

**PROPOSED MERGED OF IRISH HUMAN RIGHTS COMMISSION AND
EQUALITY AUTHORITY.**

SUBMISSION

**CENTRE FOR DISABILITY LAW & POLICY,
NUI GALWAY.**

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1. INTRODUCTION.

The Centre for Disability Law and Policy at the National University of Ireland (Galway) is thankful for the opportunity to provide its views as to the proposed merger of the Irish Human Rights Commission and the Equality Authority.

The Centre was established in 2008 and publishes research based on best international practice to inform Irish policy debates. Because of its area of specialization on disability it will focus more on the first question posed in the call for proposals: vis, what do people think the new body should do.

In general, the Centre supports the merger of the Equality Authority and the Irish Human Rights Commission provided there is an ironclad guarantee of independence. This submission focuses on the vital role that the merged body can and should play to advance the rights of persons with disabilities in Ireland both generally and more specifically under the under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD, 2006) which Ireland has signed (2007) and is poised to ratify.

Article 33.2. of the UN CRPD will oblige Government to designate a framework with one or more independent mechanisms to 'promote, protect and monitor' the CRPD.

Our primary recommendation is that the Government should make a formal decision to explicitly designate the merged body as the 'independent' element in any such framework under Article 33.2 UN CRPD. This would be consistent with international best practice whereby such independent human rights and equality bodies have been designated the independent element of the relevant domestic CRPD framework. It would be consistent with the decision of the British Government to jointly designate the Northern Irish Human Rights Commission and Equality Commission as the relevant independent mechanism and thus fulfill Ireland's obligation under the Good Friday Agreement to ensure an 'equivalent level' of protection of human rights.

No effort should be spared to ensure that the merged body retains its 'A' status among national human rights institutions. No other entity in Ireland will have this coveted status and it therefore makes sense to place the new body at the very heart of the national mechanism under Article 33.2. CRPD.

Such a formal designation would also build on the substantial body of work already done by the Equality Authority and the Irish Human Rights Commission in the disability field for which they have already received international plaudits.

It bears emphasizing that the Irish Human Rights Commission played a leading role in the negotiations on the new UN disability convention. It is therefore extremely well placed in any merged entity to play a key role in translating the majestic generalities of the convention into domestic law and policy.

Other bodies can – and should play a role in the overall framework especially with respect to promoting the convention. But no body besides the merged entity will possess the full set of powers required by Article 33.2.

One criticism made about the current National Disability Strategy is that it currently lacks effective, independent and transparent monitoring. An added benefit of the official designation of the merged body as the ‘independent’ element of the domestic Article 33.2 framework would be that it would go some considerable way toward rounding out the National Disability Strategy.

2. THRESHOLD QUESTION: WHAT DO PEOPLE THINK THAT THE NEW BODY SHOULD DO?

A. The Merged Body should be Formally Designated to play the Key Roles under Article 33.2. CRPD in Ireland.

The merged body should be designated as the appropriate independent mechanism within the national framework to ‘promote, protect and monitor implementation of the UN CRPD’ as part of the overall 33.2.

Designating the merged body as the independent mechanism would be consistent with international trends. South Korea designated its Human Rights Commission as its sole mechanism under Article 33(2). Australia, New Zealand and Mexico have all built frameworks anchored on their human rights commissions. Germany has appointed the German Institute for Human Rights as the sole monitoring body. Denmark has created a framework of 3 bodies, with the Danish Institute for Human Rights at its core as the independent mechanism.

In England and Wales the Equality and Human Rights Commission has been designated under 33.2. In Scotland it is the Scottish Human Rights Commission and in Northern Ireland it is the Northern Ireland Human Rights Commission together with the Equality Commission.

The joint appointment of the Northern Irish Human Rights Commission and the Northern Ireland Equality Commission is of particular relevance to us because the Good Friday agreement requires that Ireland maintain an equivalent level of human rights protection with Northern Ireland. It

therefore makes perfect sense to mirror the Northern Irish practice in the Republic.

B. The Merged Body should have ample powers to ‘Promote’ the UN CRPD in Ireland.

The new body should have a key role in ‘promoting’ good practice, raising awareness, advising on legislation and policy, scrutiny for compliance of existing national legislation, regulations and practices, as well as detailed commentary on draft bills and other proposals, to ensure they are consistent with the requirements of the Convention.

This is a role that both the Equality Authority and the IRHC have played in the past in regard to the rights of persons with disabilities. The Equality Authority has produced detailed legislative submissions. This commendable track record of the Authority has been matched by the Irish Human Rights Commission which has made detailed submissions on mental capacity law, inclusive education rights and on the Disability Legislation Consultation Group.

Promotion is something that can be shared with other subject-specialist bodies. But the merged body should play a leading role especially as it is best placed to credibly ground ‘promotion’ in human rights and equality.

C. The Merged Body should have ample Powers to ‘Protect’ the CRPD rights in Ireland.

The merged body should be designated by Government to have a key role to ‘protect’ the rights of persons with disabilities.

In practical terms, this will mean investigation and examination of individual and group complaints, conducting of enquiries, etc. We recommend that the merged body be in a position to assist litigants. The Equality Authority has done a commendable job in this regard. Likewise the Irish Human Rights Commission can play a leading role in ‘protecting’ persons with disabilities as witness its a historic intervention on the European Court of Human Rights on the critical issue of legal capacity (2008).

It bears emphasizing that the merged body alone with have the capacity to actively ‘protect’ the UN CRPD rights. And since there can be ‘no rights without remedies’ it makes sense to place the merged body at the core of the Art 33.2. CRPD domestic mechanism.

D. The Merged Body should have ample powers to ‘Monitor’ the UN CRPD in Ireland.

Article 33.2 CRPD requires effective ‘monitoring’. Effective monitoring can be achieved through monitoring human rights violations, assessing

progress or developing indicators and benchmarks . Again, both the Equality Authority and the IHRC have an excellent track record in this area.

A prime example would be the Irish Human Rights Commission's 3rd Enquiry: *Enquiry Report on the Human Rights Issues Arising from the Operation of a Residential and Day Care Centre for Persons with a Severe to Profound Intellectual Disability*.

Monitoring is what human rights commissions and equality bodies do best. No doubt subject-specialist bodies can play a useful role within the overall framework.

E. The Merged Body should Actively Involve Persons with Disabilities in their Processes.

Article 4.3. UN CRPD requires States to actively involve persons with disabilities in relevant decision-making processes. And Article 33.3. of the UN CRPD obliges the domestic framework established under Article 33.2. to involve persons with disabilities in the relevant monitoring process. This is good practice in any event. But its specific mention in the text of the UN CRPD will oblige the merged body to innovate with respect to its working practices.

The importance of a new way of working was highlighted by the first EU Work Forum on the Implementation of Article 33 of the UNCRPD in 2010. These new work practices will be particularly important for those traditionally excluded such as persons with intellectual disabilities and mental health problems. The merged body should be specifically tasked to explore new ways of working together with civil society.

3. CONCLUSION.

Both the Equality Authority and the Irish Human Rights Commission have amply demonstrated their ability to 'promote, protect and monitor' the rights of persons with disabilities generally.

The merged body should be in prime position to become the core independent element of the national framework under Article 33.2. of the UN CRPD.

We therefore strongly recommend a formal Government decision to this effect once the merged body is established.

This would fit with the very strong international trend in this direction. It would dovetail neatly with Northern Irish practice and ensure equivalent human rights protection for persons with disabilities in the Republic.

