



**Submission by the Irish Council for Civil
Liberties (ICCL) to the
Working Group on the Establishment
of the
Human Rights and Equality Commission**

November 2011

1. Introductory remarks

The Irish Council for Civil Liberties (ICCL) is Ireland's independent human rights watchdog. Founded in 1976 by President Mary Robinson and others, it receives no Government funding.

The ICCL welcomes the proposed merger of the Irish Human Rights Commission (IHRC) and the Equality Authority (EA). Provided that the independence of the new body is guaranteed and it is properly resourced and effectively led, it could be significantly more effective than the IHRC and the EA.

This brief submission highlights some of the shortcomings of the current structures and provides the ICCL's answers to the three key questions on which the Working Group has sought responses.

2. What should the new body do?

The new Human Rights and Equality Commission¹ should be vested with the powers necessary to ensure that it fully complies with the "Paris Principles".² The existing core legal functions and powers of the former IHRC and the EA should be preserved and further enhanced.

3. What features and functions will it need in order to carry out its work?

Shortcomings of the current structures

Although the former IHRC was officially rated as an "A status" National Human Rights Institution (NHRI) by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), this rating was based on formal rather than substantive compliance with the Paris Principles. In a number of areas, the features and functions of the former IHRC failed to achieve substantive compliance with the Paris Principles. These included: a direct reporting relationship to the Government department that controlled its budget; a cumbersome and ineffective complaints procedure and under-use in practice of its formal inquiry powers.

The new HREC should fully comply with the Paris Principles not only formally but also in a substantive sense. It should have appropriate legal functions as well as powers to monitor, investigate, review, educate and carry out research. These functions and powers should include:

¹ Hereinafter referred to as the "HREC".

² Principles relating to the Status of National Institutions (The Paris Principles) General Assembly Resolution 48/134 of 20 December 1993, Competence and Responsibilities, Principle 1. Hereinafter referred to as the "Paris Principles".

Legal Functions

a. Amicus Curiae

The power of the HREC to apply to all courts and quasi-judicial bodies to appear as *amicus curiae* in proceedings in any case that involves or is concerned with the human rights of, or discrimination against, any person.

b. Legal Representation

The capacity to offer legal assistance to persons who have instituted or wish to institute a human rights or equality claim³, including groups of people (their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations)⁴, where the claimant(s) cannot get such assistance under the existing schemes. If the persons concerned do not have the means to pay for such legal assistance, it should be provided by the HREC without cost.

In the ICCL's view, this function is of paramount importance given the particular difficulties in accessing the courts experienced by people on low incomes and the fact that this function is not vested in any other body.

c. Institution of Legal Proceedings

The HREC should have the power to institute proceedings in its own name for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights or equality of any person or class of persons.

Monitoring, Investigation and Review

a. Monitoring and Investigation

The HREC should have the power to monitor and investigate alleged human rights violations and allegations of discrimination.⁵ These should include powers of compellability of witnesses and evidence, administration of oaths and affirmations and examination of witnesses attending before the HREC.

³ Paris Principles, Additional principles concerning the status of commissions with quasi-judicial competence.

⁴ Paris Principles, *supra* n. 7.

⁵ Minister Shatter, "Government to establish a new enhanced Human Rights and Equality Commission" (9 September 2011) available at <http://www.justice.ie/en/JELR/Pages/PR11000174>

b. Review

The HREC should review and advise on the adequacy and effectiveness of the current law in the State and make submissions relating to proposed legislation that may have an impact on human rights or equality of individuals or groups of individuals.⁶ It should also have the power to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.⁷

The HREC should be given the power to conduct human rights and equality reviews of businesses or groups of businesses, the outcome of which should result in a human rights or equality action plan, the recommendations of which should be legally enforceable. The power to issue codes of practice should also be provided. The HREC should also have the power to “human rights and equality proof” proposed legislation.⁸

Education, Research and Codes of Practice

The HREC should also be equipped to carry out educational activities and to conduct research in furtherance of its mandate. In addition, the new HREC should be empowered to produce codes of practice on different aspects of equality legislation that could be useful to legal practitioners, advocates and human resources professionals.

4. How should it be structured and what working methods should it use to achieve the above?

Shortcomings of the current structures

Human rights commissioners and members of the Board of the Equality Authority were appointed without an open, transparent and merit-based process. The outgoing Chief Executive of the former IHRC was seconded from a Government department, to which the IHRC was obliged to refund the cost of his salary.

Both former bodies were under-resourced and, in the case of the former IHRC, a disproportionate share of its income from public funds was spent on the salary of its President and Chief Executive, to the detriment of its capacity to fund its programmatic work.

⁶ Equality and Rights Alliance, *Response on Proposed Merger of the Equality Authority and the Irish Human Rights Commission*, (Dublin: ERA, 2011) at p. 11. See also the Paris Principles, *supra* n. 7 Competence and Responsibilities, 3(a)(i).

⁷ Minister Shatter, *supra* n. 10.

⁸ Harvey B. and Walsh K., *Downgrading Equality and Human Rights: Assessing the Impact* (Dublin: ERA, 2009) at p. 35.

Suggested future structures and working methods

a. Appointments/recruitment

Board members and senior staff of the new HREC should be appointed in accordance with the following General Observations of the ICC Sub-Committee on Accreditation (SCA) (adopted in June 2009 by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) after the SCA meeting of March 2009):

2.2 Selection and appointment of the governing body:

The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

- a) A transparent process
- b) Broad consultation throughout the selection and appointment process
- c) Advertising vacancies broadly
- d) Maximizing the number of potential candidates from a wide range of societal groups
- e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.”

2.4 Staffing by secondment:

In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following: a) Senior level posts should not be filled with secondees.”

The recruitment procedures to be adopted should go beyond the recently-adopted practice of advertisement for “expressions of interest”, followed by vetting by civil servants and appointment after the exercise of Ministerial discretion. The Public Appointments Service (PAS) should be used to carry out a genuinely open, transparent and merit-based recruitment process for the appointment of HREC Board members and senior staff.

b. Finance and human resources

Provision of adequate human and financial resources will be essential if the HREC is to operate in an independent and effective manner.⁹ Funding for the HREC should be “ringfenced” and safeguards put in place to ensure that its budget cannot be affected if the HREC takes decisions or engages in actions that the Government considers to be unfavourable.

⁹ Paris Principles, *supra* n. 7 Composition and Guarantees of Independence and Pluralism, 2.

c. Accountability

The HREC should be formally accountable to the Oireachtas or one of its Committees, to which the HREC should present its Annual Report¹⁰, strategic plans, and annual business plans.¹¹

Formal consultative processes should be put in place to ensure that, while maintaining its independence, the HREC adopts a participative approach to its work and renders itself accountable to its key stakeholders, including HREC clients and civil society organisations.

d. Accessibility

The HREC should be accessible to everyone and this requires both physical¹² and institutional accessibility. Particular efforts will be required to ensure that the HREC makes its services directly available to vulnerable and marginalised people.

¹⁰ Minister Shatter, *supra* n. 10.

¹¹ Minister Shatter, *supra* n. 10.

¹² International Council on Human Rights Policy, *supra* n. 22 at p. 8.