



EAPN Ireland Submission on establishment of new Human Rights and Equality Commission

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The European Anti-Poverty Network (EAPN) Ireland¹ welcomes the opportunity to make a submission to the Working Group on the establishment of new Human Rights and Equality Commission.

There are some key initial points which need to be made in relation to the new body.

1. The new HREC must be given the explicit task of unequivocally promoting equal treatment and equality of opportunity as a core function as is required by the EU equality Directives.
2. The new HREC must be established as an independent structure according to the principles of the UN Paris Principles for the operation of human rights institutions. This includes the ability to carry out its functions without interference from the state, freedom to define its own tasks, diversity of representation on its board, transparency, ability to communicate freely and adequate funding to employ staff and carry out its functions.

These principles are expanded on by the EU Fundamental Rights Agency. In this the EAPN Ireland would like to highlight the importance of accountability. Key in establishing this accountability would be that the HREC would be accountable to the Oireachtas and in this regard EAPN Ireland welcomes the intention of the Minister for Justice to make the HREC accountable to the Oireachtas committee system. Secondly, the HREC needs to be accountable to civil society stakeholder organisations through a transparent approach to agreeing its strategic plans, and annual work plans and reports in a process involving constructive consultation and debate.

3. Equality between men and women is a fundamental principle of EU legislation including the promotion of gender equality in all activities. This should be explicitly stated as one of the functions of the new HREC. This principle should be realised through the implementation of gender mainstreaming and 'equality proofed'.
4. The EU Equal Treatment Directives oblige Member States to encourage dialogue with appropriate NGOs with a legitimate interest in contributing to the fight against discrimination

¹ EAPN Ireland is a community organisation with over 200 members throughout Ireland and is the Irish member of EAPN (Europe). For more information on EAPN Ireland see www.eapn.ie

with a view to promoting the principle. EAPN Ireland therefore proposes that NGOs and social partners should be given a more formal role in the operation of the HREC.

The rest of this submission is presented in two sections. The first section focuses on the existing strengths of the Equality Authority and the Irish Human Rights Commission which need to be at the heart of the functions and powers Human Rights and Equality Commission. The second section outlines a number of areas of legislative reform which need to be addressed when putting in place the legislation to establish the Human Rights and Equality Commission (HREC). These proposals aim to ensure the establishment of a cohesive and coherent body capable of protecting and promoting equality and human rights to the benefits of all people living in Ireland.

Section 1: Building on Existing Functions and Powers

EAPN Ireland recommends that the HREC should:

- a) be given the explicit function of promoting equality and human rights in the areas that come within its remit, in order to ensure a coherent and cohesive approach in this area. The HREC should also be given the function of seeking to eliminate discrimination and human rights abuses in the areas that come within its remit. EAPN Ireland believes that these should be core functions of the HREC;
- b) have the function of keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and the promotion of equality and the elimination of discrimination and, if requested by a Minister, to examine any legislative proposal and report its views on any implications of such proposals for human rights, the promotion of equality and the elimination of discrimination;
- c) maintain an information function;
- d) have the function of granting of assistance to victims of discrimination;
- e) be given the power to grant legal assistance to groups/NGOs and trade unions;
- f) be provided with resources to take sufficient cases which will establish a culture of compliance in relation to equality and human rights norms, and which will be of assistance in the drafting of authoritative Codes of Practice;
- g) be given the composite function of the IHRC and the Equality Authority in relation to the institution of proceedings in its own name and that this power should apply to all matters that come within the scope of the HREC;
- h) be given explicit power to apply to all levels of the Courts and quasi-judicial bodies to appear as *amicus curiae*;
- i) be given the power to prepare Codes of Practice in relation to matters that comes within its remit;
- j) be given the power to carry out equality and human rights reviews and prepare action plans on either a voluntary or compulsory way in relation to matters that come within its scope;
- k) have the composite power of both existing bodies in relation to research and this power should apply to all matters that come within its remit;
- l) be given the power of enquiry and these powers should apply to all matters that come within its remit;

EAPN Ireland also recommends that legislation be amended to ensure that the full scope and remit of the HREC will extend to all the function and activities of the Irish State.

Section B: Legislative Changes

This section lists the legislative changes that need to be made in order to enhance the promotion of equality and human rights and prevent discrimination. These are presented under the two areas of international instruments and the enhancement of equality legislation as follows:

1. International Instruments

The following international instruments should be ratified and implemented.

- a) The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- b) The Convention on the Rights of Persons with Disabilities.
- c) Protocol 12 to the European Convention on Human Rights.
- d) The optional protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- e) The optional protocols that enable individual complaints mechanisms under the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities.

2. Enhancement of Equality Legislation

- a) Introduce a duty on public sector organisations to have due regard to equality and human rights in carrying out their functions.
- b) Introduce a duty on public sector organisations to implement positive action measures to achieve full equality in practice in employment and service provision.
- c) Introduce a duty on private sector organisations to be planned and systematic in their approach to equality and human rights.
- d) Expand the equality grounds to include the following grounds: socio-economic status; criminal conviction; transgender; and political opinion.
- e) Expand the definition of 'carer' under the family status ground to encompass the full diversity of carers (resident and non-resident carers, and carers providing continuing or intermittent care).
- f) Redefine the age ground, without age limits, to include people under eighteen.
- g) Expand the scope of the Equal Status Acts 2000 to 20011 to explicitly include the functions of the state. The legislation would thus cover the role of the state in exercising its powers in areas such as policing, immigration controls, social protection, education and housing.
- h) Remove the ceilings on compensation made in cases under the equality legislation so that sanctions could be effective, proportionate and dissuasive.
- i) Remove the exemption in the Equal Status Acts for actions required under other legislation.
- j) Amend the exemptions in relation to religious ethos in the equality legislation to ensure that they are not a source of discrimination on other grounds, in particular on the grounds of sexual orientation and family status.
- k) Apply the provisions under the Employment Equality and Equal Status Acts, which require adjustments and reasonable accommodation for people under the disability ground, to all grounds covered by the equality legislation. An exemption in relation to these provisions,

under both Acts, would ensure that they were not a source of disproportionate burden on the employer or service provider.

- l) Amend the definitions of discrimination in the equality legislation so that they are based on prohibition of treatment that disadvantages a person on the basis of their membership of one of the grounds.
- m) Extend the time limit within which a claimant under the Equal Status Acts has to notify the person they are making the claim against, from two months to six months.
- n) Empower trade unions and non-governmental organisations to take cases in their own name.
- o) Allow the HREC power to grant legal assistance to groups/NGOs and trade unions