

EQUALITY & RIGHTS ALLIANCE

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Submission to the UN ICC to inform the accreditation of the Irish NHRI: March 2015

About the Equality and Rights Alliance

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

Introduction

The national infrastructure to promote, protect and fulfil human rights has undergone much change in recent years in Ireland. In 2009 the government reduced the budget of the Irish Human Rights Commission (IHRC) by 32% and the Equality Authority reduced by 42%.¹ Between 2009 and 2012 the IHRC and the Equality Authority were subject to cumulative budget cuts of 40% and 49% respectively and their staffing compliments were reduced from 17 to 9 and from 58 to 35 respectively.²

In 2011 the new government announced plans to merge the IHRC and the Equality Authority. The legislative process to merge the two bodies was completed in late 2014 and the merged Irish Human Rights and Equality Commission (IHREC) was formally established on November 1st 2014.

Concerns regarding the erosion of the Irish statutory equality and human rights infrastructure and regarding the proposed establishment of the merged Irish Human Rights and Equality Commission have been consistently raised by the UN and Council of Europe with the Irish Government since 2008. Twelve separate UN and CoE reports raised concerns in this regard.³ Regarding the process to merge the two bodies, consistent concerns have been raised that the merged IHREC should be fully independent and adequately funded, the latter being especially critical given the hugely disproportionate cuts to the precursor bodies.

As the IHREC is about to be assessed for UN accreditation, ERA present this submission to inform that process. In particular we raise concerns that the Government has not taken the merger process as a key opportunity to reinvigorate the equality and human

¹ The National Consultative Committee on Racism and Interculturalism had all of its funding removed in the same budget.

² The staffing of the Equality Authority has reduced further between 2012 and 2014.

³ ERA has compiled a summary of these concerns raised, in a short briefing document that can be accessed here:

[http://www.eracampaign.org/uploads/International%20reports%20referring%20to%20cuts%20to%20infrastructure%20\(2\)-1.pdf](http://www.eracampaign.org/uploads/International%20reports%20referring%20to%20cuts%20to%20infrastructure%20(2)-1.pdf)

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rights infrastructure, by ensuring the new body is fully compliant with the UN Paris Principles and the UN Belgrade Principles in the areas of independence, adequacy of funding, accountability to Parliament and affording the body the broadest possible mandate to promote and protect human rights in the Irish State. We are raising these issues in the hope that the accreditation process might secure commitment from the Irish Government to progress these issues.

Below we refer to specific areas of the UN Paris Principles and outline below each one the current situation regarding the status of the IHREC.

Status of the IHREC vis-a-vis the UN Paris Principles

The main criteria of the Paris Principles are:

1. A mandate “as broad as possible”,
2. Independence from government,
3. Pluralism including through membership and/or effective cooperation, and
4. Adequate human and financial resources.

The UN Belgrade Principles developed in 2012, are also of relevance as they outline how the relationship between NHRIs and Parliament should be constituted.

1. Broad mandate

“A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence”.⁴

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

There are two definitions of human rights in the IHREC Act 2014.⁵ A narrower definition applies to Part 3 of the Act dealing with all of the enforcement powers and functions of the Commission and some other powers not of an enforcement nature. The narrower definition, confines human rights to those rights guaranteed by the Constitution or enshrined in law within the State. While it is appropriate that this narrower definition would apply to enforcement powers such as: the provision of legal assistance and instituting legal proceedings in its own name, it is regrettable that this narrower definition also applies to the operation of the new public sector duty and to the inquiry and codes of practice functions of the Commission. In this regard, we do not believe that the IHREC has been given the broadest mandate as possible to protect and promote human rights in the State.

⁴ UN Paris Principles: Competence and Responsibilities para 2.

⁵ The Irish Human Rights and Commission Act 2014 : <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0025.pdf>

2. Independence from Government

“The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence”.⁶

The UN Sub-Committee on Accreditation states that *“financial systems should be such that the NHRI has complete financial autonomy. There should be a separate budget line over which it has absolute management and control”*.⁷

When the General Scheme of the IHREC Bill was published in 2012, the UN Office of the High Commissioner submitted observations to the Minister for Justice and Equality, drawing attention to the need for the provisions of the Bill to have coherence with standards set out in both the UN Paris Principles and the UN Belgrade Principles.⁸ The correspondence from the UN OHCHR in particular noted concern that *“some provisions of the General Scheme may undermine the financial autonomy of the new IHREC”*.⁹

The IHREC Bill was not amended to take account of these concerns and the IHREC Act 2014 cedes considerable financial control to the Minister for Justice regarding the financial resourcing of the IHREC and its financial accountability. The Act provides that: *“In each financial year, the Minister (for Justice and Equality) may, after consultation with the Commission, advance to the Commission out of moneys provided by the Oireachtas such sums as appear to the Minister, with the consent of the Minister for Public Expenditure and Reform, to be reasonably sufficient for the purposes of expenditure by the Commission in the performance of its functions.”*¹⁰

Much attention has been given to the Irish Government recently agreeing to allocate the IHREC a separate vote in the annual budget, as if this somehow amounts to the Commission now having financial control over its budget. In reality, however, the amount of money allocated annually to the Commission will still be decided by the Minister for Justice, rather than the wider Parliament. This leaves the IHREC vulnerable to another abrupt and significant cut to its funding such as occurred in budget 2009 following a unilateral decision by the then Minister for Justice.

The UN Belgrade Principles note that *“NHRIs should report directly to Parliament”*¹¹ and that *“Parliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to Parliament, in compliance with the Principles related to national institutions (Paris Principles) and taking into account the*

⁶ UN Paris Principles: Composition and guarantees of independence and pluralism para 2

⁷ UN Sub Committee on Accreditation General Observations 2.6 on Adequate Funding.

⁸ Correspondence from the Deputy High Commissioner for Human Rights, to the Minister for Justice, July 16 2012, obtained under the Freedom of Information Act.

⁹ Correspondence from the Deputy High Commissioner for Human Rights, to the Minister for Justice, July 16 2012, obtained under the Freedom of Information Act.

¹⁰ IHREC Act 2014 S26

¹¹ BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS (Belgrade, Serbia 22-23 February 2012) para 16

General Observations of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and best practices.”¹²

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

3. Pluralism of Membership

***“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights”.*¹³**

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

4. Adequate human and financial resources

***“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding”*¹⁴**

In addition to the Paris Principles, the UN Belgrade Principles state that that Parliaments should have a role in agreeing the annual budgets of NHRIs and “*should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law*”.¹⁵

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

¹² IBID para 2

¹³ UN Paris Principles paragraph: Composition and guarantees of independence and pluralism paragraph 1.

¹⁴ UN Paris Principles: Composition and guarantees of independence and pluralism para 2

¹⁵ Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments (Belgrade 22-23 February 2012) sec B (9)

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

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