focus. Likewise, work on human rights needs to secure a new balance between initiatives on civil and political rights and initiatives on economic, social and cultural rights. With notable exceptions, the focus on economic, social and cultural rights has not achieved the prominence it merits in these times of economic crisis.⁸ The tradition of equality, rooted in concerns for the redistribution of resources, power and influence, status and standing, and relationships can stimulate a necessary rebalancing in relation to economic, social and cultural rights.

Parity of esteem between the two traditions is a key starting point if these gains are to be achieved. It is not useful to pose one as a subset of the other. This ignores the potential in two distinct traditions and fails to create the necessary starting point for gains to be made from this potential. Integration will also need to go beyond a mere joining up of two different traditions if the full potential in this is to be identified and realised. The goal needs to be the emergence of a new tradition that is more effective in pursuing the achievement of equality and the fulfillment of human rights.

2. Gender, civil status, family status, disability, age, sexual orientation, race, religion and membership of the Traveller community.
3. European Court of Human Rights: 1988
4. European Court of Human Rights: 1979
5. In 2007, the High Court granted the first declaration of incompatibility of Irish law with the European Convention on Human Rights (ECHR) in Foy's case
6. For more information on the PPR project : <http://www.pprproject.org/> and for more information on the Rialto Rights in Action project : http://canaction.ie/can_15/scripts/page/our_work_human_rights_housing.php?gi_sn=4fdb415fc4f75%7CO
7. The UN International Covenant on Economic Social and Cultural Rights has an open list of grounds stated as 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' and the Charter of Fundamental Rights of the EU has a list of 'sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation'.
8. For example: Respecting Rights in a Recession, FLAC, Dublin, 2011.

4. The Literature

There is limited literature on this issue of integrating work on equality and human rights. The literature that is available has, in most instances, been stimulated by moves to integrate equality bodies and national human rights institutions. This means that much of the literature has more of an institutional focus than a conceptual focus, however, both of these elements are inevitably intertwined in the literature.

This review of the literature is divided into four sections. The literature dealing with the potential and pitfalls in taking an integrated approach to work on equality and human rights is first examined. This is largely focused on issues emanating from analysis of the experience of integration of equality bodies and national human rights institutions. In the second section the manner in which such integration has been conceptualised and understood in the literature is explored. The literature review then goes on to identify the work that has been done in analysing the establishment and operation of bodies that integrate equality and human rights mandates. The bulk of this literature is focused on the establishment of such bodies. There is, however, an emerging literature on their operation, a focus that this paper seeks to further contribute to.

4.1: Potential & Pitfalls In Integrating Work On Equality & Human Rights

Equinet, the European network of equality bodies, has assessed the experience of bodies, with a combined equality and human rights mandate, to identify the potential in such a dual mandate. It identified the gains realised from this as including:

- Enabling the equality mandate to benefit from the protection of international standards that have been developed for national human rights instruments and institutions,
- Moving beyond the limitations of equality legislation with its defined grounds and its requirement for a comparator to prove discrimination,
- Strengthening the voice and influence of the body due to the dual mandate held,
- Enabling situations that involve an interaction of both discrimination and human rights abuses to be effectively addressed,
- Achieving cost reductions and enabling cost effectiveness,
- Securing a simplicity from a citizen perspective once there is only a single institution to be approached.⁹

Crowther and O’Cinneide, coordinated research on six EU Member States (including Ireland) where statutory bodies were given merged functions in relation to both equality and human rights.¹⁰ Their research raises interesting observations on the issue of integrating equality

and human rights agendas. On the potential gains from integration they draw attention to “the synergies that could be developed between an integrated body’s work in the fields of non-discrimination and socio-economic rights (which) could supply a ‘missing dimension’ to the equality agenda, on the basis that many forms of structural inequalities were ultimately linked to a failure on the part of public authorities to give effect to their obligations under the UN International Covenant on Social, Economic and Cultural Rights, the European Social Charter and other socio-economic rights instruments”.¹¹ They acknowledge the risks, however, and emphasise the need for bodies combining equality and human rights mandates to invest in integration. They warn: “this potential may remain unfulfilled if the challenges of integration are not adequately addressed”.¹²

Equinet point to the danger of inappropriate or poorly constructed linkages between human rights and equality mandates. They argue that this can undermine “the useful emphasis on the promotion of equality that results from the existence of a separate body for the promotion of equality” and “the distinct focus on equality and on human rights that can be secured by separate bodies”.¹³ This situation can, they argue, lead to a “contest between these two fields for the resources and attention required by each” and “a clash of traditions, legal procedures and approaches that undermines the effectiveness of the work in each field”.¹⁴

4.2: Integrating Work On Human Rights & Equality

The dominant discourse in relation to integrating equality and human rights is based on an understanding that equality and non-discrimination form part of the spectrum of human rights. Equality is viewed as a subset of human rights. This understanding emanates from the non-discrimination provisions in human rights instruments. It is an understanding that limits equality to non-discrimination and diminishes the potential in this distinct tradition.

The European Union Agency for Fundamental Rights (FRA) suggested that human rights offer an overarching spectrum within which to locate equality and non-discrimination. FRA recommends that “when adding specific mandates under various EU directives, consideration should also be given to promoting existing NHRIs (National Human Rights Institutions) as an alternative to the establishment of new specialised bodies”. This is explained: “there is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions – such as a visible and effective overarching NHRIs that can act as a hub to ensure that gaps are covered and that all human rights are given due attention”.¹⁵

The report of the Working Group to advise on the establishment of a merged Irish Human Rights and Equality Commission reflected this analysis: “the idea of human rights turns on the core value of human dignity” and the merged body “can take a cohesive approach to promoting and protection of equality and freedom, the two values underpinning human dignity”.¹⁶ The ambition of the Working Group, for the merged IHREC, was stated in terms of “drawing all the strands of the human rights agenda together in a single body”.¹⁷ They

recommended that equality should be defined in the establishing legislation as meaning “that 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”.¹⁸ Equality is, however, limited to equal treatment and non-discrimination in this understanding.

Crowley (author) has critiqued this understanding: “those who espouse liberal egalitarianism¹⁹ emphasise non-discrimination and equality of opportunity. They prioritise a focus on the individual rather than examining disparities between groups....the central problem with this liberal egalitarianism is that it can accept and coexist with significant levels of inequality (and can) mask or even justify this persistent inequality”.²⁰

Baker, Lynch, Cantillon and Walsh highlight a shared starting point for work on equality and human rights: “basic equality is the cornerstone of all egalitarian thinking: the idea that at some very basic level all human beings have equal worth and importance, and are therefore equally worthy of concern and respect”.²¹ They emphasise, however, that a key assumption underpinning liberal egalitarianism is that “there will always be major inequalities between people in their status, resources, work and power”²² and they espouse ‘equality of condition’ that “aims to eliminate major inequalities altogether, or at least massively to reduce the current scale of inequality” and that is about “enabling people to make real choices between real options”.²³ Baker explores human rights against these different understandings of equality.²⁴

He states: “the human rights agenda clearly encompasses basic equality. It is also closely connected to liberal egalitarianism because it is primarily concerned with the setting of minimum standards and promoting key principles of non-discrimination”. He goes on to conclude: “It is plausible to think of the protection of human rights as a step on the way to the more demanding principles found in some forms of liberal egalitarianism and in equality of condition, since human rights are concerned with the most basic and urgent of egalitarian aims. However, it can be argued that it is precisely the existence of substantial inequalities of condition that has enabled the privileged to violate the human rights of others”.

The EU Equal Treatment Directives establish the inadequacy of this reduction of equality to non-discrimination and equal treatment. They allow for positive action “with a view to achieving full equality in practice.” This definition is replicated in the Irish equality legislation. This is a more substantive equality objective than non-discrimination and equal treatment. It is this understanding of equality that will need to underpin any integration of equality and human rights.

The first three strategic plans of the Equality Authority reflect this understanding of substantive equality with a focus on equality outcomes across a framework of linked objectives. In its second strategic plan the Equality Authority set out its understanding of equality as having “economic,

cultural and affective dimensions....(to) address: Redistribution, involving access to resources and economic activity: Representation, involving access to decision making a capacity to organise: Recognition, involving an acknowledgement and a valuing of different identities, experiences and situations of the groups disadvantaged by inequality: Respect, involving an underpinning of the interdependence and mutual support aspects of human welfare".²⁵

Another more nuanced understanding, in relation to integrating equality and human rights, is based on an understanding that groups disadvantaged by inequality are more likely to have their human rights abused. This can, however, be understood as an intersectional approach rather than an integrated approach. It captures the intersection between particular human rights and specific groups disadvantaged by inequality and discrimination, but it still fall shorts of an integration based on parity of esteem between the two traditions.

Crowther, in his research on the British Equality and Human Rights Commission (ECHR) merger, identified an intersectional approach to equality and human rights being pursued. He found: "the EHRC's combined equality and human rights mandate has enabled it on occasion to creatively integrate equality and human rights in its work. Of particular note has been the Commission's inquiry into the human rights of older people receiving care in their own homes and its work to monitor and advise upon the use of stop and search powers by the police".²⁶

This understanding is, however, human rights led. It is still about ensuring some minimum standard of treatment rather than looking to the ambition of achieving full equality in practice. The more political ambitions for equality are not being pursued. It falls short of a real and effective integration of the two traditions.

4.3: Establishment Of An Equality And Human Rights Body

The establishment of combined equality and human rights bodies has driven the debate on the effective integration of equality and human rights concerns. These bodies are important sites to develop and test out approaches to this integration. Most of the literature on the issue of integrating equality and human rights is focused on the act of merging equality bodies and human rights institutions. There is less published on the actual operation of such merged bodies and how they might integrate equality and human rights concepts.

Tom Pegram's study of the merger of the Equality Authority and the Irish Human Rights Commission identifies this issue. He noted that "one conspicuous deficit in the Working Group report was in-depth discussion of how to integrate equality and human rights concepts. The fundamental compatibility of these related but distinct concepts was not probed in a substantial manner, the focus falling instead on the practical task of fusing structures".²⁷ The Working Group on the Irish merger interpreted its mandate solely in terms of how to "integrate the two bodies" rather than how to integrate the two fields of equality and human rights.²⁸

Equinet identified a number of factors for success in the establishment of bodies that combine a mandate of equality and human rights.

These include:

- A coherent legal basis for the promotion of equality and the promotion of human rights,
- An adequacy of resources such that equality bodies and national human rights institutions, whether together or separately, can implement all of the powers they are accorded to full effect,
- Support and engagement from stakeholders with a remit in equality and in human rights in devising and implementing the links between equality bodies and national human rights institutions,
- Developing a multi-disciplinary competence among staff that encompasses and enables an equality and a human rights perspective on their work.²⁹

Crowther and O'Conneide also addressed the need for symmetry of powers and adequacy of resources in their study of such hybrid bodies.³⁰

Some reports point to the need to go beyond a focus on the establishment of equality and human rights bodies to seek an integration across the wider equality, human rights and social inclusion infrastructure. A report commissioned by the then Department of Community, Equality and Gaeltacht Affairs, in 2010, proposed a merger of the Equality Authority and the Irish Human Rights Commission and looked beyond this to suggest establishing a Joint Oireachtas Committee on Equality and Human Rights and a National Forum on equality and human rights.³¹ The Roadmap for a more effective

equality and human rights infrastructure, commissioned by the Equality and Rights Alliance, also recommended that “an Oireachtas Committee on Equality, Human Rights and Women’s Rights needs to be established”.³²

4.4: Operation Of An Equality And Human Rights Body

The limited literature on how a body with a mandate that encompasses both equality and human rights might actually put this mandate into practice, in an integrated manner, is key to understanding the depth and nature of the challenge posed and in beginning to establish how best to secure gains from the integration of equality and human rights.

Crowther and O’Cinneide, in their study of the merging of equality and human rights bodies, found that “developing effective links and synergies between functions commonly associated with NEBs (National Equality Bodies) and those associated with NHRIs (National Human Rights Institutions) can be hard to achieve” and that “considerable uncertainty appears to exist as to how equality and human rights functions should be linked together”.³³

Integration can be assisted through external developments. An approach to stimulating an integration of equality and human rights is suggested in the report commissioned by the then Department of Community, Equality and Gaeltacht Affairs in a proposal for an overarching National Action Plan on equality and human rights. It suggested that “this could provide a wider strategic framework and blueprint governing the future development of the equality and human rights bodies”.³⁴ Such a plan could, it was argued, set out “an ambition for the bodies which would shape how they operate” in “outlining priorities for Ireland as a society in relation to equality and human rights”.³⁵ The Equality and Rights Alliance also recommended, in its Roadmap, the development of a “national strategy to advance equality, social inclusion and human rights”.³⁶

The Working Group on the IHREC merger recommended that integration would be enabled if the purpose of the IHREC was set out in law as follows: “the purpose of the IHREC is to protect and promote human rights and equality, to encourage the development of a culture of respect for human rights, equality and intercultural understanding in Ireland, to work towards the elimination of human rights abuses and discrimination and other prohibited conduct, while respecting diversity and the freedom and dignity of the individual and, in that regard, to provide practical assistance to persons to help them vindicate their rights”.³⁷ However, such a statement of purpose appears to join up the two mandates rather than to integrate them.

The Working Group also recommended “a general statutory duty on public bodies to have regard to equality and human rights”³⁸ and identified the purpose of such a duty being “to ensure that public bodies reflect on and take action on these core values as part of their mainstream service”.³⁹ This broad public sector duty would hold the potential for a more integrated approach.

Equinet identified a number of factors for success, for the operation of national bodies that combine a mandate of equality and human rights. These include:

- An appropriate provision and balancing of resources such that parity can be achieved between resourcing work on equality and work on human rights, particularly within a single body with a mandate for both these areas, and
- The development of a strategic approach by the equality bodies and national human rights institutions to making links ... to enable an integrated perspective on human rights and equality.⁴⁰

Internal practices, such as the development of a strategic approach, can also enable integration. The Working Group on the IHREC merger suggested an evaluation framework for the IHREC that could advance an integrated approach to equality and human rights. Their focus on societal change and the use of the term flourishing in this regard is of interest. They proposed that this evaluation would address the following:

- What kind of society are we trying to achieve?
- How do vulnerable and marginalised groups regard the Commission?
- How has it improved people's lives and what has it done to eliminate discrimination and promote equality and inclusion?
- What has the Commission put in place, or removed, to allow, and indeed encourage, each person to flourish with the greatest degree of freedom without impinging on the dignity and worth of any other individual?
- What impact has the Commission had on public opinion, in terms both of public awareness of its work and support for human rights and equality?
- Has the Commission had sufficient regard for individual liberty in its decision making?⁴¹

Crowther and O'Connell identified a common value base as underpinning equality and human rights work and offering a "strategic compass" for integrating equality and human rights.⁴² They note that "the argument can be made that the functions of integrated bodies are ultimately linked by a common respect for the underpinning principle of human dignity and associated values such as individual autonomy and equality of status".⁴³ They note that many interviewees, for their research, suggested that "integrated bodies would benefit from a clear articulation of the new organisation's goals, values and approach".⁴⁴

The authors suggest working at an intersectional level: "integrated bodies may want to give serious consideration to integrating equal treatment principles into every aspect of their activities, thereby maximising the potential for synergy to develop between their human rights and equality mandates. Similarly, factoring in human rights considerations into their anti-discrimination work may also enhance their capacity to deal with persisting forms of inequality, and help to bridge the divide between the work practices associated with NEBs (National Equality Bodies) and NHRIs (National Human

Rights Institutions)”.⁴⁵ They also note that many interviewees suggested that this could be combined with work at a specific level: “different approaches were needed to deal with different equality and human rights issues, and an integrated body should not adopt a ‘one size fit all’ work programme that disregards the specific issues generated by specific elements of its remit”.⁴⁶

Crowther, in his research on the establishment of the British Equality and Human Rights Commission, made a number of recommendations to the body on practice sites for pursuing an integrated approach including:

- Developing an integrated approach to the promotion of a culture of compliance with equality and human rights law and good practice by providers, commissioners and regulators of public services,
- Developing an integrated approach, where appropriate, in relation to the promotion of equality and human rights in the private sector,
- Using its position to break down barriers between equality and human rights, including through fostering increased dialogue between different communities of expertise around issues of shared concern, and increasingly integrating its products, services and communications.⁴⁷

9. Equinet (2011) “Equality Bodies and National Human Rights Institutions - Making the Links to Maximise Impact” Equinet, Brussels, Belgium (Page 11).
10. Neil Crowther and Colm O’Cinneide (2013) “Bridging the Divide: Integrating the functions of national equality bodies and national human rights institutions in the European Union”, University College London, UK
11. IBID page 35.
12. IBID page 76.
13. Equinet (2011) op cit (Page 8).
14. IBID page 9.
15. The EU Fundamental Rights Agency (2010) “National Human Rights Institutions in the EU Member States: Strengthening the Fundamental Rights Architecture in the EU Member States”, European Union Fundamental Rights Agency, Vienna, Austria.
16. Working Group Report to the Minister of Justice, Equality and Defence on the Irish Human Rights and Equality Commission, 2012 (Page 18).
17. IBID page 20.
18. IBID page 33.
19. Liberal egalitarianism is concerned with equality of opportunity and fairness in the competition for advantage in society.
20. Niall Crowley (2006) “An Ambition for Equality”, Irish Academic Press (Page 15).
21. John Baker, Kathleen Lynch, Sara Cantillon, & Judy Walsh, Equality from Theory to Action, Palgrave Macmillan, Hampshire, 2004 (Page 23).
22. IBID page 25.
23. IBID page 33.
24. John Baker in The Essential Guide to Human Rights, edited by Christien Van Den Anker and Rhona Smith, Hodder Arnold, London, 2005 (Page 108-110).
25. Strategic Plan 2003-2005, Equality Authority, 2004, (Page 3).
26. Crowther (2013) “Bridging the Divide. Case study, the British Equality and Human Rights Commission”, in Crowther and O’Cinneide 2013 op cit, (Page 3).
27. Thomas Pegram (2013) “Bridging the Divide: The merger of the Irish Equality Authority and Human Rights Commission” Trinity College, Policy Institute, Dublin. (Page 18).
28. Working Group Report to the Minister of Justice, Equality and Defence on the Irish Human Rights and Equality Commission, 2012, op cit (Page 11).
29. Equinet (2011) op cit (Page 13).
30. Neil Crowther and Colm O’Cinneide, (2013) op cit.

31. PA Consulting (2010) "Scoping Exercise on Better Integration of Equality, Human Rights and Social Inclusion Policy Formulation and Implementation", Report to the Department of Community, Equality and Gaeltacht Affairs.
32. Equality and Rights Alliance (2010) "A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland", Equality and Rights Alliance, Dublin (Page 38).
33. Neil Crowther and Colm O'Conneide (2013) op cit (Page i & page v).
34. PA Consulting (2010) op cit (Page 36).
35. IBID page 33.
36. Equality and Rights Alliance (2010) op cit (Page 56).
37. Working Group Report to the Minister of Justice, Equality and Defence on the Irish Human Rights and Equality Commission, 2012, (Page 8).
38. IBID page 47.
39. IBID page 48.
40. Equinet (2011) op cit (Page 13).
41. Working Group Report to the Minister of Justice, Equality and Defence on the Irish Human Rights and Equality Commission, 2012, (Page 67).
42. Neil Crowther and Colm O'Conneide (2013) op cit (Page 61).
43. IBID page vii.
44. IBID page 73.
45. IBID xii.
46. IBID page xiv.
47. Neil Crowther (2013) op cit (Page 59).

5. An Integrated Approach

In developing an integrated approach to equality and human rights concerns, it is not intended that such an approach would replace initiatives that specifically focus on equality or human rights concerns. An integrated approach would complement actions that have a singular focus on equality or human rights and actions that address the intersections of human rights and equality concerns. Organisations with a mandate that covers both equality and human rights will need to operate at three different levels:

5.1: Integrated Level

The bulk of the work of the IHREC and other organisations within the human rights and equality infrastructure should reflect an integration of equality and human rights concerns. This approach must draw from both traditions in devising its strategy to implement its mandate and include an integrated focus on the human rights and equality dimensions to any issue being worked on.

The immediate challenge, to develop an integrated approach, is posed to the IHREC, given it is the sole body with a specific mandate covering both traditions. This integration would be particularly important in implementing its research, policy, development, communication and positive duty functions. However, the wider equality and human rights infrastructure faces a similar challenge if these organisations are to realise the added potential in an integrated approach. It is also necessary if they are to engage with rebuilding a coherent infrastructure for equality and human rights that includes an effective national institution. The implementation of this integrated level is described in more detail in section 6.

5.2: Intersectional Level

It is the case that it will sometimes be appropriate that activities of the IHREC or other parts of the equality and human rights infrastructure are human rights-led or equality-led.

Equality perspectives could be applied to the human rights-led work to deepen its impact. Work on prison conditions, for example, could be human rights-led. However, taking intersections into account, this work would also be concerned about the particular experience of women, Travellers, Black and other minority ethnic groups, LGBT people, people with disabilities and people from different socio-economic groups. This captures and addresses the intersections between human rights and relevant groups that experience inequality.

Human rights perspectives could be applied to the equality-led work to deepen its impact. Work to enhance the situation of women, for example, would look beyond the scope of equal treatment legislation to include a wider range of issues not covered by such legislation, such as gender-based violence. This would capture and address the full spectrum of human rights concerns of groups disadvantaged by inequality.

5.3: Singular Level

Equality and human rights issues can have different imperatives, therefore, it is recognised that the IHREC and other organisations within the human rights and equality infrastructure, will sometimes need to focus on specific human rights issues or specific equality issues separately.

Work on this level will depend on the urgency attaching to the particular issue, the opportunities that might arise to make progress on the issue, or the distinct nature of the issue such that it requires a singular focus. The strategy required to address the particular issue will, in some instances, call for a singular focus. Litigation is one obvious strategy where a singular focus on either equality or human rights may be required given the different legal provisions in each field.

The singular approach to these elements should be coherent with the broader work of the body that would be based on an integrated approach.

6. Three Linked Dimensions For An Integrated Approach

This section focuses on the integrated level of work on human rights and equality. It focuses predominantly on the Irish Human Rights and Equality Commission as a potential exemplar, but also identifies other organisations within the wider equality and human rights infrastructure. It seeks to identify what is required within the operations of an organisation to secure an integrated approach to equality and human rights.

Three linked strands of action are required by an organisation for an integrated approach to equality and human rights. These are to:

1. Set goals that integrate human rights and equality.
2. Establish values that integrate equality and human rights.
3. Identify practice sites for integration.

6.1: First Strand: Set Goals That Integrate Equality And Human Rights

6.1.1 The Approach

This approach to an integration of work on equality and human rights is based on the social changes this work aims to achieve in terms of a goal or set of objectives that integrate human rights and equality concerns. The goal or set of objectives need to be transformative and concerned with changing society for the better.

The International Council on Human Rights Policy has identified that the effectiveness of national human rights institutions should be measured in terms of having a “transformative effect” on the broader society.⁴⁸ Research published by the European Commission has identified equality bodies as “necessary and valuable institutions of social change”.⁴⁹ The Working Group on the IHREC merger identified that “a National Human Rights Institution should make constructive use of its powers to become an active force for change”.⁵⁰

This approach involves identifying and developing a goal or set of objectives that integrate equality and human rights and capture the broad change sought by the equality and human rights infrastructure. The change sought would guide and shape the work of the IHREC, for example. Its actions would be directed at achieving the goal or set of objectives in order to make its contribution to this broader change. This focus on the desired change would enable the IHREC to: prioritise the issues it will address, underpin the manner in which issues are analysed, and shape the manner in which actions are designed and implemented.

The concepts of individuals flourishing and a flourishing society are proposed as central to any such goal. A flourishing society is one where all of its individual members have the capability to flourish and to live lives that they have reason to value. The IHREC's goal and subsequent strategy would be to contribute to the changes necessary at societal, institutional and individual level to achieve such a flourishing society. A similar goal and strategy could govern the work of any organisation within the broader equality and human rights infrastructure.

6.1.2 The Goal of Flourishing

There is a substantial literature on the goal of flourishing. The position put forward here is based on what is called the capability approach to issues of social justice. Employing this approach, a flourishing society can be defined as one where people have the capabilities to flourish, which is understood as being able to live lives they have reason to value.

The economist and philosopher Amartya Sen introduced this concept of 'capabilities' in the 1980s, initially as a means of measuring well-being. Sen defined capabilities in terms of the substantive freedoms a person enjoys to lead the kind of life he or she has reason to value.⁵¹

The capability approach involves two main concepts:

- Functionings: "the various things a person may value doing or being."⁵² Examples would include to travel, to vote, to participate in decision making and to be educated or to be secure.
- Capabilities: "the freedom to achieve alternative functioning combinations (or less formally put, the freedom to achieve various lifestyles)".⁵³ These are the person's real freedoms to do these valued things and to achieve these valued states. They should reflect genuine choices for the person from substantial options. This can be located in the ambition for equality of condition noted earlier.

Sen did not subscribe to a fixed list of capabilities but identified five broad categories of instrumental freedom: political freedom; economic facilities; social opportunities; transparency guarantees; and protective security.

Sen argued for an equality of "basic capabilities" that he defined as "a person being able to do certain basic things". He noted that this shifts attention from "goods, to, what goods do to human beings", pointing out that "there is evidence that the conversion of goods to capabilities varies from person to person substantially and the equality of the former may still be far from the equality of the latter".⁵⁴ People with disabilities, for example, need to secure higher levels of income (goods) to achieve the same level of capability as the general population due to the additional costs of disability.

The philosopher Martha Nussbaum further developed the capability approach. She identified ten central human capabilities as being of central importance for any human life whatever else the person pursues and chooses. These were: life; bodily health; bodily integrity; senses, imagination,

thought; emotions; practical reason; affiliation; other species; play; and political and material control over one's environment.⁵⁵ According to Nussbaum, the principle that every person is entitled to an adequate or 'threshold' level of each of these central capabilities represents the most coherent way of defining human rights.

Burchardt and Vizard brought the capability approach into the work of the Equality and Human Rights Commission in Britain, to establish an equality measurement framework to measure progress in achieving an equal society that secures human rights for all.⁵⁶ Their list of domains of capabilities, with some of their associated freedoms, was as follows:

- Life (e.g. avoid premature mortality, protection from murder),
- Health (e.g. high standard of physical, mental, reproductive and sexual health, access to information and care, maintain a healthy lifestyle, live in a safe and healthy environment),
- Physical security (e.g. free from violence, free cruel and degrading treatment, protected from physical or sexual abuse, secure use of public spaces),
- Legal security (e.g. treated equally before the law, freedom from arbitrary arrest, right to a fair trial, access to information and advocacy),
- Education and learning (e.g. attain high standard of knowledge, understanding and reasoning, fulfilled and stimulated intellectually, including being creative, develop skills for participation, access information and technology to participate in society),
- Standard of living (e.g. standard of living encompassing nutrition, clothing, housing, warmth, social security, social services and utilities, and being cared for and supported when necessary, live with independence, dignity and self-respect),
- Productive and valued activities (e.g. decent paid job, just and favourable working conditions, care for parents and children, recognition of value of your work even if unpaid, balance between paid and unpaid work, care and leisure),
- Individual, family and social life (e.g. hope for the future, form intimate relationships, friendships and a family, spend time with and care for others including family, enjoy independence and equality in primary relationships including marriage),
- Identity, expression and self-respect (e.g. freedom of expression, of cultural identity and expression of gender, and of conscience, belief and religion, confidence that you will be treated with dignity and respect, communicate),
- Participation, influence and voice (e.g. participate in decision-making that affects you, participate in forming government policy, form and join civil society organisations, participate in local community).⁵⁷

Within each of these domains both human rights objectives and equality objectives can be identified. In the UK context, these capabilities were

assessed in relation to people covered by the grounds of age, disability, gender, transgender, sexual orientation, ethnicity, religion or belief and social class. The assessment was concerned with achieving:

- Equality of outcome (addressing the central and valuable things in life that individuals and groups achieve),
- Equality of autonomy (addressing issues of choice and control and the independence people have in order to make decisions),
- Equality of process (addressing the treatment of people in terms of dignity, respect, and in terms of addressing discrimination against people and groups).

There have been critiques of this goal of a flourishing society and the use of the capability approach. The emphasis on the individual person has been a source of concern in that there is little reference to the societal groups around which inequality is structured. Burchardt and Vizard seek to address this by building group-related assessments into their overall framework. However, this issue remains as a challenge to be addressed in using the capability approach.

The capability approach has been criticised for deflecting attention away from the redistribution of respect, power, resources and status that are necessary conditions for realising one's capabilities. Proponents of the approach insist that the approach entails these redistributions but it remains a challenge to find a way of combining the idea of capabilities with that of the material conditions required for their realisation. Burchardt and Vizard's inclusion of various material conditions, within the domains of capabilities they develop, is an attempt to address this problem. However, it does blur the distinctions between goods and capabilities identified by Sen in the first place.

The concentration on central or basic capabilities by various authors has been criticised as a set of minimum standards that reflects a limited ambition for change. There is little focus on the more decisive redistributions of resources, power, status and respect that belong to ambitious conceptions of equality: conceptions that might be framed in terms of equal capabilities as distinct from basic capabilities. This issue remains as a challenge in using the approach.

Nevertheless, the capability approach is, a flexible framework and could be developed in a useful manner. It is not necessary to limit the approach to the capabilities already identified by others. They can be further developed to reflect a more effective integration of equality and human rights traditions and tailored for the Irish context. The capabilities and associated freedoms developed by Burchardt and Vizard offer a valuable starting point for this further development.

Capabilities should be devised in a manner that acknowledges that individuals are embedded in society. The duty on the state to increase the

range of feasible options, by removing structural constraints, needs to be emphasised. Achieving the goal of flourishing requires looking at how the capabilities of individuals are affected by social conditions, with a focus on:

- The redistribution of power, resources, status and relationships of love, care and solidarity.
- Remodeling society and the economy such that we can live within the limits of our ecosystem in an environmentally sustainable manner that enables the capabilities of future generations.
- Remodeling governance and decision-making within society such that it is no longer subject to the influence of the powerful, is accountable, reflects the diversity within our society, allows for more direct forms of democracy, and is capable of achieving substantive change.

6.1.3 Implications for the IHREC and the Wider Equality and Human Rights Infrastructure

The IHREC could usefully work with the broader equality and human rights infrastructure to promote this goal of a flourishing society and define the capabilities required to achieve individual flourishing in a manner that effectively captures the ambitions of both the equality and the human rights traditions. It could build a broader engagement in this process, through participative initiatives, to tease out and agree the core capabilities required for flourishing and to further develop the capability framework.

The IHREC could usefully endorse and flesh out this goal of a flourishing society as its long-term vision. It could use the capability approach to develop its objectives and priorities with a view to promoting and supporting the individual and collective capabilities required for achieving this long-term vision, while also addressing shortcomings identified in the approach. The Commission could promote good practice models for employment and service provision (for the public and private sectors and wider civil society) that would contribute to the goal of individual flourishing, the realisation of people's capabilities, and achieving the social conditions necessary for a flourishing society. It could develop research to build a knowledge base on, and to monitor progress in relation to, realising these goals. It could communicate its work in terms of contributing to a flourishing society.

Civil society needs to occupy spaces that enable an integration of equality and human rights goals. The Equality and Rights Alliance is one such space with its broad integrated agenda. Civil society needs to assess the concept of flourishing for its capacity to integrate equality and human rights and to enable progress towards a more equal society and a society based on the fulfillment of human rights. Civil society needs to explore the capabilities required to enable flourishing, recognising that there will inevitably be disagreements about their relative importance.

Individual civil society organisations could usefully tease out the implications of this goal and these capabilities for their work and objectives. This should enable civil society organisations to achieve added potential from a better integration of equality and human rights concerns in their work. It should offer the opportunity to reinvent their work in a manner that has greater impact and greater coherence across civil society.

The Equality and Diversity Division of the Department of Justice and Equality could play a role in contributing to and stimulating the development of knowledge and practice in the integration of human rights and equality. This could be set out as a goal in its next strategic plan, where the objectives for the Division could be articulated in a manner that is coherent with the goal of a flourishing society and the role of the capability approach in achieving this goal.

The Department of Foreign Affairs through its annual Forum on Human Rights could explore the goals for work on human rights and, in particular, the goals for work on human rights where this reflects an integrated approach combining a concern for equality and human rights. This could include a focus on flourishing and the capability approach. Action on this issue of integration equality and human rights could then be further explored within the Standing Committee on Human Rights.

The mandate of the Oireachtas Committee on Justice and Equality could usefully commit to an integrated approach to its mandate. The Committee could establish the goals that underpin this integration and explore the goal of a flourishing society and the use of the capability approach to assess and identify how it might achieve such an integration. It could usefully develop the results of this work as a template to guide its work of considering legislation.

6.2 Second Strand: Establish Values That Integrate Human Rights And Equality

6.2.1 The Approach

This approach involves an understanding that equality and human rights traditions are based on shared values. It is rooted in a theory of change that reflects the importance of values in bringing about social change. Values shape popular demands and in turn influence political choices. They inform policy and practice in the public sector, private sector and civil society. They connect different issues including equality and human rights.

This approach requires the identification of the values that are common to the equality and human rights traditions. It involves teasing out and promoting what these values mean in practice for different groups and in different situations. There is a challenge to devise effective ways to build a popular commitment to the practical expression of these values.

6.2.2 Values Frameworks

The Treaty on European Union Article 2 states: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.⁵⁸

The FREDA framework of values was developed in the health sector in the UK to support the NHS in using human rights-based approaches to improve service design and delivery for all.⁵⁹ Guidance for the sector sets out that “a good way to understand human rights is to see them as a vehicle for making fairness, respect, equality, dignity and autonomy central to our lived experience as human beings. These core values are brought to life by a range of different human rights that make them real” and “obligations placed on NHS organisations and other public bodies to respect human rights can give these principles real meaning in people’s lives”.⁶⁰ Values and acting out of a particular value base is seen as an effective way of making rights real for people.

The FREDA framework is predominantly focused on human rights, however, it captures the power and potential of values. It includes equality as a specific value within the framework but appears to limit the understanding of equality to non-discrimination. FREDA encompasses values of:

- Fairness: right to a fair trial and supports, for example, “ensuring that there is a robust and fair process for dealing with concerns about the professional conduct or performance of a healthcare professional”,
- Respect: respect for family and private life, home and correspondence and supports, for example, “respecting all diverse families, e.g. same-sex couples with children and avoid denying those detained or in residential care access to family without good reason”,
- Equality: the right not to be discriminated against in the enjoyment of other human rights and entails, for example, “commitment to improving mental health services for people from black and minority ethnic groups and ensuring that people are not denied treatment solely on the basis of their age”,
- Dignity: the right not to be tortured or treated in an inhuman or degrading way and supports, for example, “ensuring that there are sufficient staff to promptly change wet sheets to reduce the risk of people suffering degrading treatment”,
- Autonomy: respect for family life and entails, for example, “involving people in decisions made about their treatment and care”.⁶¹

The Scottish Human Rights Commission developed the PANEL framework of principles to underpin the implementation of a human rights-based approach. They state: “a human rights-based approach is about ensuring that both the standards and the principles of human rights are integrated into policy making as well as the day to day running of organisations”.⁶²

The PANEL framework is based on human rights and is promoted as values that people should give expression to when applying a human rights-based approach in practice. It includes a focus on non-discrimination and equality and appears to be based on an understanding of equality limited to equal treatment. It encompasses:

- Participation and the right to participate in decisions that affect your human rights,
- Accountability and the requirement to monitor human rights standards and to remedies for human rights breaches,
- Non-discrimination and equality and the prohibition, prevention and elimination of all forms of discrimination in the realisation of rights,
- Empowerment and the need for people to know their rights and to be fully supported to participate in the development of policy and practices that affect their lives and to claim their rights,
- Legality of rights and the recognition that rights are legally enforceable and linked to national and international human rights law.

Sandra Fredman sets out a broader approach to human rights: “human rights hold out more than just the promise of freedom from state interference with their exercise. Human rights are based on a much richer view of freedom, which pays attention to the extent to which individuals are in a position actually to exercise those rights. This positive view of freedom carries with it a substantive view of equality”.⁶³ Fredman argues that “the values inherent in human rights as we know them require us to go beyond duties of restraint to positive duties, regardless of whether the right in question is formally classified as civil and political or socio-economic.” This understanding of human rights provides a valuable starting point for the integration of equality and human rights.

Fredman’s work includes a focus on a range of different values that underpin this understanding of human rights. These include:

- Freedom: building on Sen’s view of freedom as: “agency, or ability to exercise genuine choice and act on these choices”,⁶⁴
- Dignity: noting that human rights “value relationships for themselves. This gives rise to a duty to ensure dignity and respect, and to promote and facilitate responsibility and caring”,⁶⁵
- Solidarity: whereby “individuals should be understood as embedded in society, in the sense that individual identity and even survival cannot be conceived of outside of the social framework” and noting that “everyone needs society in order to flourish”,⁶⁶
- Democracy: “properly framed, human rights are necessary to not only establish and maintain democracy, but to ensure that all have the ability to participate equally in democratic decision making”,⁶⁷
- Equality : whereby equality should encompass the following four aims: “promote respect for equal dignity and worth of all”; “entail an

accommodation and positive affirmation and celebration of identity within community”; “break the cycle of disadvantage associated with the out-groups”; and “facilitate full participation in society”,⁶⁸

This final framework of values, and its particular understanding of human rights, offers a particularly useful starting point to establish a framework of values to shape an integrated approach to equality and human rights. It can be further developed using the other frameworks set out above and the analysis emerging from the literature review.

A framework of values to underpin an integration of equality and human rights and to establish an ambition for a society where full equality in practice is achieved and where human rights are both protected and fulfilled might then include:

- **Autonomy:** encompassing choice, agency, freedom, self-determination and the absence of coercion.
- **Democracy:** encompassing participation, voice, empowerment and accountability from those in positions of power.
- **Dignity:** encompassing respect, relationships of care and love, human worth and the absence of inhumane and degrading treatment, harassment and discrimination.
- **Inclusion:** encompassing a sense of belonging and community, interdependence, collective responsibility and a valuing of diversity.
- **Social Justice:** encompassing redistribution of wealth, income, jobs and social goods and the absence of privilege and entitlement.

This framework of values needs to be applied to securing outcomes for groups covered by the nine grounds under the equality legislation as well as the ground of socio-economic status.⁶⁹

6.2.3 Implications for the IHREC and the Wider Equality and Human Rights Infrastructure

The IHREC could work with the wider equality and human rights infrastructure to identify and give practical meaning to a set of values that underpins both equality and human rights and in that way helps to integrate them. The values identified by the IHREC could usefully be deployed within the body in helping to define the objectives of the IHREC, prioritise the actions of the IHREC, and establish the manner in which these actions are implemented.

This framework of values could also be a focus for actions in their own right. The IHREC could develop and take initiatives to support institutions and organisations to apply these values in their policies, procedures and practice. The IHREC could develop communication and public education initiatives to build a popular engagement with values.

Civil society organisations concerned with equality and human rights could explore the potential in working from an agreed value base that integrates

equality and human rights concerns and traditions. These organisations could develop a programme of work to promote these values and to mobilise people in support of these values.

This would require new ways of working. Civil society would need to:

- Invest more in engaging with people and communities about values,
- Find ways of engaging effectively with people on the basis of values,
- Establish the link between values, policy and practice, and new outcomes for people experiencing human rights abuses and disadvantaged by inequality and discrimination.

The work of Common Cause in the UK offers some insights into working with values.⁷⁰

The Department of Justice and Equality could usefully identify and define a value base that would inform its work both on equality and human rights and across its full range of functions. The value base could reflect that developed by the IHREC with a capacity to integrate equality and human rights commitments. This could be done as part of its strategic planning. It would need to include support and monitoring systems capable of assessing the manner in which the values chosen have been made real in the work of the Department.

The Department of Foreign Affairs could work with the Standing Committee on Human Rights to identify and define a set of values, integrating equality and human rights commitments, to inform its international work on human rights and its work in coordinating reports of the Irish Government under international human rights instruments.

The Oireachtas Committee on Justice and Equality, in progressing its examination of legislation from an equality and human rights perspective, could usefully identify and define a set of guiding values that integrate equality and human rights. This would enable the Committee to assess legislation at an early stage for the extent to which it has given adequate expression to this value base and to which it can effectively realise such values for groups disadvantaged by inequality, discrimination and human rights abuses.

6.3 Third Strand: Identify Practice Sites For Integration

6.3.1 The Approach

This is based on identifying sites of practice for integrating equality and human rights that hold potential for achieving change. The sites of practice are where the IHREC and the wider human rights and equality infrastructure would take initiatives that engage with, and integrate, equality and human rights issues in a manner that is transformative and contributes to social change.

These sites of practice could use either:

- An approach based on advancing the goal of a flourishing society and using the capabilities approach,
- An approach based on a values framework, establishing the practical meaning for these values and advancing actions to achieve a practical realisation of these values.

Sites of practice for integration can be identified in the public sector, the private sector, and local communities or communities of interest disadvantaged by inequality. These three sites of practice hold particular potential:

- The public sector with a focus on mainstreaming equality and human rights in policy-making, policy implementation and policy review,
- The private sector with a focus on supporting infrastructure and systems within companies to advance equality and fulfil human rights,
- Communities with a focus on empowerment of people through the pursuit of equality and human rights

6.3.2 Public Sector - Mainstreaming Equality and Human Rights

The first site of practice within which to develop an integrated approach to human rights and equality is the public sector. This practice can be developed on foot of a new duty on public sector bodies introduced in the Irish Human Rights and Equality Commission Act (2014).

Section 42(1) of the IHREC (2014) provides that “A public body shall, in the performance of its functions, 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”.

A wide range of public bodies are included such as Government Departments, local authorities, education and training boards, the HSE, universities and institutes of technology. They are required to make an assessment of the human rights and equality issues they believe to be

relevant to their functions and purpose and to set out the policies, plans and actions in place, or proposed, to address those issues in their strategic plans. They are also required to report on developments and achievements in relation to these, in their annual reports.

The duty requires public bodies to consider human rights concerns in regard to those human rights treaties and conventions that have been incorporated into domestic law. Public bodies must consider the provisions of the Employment Equality Acts (1998-2012); the Equal Status Acts (2000-2011); the European Convention on Human Rights Act (2003); and the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution.

The inclusion of the Charter of Fundamental Rights in the European Treaties places an onus on the public sector to have regard to the rights enshrined in the Charter in implementing European Union law. The rights in the Charter include civil, political, economic, social and cultural rights. This should serve to expand the obligations on public bodies under the new public sector duty to include economic, social and cultural rights. The European Convention on Human Rights Act (2003) requires public sector bodies to perform their functions in a manner that is compatible with the European Convention on Human Rights.⁷¹ This further underpins the focus on civil and political rights under the new public sector duty.

The implementation of the public sector duty holds significant potential for an integrated approach to equality and human rights in terms of how these bodies discharge on their functions as employers, service providers, policy makers and procurers of goods and services. This implementation needs to be particularly concerned with groups covered by the nine grounds in the equality legislation and the ground of socio-economic status. The Equality and Rights Alliance has developed an analysis of approaches to implementing this duty in a separate publication.⁷²

6.3.3 Private Sector - Business Systems for Equality and Human Rights

The second practice site within which to develop an integrated approach to equality and human rights is the private sector. The development of an integrated approach to human rights and equality can build on work by the former Equality Authority with this sector. It can draw from initiatives taken by the UN to develop a framework for action on human rights within the private sector, and by the International Labour Organisation in relation to 'decent work'.

The Equality Authority developed the concept of a "planned and systematic approach" to equality for private sector companies.⁷³ A planned and systematic approach to equality involves:

- Putting equality policies in place that set a standard for operations in employment, service provision and procurement,

- Training staff in the awareness, knowledge and skills required to implement the equality policy of the company,
- Reviewing current operations of the company, as an employer, service provider and procurer of goods and services, for their impact on equality, and setting out an equality action plan to enhance this impact,
- Assigning responsibility for equality within the company.

The Equality Authority developed templates to guide companies in developing equality policies and providing equality and diversity training. This work provides a useful starting point but it would be necessary to integrate a focus on human rights into this guidance and practice.

The Ruggie Framework developed at the UN introduces human rights into the private sector and addresses human rights issues relevant to business. It suggests that companies are required to “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur: and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.⁷⁴

This UN Framework identifies a corporate responsibility to respect human rights to be addressed through:

- A policy commitment to meet their responsibility to respect human rights,
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights,
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

A recent report from the Centre for Human Rights, in NUI Galway, identifies that the subject of business and human rights remains ‘under-explored’ in Ireland. It recommends that:

- Guidance should be given to business entities on the requirements of human rights due diligence, which should be a mandatory requirement,
- The Government should require human rights compliance and reporting by business for public procurement contracts, State investment or listing on the Irish Stock Exchange,
- Business enterprises domiciled in Ireland should make a policy commitment to respect human rights, incorporate human rights due diligence in their operations, make compliance with human rights a contractual requirement for suppliers, and provide remediation in the event of human rights breaches”.⁷⁵

The International Labour Organisation (ILO) of the UN has developed and promoted a comprehensive agenda for decent work.⁷⁶ ‘Decent Work’ could provide one overarching goal that integrates equality and human rights in

employment in the private sector. The decent work agenda being pursued by the ILO was developed with the participation of the ILO constituents of government, employers and workers. It has four components:

- Creating jobs – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods,
- Guaranteeing rights at work – to obtain recognition and respect for the rights of workers. All workers, and in particular disadvantaged or poor workers, need representation, participation, and laws that work for their interests,
- Extending social protection – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of loss or reduced income, and permit access to adequate healthcare,
- Promoting social dialogue – involving strong and independent workers’ and employers’ organisations is central to increasing productivity, avoiding disputes at work, and building cohesive societies.

This focus on human rights and equality could usefully be developed in the private sector in relation to employment, production, customer service, procurement, and supplier chains. This should be particularly concerned with groups covered by the nine grounds in the equality legislation and the ground of socio-economic status.

6.3.4 Local Communities - Empowerment in Pursuit of Equality and Human Rights

Local communities are the third site of practice within which to develop initiatives that integrate equality and human rights. This work can build on traditions of community development and of more recent human rights-based approaches at local level.

Community development has provided the means through which people-based struggles for equality have been advanced. The practice of community development has provided a space for people from communities disadvantaged by inequality to explore their individual needs and identify collective interests. It has provided platforms from which to articulate, campaign for, and negotiate these interests.

Community development has been defined as involving “an analysis of social and economic situations and collective action for change based on that analysis. It is centred on a series of principles that seek to go beyond consultation to participation, and beyond capacity building to consciousness raising and empowerment. It recognises the changing and often hidden nature of the structural inequalities based on ‘race’, class, gender and disability to name but a few. It seeks to be transformative rather than conforming, and empowering rather than controlling”.⁷⁷

Participation and Practice of Rights in Belfast have developed a grass-roots human rights-based approach. The Roadmap developed by the Equality and Rights Alliance recommended such an approach: “civil society organisations need to be supported to advance human rights based approaches to addressing social problems”. The Roadmap defined this approach as involving:

- Advancing the needs of communities experiencing inequality and disadvantage as rights,
- Holding Government and public bodies to account in relation to rights.
- Empowering people experiencing inequality and disadvantage to assert their rights,
- Enabling people experiencing inequality and disadvantage to participate in identifying their issues and how best to address them.⁷⁸

Community development approaches and human rights-based approaches could usefully be combined to achieve an integrated approach to equality and human rights within communities experiencing human rights abuses and disadvantaged by inequality. This should have a particular focus on the groups covered by the nine grounds in the equality legislation and the ground of socio-economic status.

6.3.5 Implications for the IHREC and the Wider Equality and Human Rights Infrastructure

The IHREC could usefully prioritise initiatives that integrate human rights and equality within these three sites of practice. It could develop, promote and support a code of practice on how public bodies can meet their obligations under the Irish Human Rights and Equality Commission Act 2014, including in relation to the Charter of Fundamental Rights and the European Convention on Human Rights Act 2003.

The IHREC could develop a partnership with employers’ associations and trade unions to support the development and implementation of a suite of good practice guides for companies to implement a planned and systematic approach to an integrated human rights and equality agenda with a view to giving effect to a shared commitment to ‘decent work’.

The IHREC could develop a partnership with relevant civil society organisations to devise, pilot, and support equality and human rights-based approaches to issues within communities disadvantaged by inequality or human rights abuses. A body of practice could be developed and documented to guide the future development and expansion of this work.

Community sector organisations have a key role to play in building and articulating the demand for an ambitious implementation of the public sector duty by public bodies at local and national level. These organisations could contribute to monitoring the quality of the implementation of this duty and the impact of its implementation on equality for and the human rights of the communities they represent. Community sector organisations have a lead

role to play in implementing equality and human rights based approaches to issues within the communities they work with. This work should include a concern for addressing under-reporting and enabling those experiencing discrimination and human rights abuses to make use of the relevant legislation and the IHREC to bring forward their cases in the courts and to the Workplace Relations Commission.

Trade unions and employer associations have a lead role to play in encouraging and supporting companies to take up the challenge of a 'decent work' agenda and to implement an integrated approach to their equality and human rights obligations and ambitions.

The Department of Justice and Equality and the Department of Foreign Affairs should provide leadership and example in implementing an ambitious approach to their obligations under the public sector duty. They should encourage other public bodies to implement this public sector duty to its full potential. The Department of Justice and Equality could usefully play a role in providing supports for civil society action within workplaces and within local communities to advance an integrated equality and human rights agenda.

The Oireachtas Committee on Justice, Defence and Equality could usefully champion the public sector duty and raise its provisions with any public body coming before it. It could apply the duty in its work and play a role in reviewing legislation that comes before it for its impact on equality and human rights.

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7. Conclusion

This paper offers a point of departure for a new debate on the potential in integrating work on equality and human rights and on the most effective approaches to implementing this integration. It will hopefully serve as a resource to debate and to develop practical initiatives in all sectors to test out approaches to better assess the potential in this integration.

The approaches identified seek an integration that respects and takes account of the different traditions in equality and in human rights approaches. It allows for an integrated approach to be accompanied by parallel approaches that have a singular focus on equality or human rights or an intersectional approach to equality and human rights concerns. It promotes an understanding of integration that is based on a parity of esteem for equality and human rights traditions, concerns and ambitions. It suggests work at an integrated level and offers the prospect of developing a new tradition of work in equality and human rights.

A choice of routes to integrating human rights and equality work is explored. The first is to organise this integration behind the goal of a flourishing society and to focus action on realising the capabilities required by individuals and communities to flourish. The second is to organise this integration around a framework of shared values and to focus action on giving practical expression to these values in policy, procedure and practice.

Three sites of practice for testing out and applying either or both of these routes to integrating equality and human rights are suggested. The first is in the public sector and involves the implementation of the new duty on public bodies to have regard to equality and human rights in carrying out their functions. The second is the private sector and involves action to implement a planned and systematic approach to implementing a decent work agenda within companies. The third is within communities and involves developing equality and human rights-based approaches to issues within communities disadvantaged by inequality or human rights abuses.

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