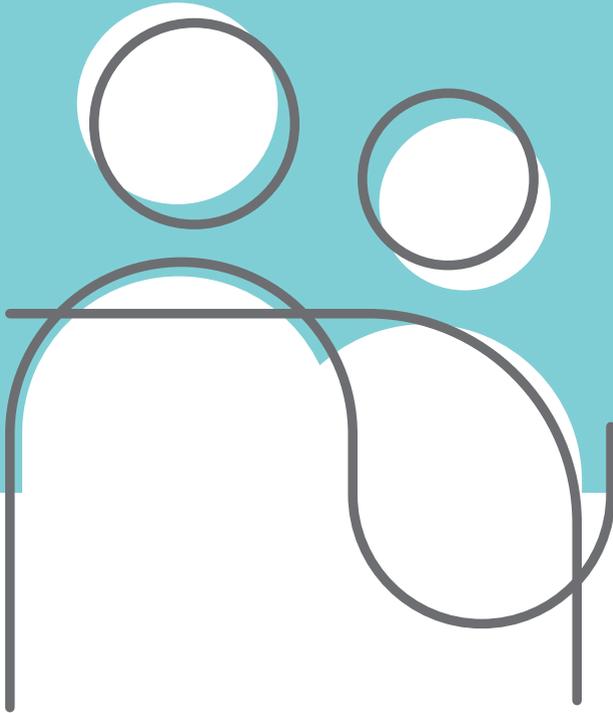


Human Rights Explained

Guide to Human
Rights Law



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

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Rights Law



**Coimisiún na hÉireann um Chearta
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Irish Human Rights and Equality Commission

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by

Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission (IHREC) was established under statute on 1 November 2014 as an independent statutory body to protect and promote human rights and equality in Ireland. It promotes a culture of respect for human rights, equality and intercultural understanding and works to eliminate human rights abuses and discrimination.

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1. Introduction

Introduction

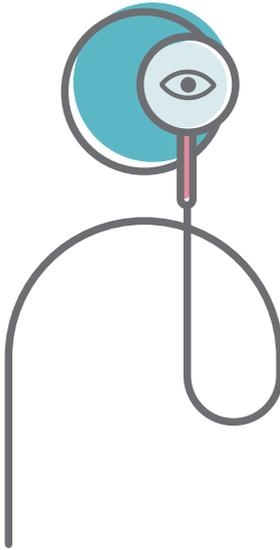
The Irish Human Rights and Equality Commission (IHREC) was established on 1 November 2014, as an independent statutory body, to protect and promote human rights and equality in Ireland. We aim to build a culture of respect for human rights, equality and intercultural understanding in Irish society. One of the ways of doing this is promoting awareness and understanding of human rights.

Everyone has human rights that should be protected. People can only claim their rights if they know about them. The aim of this Human Rights Guide is to give a brief overview of human rights. It begins by explaining what human rights are and the role of Ireland in protecting and upholding respect for them. The human rights explained here include the protections set out in the Irish Constitution, the European Convention on Human Rights and the standards in the many international conventions and treaties which Ireland has committed to respect, protect and fulfil.

The IHREC has a role to ensure that human rights and equality protections are to the fore in law, policy and practice. Therefore we review legislation, public policy and practice and advise the Government of any changes that are required to make sure human rights standards are being met. To vindicate individual human rights, the IHREC may grant legal assistance to individuals seeking to take legal proceedings involving human rights.

This booklet only gives information – it is not a legal document.

Term	In other words...
Binding	Signifies an obligation, or duty to respect.
Convention / Treaty	A formal international agreement.
In force	When a convention or treaty is 'in force' in a state, it means that the state has ratified the instrument and its provisions now apply to the state.
Protocol	An amendment or addition to a treaty or convention.
Provision	The term 'provision' is often used when referring to the content of particular articles within a law.
Ratify / Ratification	An act by which a State signifies an agreement to be legally bound by the terms of a particular convention or treaty.
State Party / Party to	A 'State party' or a 'party to' a Convention/Treaty is a country that has ratified that particular treaty, and is legally bound by its provisions.



2. What are Human Rights?

What are Human Rights?

Introduction

This section sets out briefly what human rights are, where they have come from and who is responsible for upholding them.

What are Human Rights?

Human rights are the basic rights and freedoms that belong to everyone. International law, including treaties, contain the provisions which give human rights legal effect.

Ideas about human rights have evolved over many centuries and the formal protection of these rights gained strong support after World War II. In order to protect future generations from a repeat of gross human rights abuses – in particular the Holocaust – the United Nations adopted the Universal Declaration of Human Rights in 1948. The Declaration sets out for the first time the human rights and fundamental freedoms shared by all human beings without discrimination of any kind.

Human Rights are:

- **Universally agreed basic standards** that aim to ensure that every person is treated with dignity and respect;
- **Interdependent and indivisible**, meaning that rights are linked and not protecting one right may impact on another. For example, failure to protect the right to health may affect the right to life;
- **Inherent**, meaning they belong to all people without discrimination. The principle of non-discrimination is at the centre of human rights and features in all of the human rights treaties; and
- **Usually set out in law**, through international or regional treaties, or national legislation where they form a legal statement of universally

accepted principles of how the state should treat its citizens and other people living within its jurisdiction.

Human Rights include:

- **Civil and Political Rights**, such as the right to life, the right to a fair trial and the right not to be subjected to torture; and
- **Economic, Social and Cultural Rights**, such as the right to work, to join a trade union, to health, to education, and to an adequate standard of living.

Specific groups are protected in specific treaties such as women, children, people with disabilities, minorities, and migrants.

Who are Human Rights for?

Human rights are for everyone. Central to the concept of human rights is respect for the life and dignity of **every** person.

Where are Human Rights found?

Human rights are usually set out in law. They are found in international (mainly United Nations), regional (European) treaties, or in national constitutions and national legislation.

Who is Responsible for Respecting, Protecting and Fulfilling Human Rights?

States are obliged under international law to respect, protect and fulfil human rights. The Government has the primary responsibility to uphold human rights by creating the conditions for them to be effective. However, the State does not **give** people rights; these rights **belong** to everyone.

States agree to respect, protect and fulfil the human rights contained in treaties or conventions:

- To **respect** means that states must not interfere with or restrict human rights;
- To **protect** involves passing laws and creating mechanisms to prevent violation of rights by state authorities; and
- To **fulfil** means that states must take positive action to ensure the enjoyment of human rights.

These three principles should serve all people within the state.

The Human Rights Framework in Ireland

The 'human rights framework' is a description which refers to all legal and other human rights commitments made by Ireland.

They include:

- treaties under the United Nations such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
- the European Convention on Human Rights (ECHR) under the auspices of the Council of Europe;
- the Charter of Fundamental Rights of the European Union; and
- laws that protect human rights made at national level including the Constitution and the European Convention on Human Rights Act 2003 which gave effect to the rights in the European Convention on Human Rights into Irish law.

3. Human Rights and Ireland

Human Rights and Ireland

Introduction

This section looks briefly at the Irish Constitution and introduces the European Convention on Human Rights Act, 2003.

The Irish Constitution

Bunreacht na hÉireann (the Irish Constitution) is the fundamental legal document that sets out how Ireland should be governed and the rights of Irish citizens. It was signed into law in 1937. All legislation passed by the Oireachtas must be compatible with it. The Constitution can only be changed by a referendum of the people.

The Constitution sets out a number of fundamental rights in Articles 38-44.

These include:

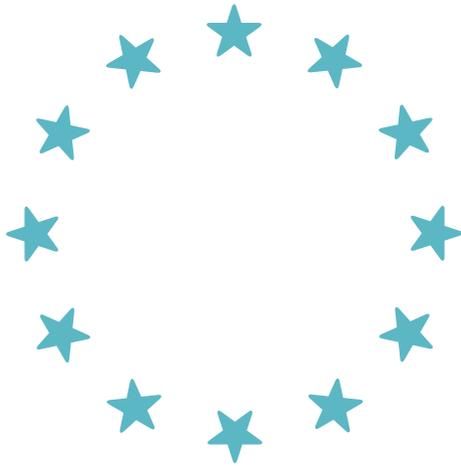
- Right to life (Article 40.3);
- Equality before the law (Article 40.1);
- Right to a fair trial (Article 38.1);
- Right to liberty (Article 40.4);
- Right to freedom of expression, assembly and association (Article 40.6.1); and
- Protection of the family (Article 41).

In addition, the Courts have interpreted the Constitution as including certain other human rights. These are referred to as **unenumerated rights** (not explicitly set out in the Constitution but recognised by the Courts), and include:

- Right to bodily integrity;
- Right to freedom from torture, inhuman or degrading treatment or punishment;
- Right to work and earn a livelihood; and
- Right to privacy.

European Convention on Human Rights Act 2003

The European Convention on Human Rights Act 2003 (ECHR Act) gives effect to the standards set out in the European Convention on Human Rights in national law. This allows these rights to be considered before the Irish Courts. The Constitution has primacy over the ECHR Act (in cases where there is any uncertainty) and, if the two conflict, the Constitution prevails. The ECHR Act will be discussed in more detail in the European section below.



4. Human Rights and Europe

Human Rights and Europe

Introduction

This section provides an overview of the European human rights system.

What is the European Human Rights System?

Protection of human rights in Europe (also called a 'regional system') is provided by two institutions with separate sets of laws and courts:

- The **Council of Europe system** includes the European Convention on Human Rights, the Revised European Social Charter and the European Court of Human Rights.
- The **European Union (EU) system** includes the Charter of Fundamental Rights, the EU Directives on Equality and the Court of Justice of the European Union.

Council of Europe

The Council of Europe was created in 1949 to protect human rights, democracy and the rule of law. Ireland was a founding member. It has 47 member states including all 28 European Union members.

European Convention on Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR) is the basis of the European human rights system. It was drafted by the Council of Europe in 1950 and has been in force since 1953. It was the first regional treaty designed to protect human rights, democracy and the rule of law.

All 47 Council of Europe member states have signed the Convention.

European Convention on Human Rights Articles include:

Article 2	Right to life;
Article 3	Prohibition of torture and ill-treatment;
Article 4	Prohibition of slavery, servitude or forced or compulsory labour;
Article 5	Right to liberty and security;
Article 6	Right to a fair trial;
Article 7	No punishment without law;
Article 8	Right to respect for private and family life;
Article 9	Freedom of thought, conscience and religion;
Article 10	Freedom of expression;
Article 11	Freedom of assembly and association;
Article 12	Right to marry;
Article 13	Right to an effective remedy;
Article 14	Prohibition of discrimination in the enjoyment of Convention rights;
Protocol 1, Article 1	Protection of private property;
Protocol 1, Article 2	Right to education; and
Protocol 1, Article 3	Right to free elections.

European Court of Human Rights

The European Court of Human Rights was established as a permanent court to handle individual cases. It decides cases brought by individuals whose Convention rights have been breached, once they have taken all possible steps to have their claim dealt with at national level. This means that the case has been before the High Court and the Supreme Court and has not been upheld by them.

States have a duty to comply with judgments against them from the European Court of Human Rights.

Cases involving Ireland

There have been over 30 judgments issued by the European Court of Human Rights in which Ireland was a party. However, the Court often considers cases against other countries which concern issues common to Ireland. The Court's case-law makes the Convention relevant and up-to-date as new judgements consider its meaning in light of present-day circumstances.

The following are key cases involving Ireland:

Ireland v UK [1978]

Article 3, Prohibition of Torture

This is the first case between two states to be brought before the European Court. It was about the use of five sensory deprivation and disorientation techniques (including sleep deprivation, exposure to noise and withholding food and drink) in places of detention in Northern Ireland. The Court found that a violation of Article 3 had taken place, as the treatment was inhuman and degrading, although it was not at the time considered severe enough to amount to torture.

O'Keeffe v Ireland [2014]

Article 3, Prohibition of Torture

The European Court found a violation of Article 3 in respect of a woman who was sexually abused in a national school when she was a child. It was found that Ireland failed in its positive obligations towards Louise O'Keeffe to have in place proper systems to prevent or punish sexual abuse in this particular case, where the sexual abuse took place in the early 1970s. The State was also found to have violated Article 13 of the ECHR, as Ms O'Keeffe was unable to get an adequate remedy for the breach of her human rights through the Irish Courts.

DG v Ireland [2002]

Article 5, Right to Liberty and Security

DG was under the age of 18, had a criminal history and was considered to be a danger to himself and others. It was decided to place him in a high-support secure educational facility for 16-18 year olds. Since no such place was available at the time, the Irish High Court allowed that he could be detained for a period of time in St Patrick's Institution for Young Offenders. The European Court found that this type of detention was not lawful for the purpose of educational supervision and found a violation of DG's Article 5 rights.

Airey v Ireland [1979]

Article 6, Right to a Fair Trial

Johanna Airey wished to have a legal separation from her husband. Because legal aid was only available in criminal cases at the time and not civil cases, Ms Airey could not afford the legal fees for the court case in Ireland. She took her case to the European Court, which found that her Article 6 rights had been violated because without legal aid and a lawyer, she had no access to the court. The decision resulted in the introduction of Civil Legal Aid in Ireland.

Dudgeon v UK [1982] Norris v Ireland [1988] and Modinos v Cyprus [1994]

Article 8, Right to Private and Family Life

In earlier European Court cases, laws prohibiting homosexuality were considered justified by the part of Article 8 that protects health and morals. The case brought against the UK by Jeff Dudgeon in 1982 changed this and, for the first time, homosexuality was considered to fall within the scope of private life. This case decriminalised homosexuality in the UK. David Norris took a similar case against Ireland and won, resulting in similar legislation being introduced in Ireland. Alexandros Modinos was also successful some years later.

Open Door and Well Women v Ireland [1992]

Article 10, Freedom of Expression

The European Court found a violation of Article 10 when the Irish Supreme Court had brought an injunction against Open Door Counselling Ltd and the Dublin Well Women Centre. The injunction prevented the two organisations from giving out information on abortion services that were legally available in other countries. The European Court found that the restrictions imposed on the two organisations from receiving or imparting information was disproportionate to the aims pursued.

European Convention on Human Rights Act, 2003

Although Ireland was one of the original countries that signed the European Convention on Human Rights, the Convention was only brought into Irish law in 2003. The signing of the Good Friday/Belfast agreement in 1998 involved a commitment to bring the Convention into domestic law on the island of Ireland. The European Convention on Human Rights Act 2003 (ECHR Act) incorporates the standards set out in the ECHR in Irish law, allowing them to be considered before the Irish Courts.

Key sections of the ECHR Act include:

Section 2 of the ECHR Act sets out that when the Court is making a judgment in relation to an existing piece of legislation or practice, it must interpret Irish law in a manner that is compatible with the ECHR standards. The ECHR standards are usually considered in parallel with the Irish Constitution as it has primacy over the ECHR Act (in cases where there is any uncertainty). If the two conflict, the Constitution prevails.

Section 3 of the ECHR Act creates a statutory obligation on every 'organ of the state', whether that is a government department, a local authority or public institution such as An Garda Síochána or the Health Service Executive to 'perform[s] its functions in a manner compatible with the State's obligations under the Convention'.

Section 4 of the ECHR Act provides that decisions coming from the European Court of Human Rights may be used in arguments before the Irish Courts.

Section 5 of the ECHR Act deals with 'declarations of incompatibility'. This means that a Court may make a declaration that a legal provision is incompatible with Ireland's obligations under the ECHR. However, the law in question remains in force, but the declaration may result in the Oireachtas repealing or replacing the law.

Section 3 Case Example

O'Donnell v South Dublin County Council [2007]

This case concerned the living conditions of a Traveller family where three of the family members were severely disabled. The High Court held that the Council's failure to provide a second mobile home to ensure adequate accommodation for the family was a failure of their duties under the ECHR Act, and therefore the Court could order a remedy to ensure compliance with the Act.

Section 5 Case Examples

Foy v An t-Ard Chláraitheoir & Others [2007]

Lydia Foy is a transgender women who was refused a birth certificate with her new name and gender. Following two similar cases in the European Court of Human Rights, where the UK was found in breach of the Convention for failing to recognise transgender people, the Irish High Court could not see any remedy in existing Irish law and made a Declaration of Incompatibility, stating that the existing Irish law is not compatible with the Convention. The Gender Recognition Act 2015 was passed by the Oireachtas to deal with the declaration of incompatibility made by the High Court.

Donegan v Dublin City Council [2012]

In this case, a Declaration of Incompatibility was also made in relation to Section 62 of the 1966 Housing Act, which provides for a summary procedure for the repossession of a local authority dwelling without the need to provide a justification for the eviction. The State appealed the decision to the Supreme Court but the Supreme Court agreed with the High Court decision that there was a violation of Article 8, because the applicants had no other 'adequate legal remedy' available to them in relation to the Local Authority's decision to evict them. Since then Section 62 has been repealed and replaced in the Housing (Miscellaneous Provisions) Act, 2014.

Positive Obligations

Case law has confirmed that, as well as ensuring human rights are not breached, public bodies have obligations to take positive measures to protect human rights. These are called positive obligations. Positive obligations are particularly relevant to the right to life, the right not to be subjected to torture or to inhuman or degrading treatment or punishment, and the right to respect for private and family life. The right to private life is quite broad in this context and includes protection of physical and mental integrity.

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member states.

European Union

The European Union (EU) is an economic and political partnership between 28 European Member States.

The EU Members established three main bodies to run the Union and to adopt its legislation:

- The **European Parliament** (directly elected representatives of the people of Europe);
- The **Council of the European Union** (comprising representatives of national governments); and
- The **European Commission** (the 'civil service' of the EU).

Charter of Fundamental Rights

The EU has over the years developed robust legislation to protect against discrimination and inequality. The EU took a major step forward in the area of promoting and protecting human rights with the adoption of the **Charter of Fundamental Rights**. The Charter contains 54 Articles on rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

It entrenches:

- all the rights found in the case law of the Court of Justice of the EU;
- the rights and freedoms enshrined in the European Convention on Human Rights; and
- other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments.

The Charter sets out a series of individual rights and freedoms.

The Charter is a contemporary statement of human rights standards and includes 'third generation' fundamental rights, such as:

- data protection;
- guarantees on bioethics; and
- transparent administration.

The Charter is consistent with the **European Convention on Human Rights** adopted in the framework of the Council of Europe: when the Charter contains rights that stem from this Convention, their meaning and scope are the same.

When the Charter applies

The provisions of the Charter are addressed to:

- the institutions and bodies of the EU with due regard for the **principle of subsidiarity**; and
- the national authorities only when they are implementing EU law.

For example, the Charter applies when EU countries adopt or apply a national law implementing an EU directive or when their authorities apply an EU regulation directly.

The Charter **does not extend the competence of the EU** to matters not included by the EU Treaties under its competence.

Fundamental Rights Agency

The European Union Agency for Fundamental Rights (FRA) is an advisory body of the European Union established in 2007. It works to ensure that the fundamental rights of people living in the EU are protected. It provides independent, evidence-based advice on fundamental rights.

5. Human Rights and the International System

Human Rights and the International System

Introduction

This section provides an overview of the international human rights system.

What is the international human rights system?

The Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948 is the cornerstone of international human rights law. From it, a system of international treaties evolved. These are enforced through supervision and reporting by expert bodies, some of which may also deal with individual complaints. The state has an obligation to respect, protect and fulfil the rights guaranteed in these instruments (see Section 1).

As a member of the UN, Ireland is expected to uphold its principles, and to protect the rights set out in international treaties through its laws, policies and practices.

What is the United Nations?

The UN is an intergovernmental body to promote international co-operation. It comprises of 193 member states, divided into six principal organs including the **General Assembly**, the **Security Council**, the **Economic and Social Council**, the **International Court of Justice** and the **Secretariat**.

According to the **UN Charter** one of the key purposes of the UN is to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The two main organs of the United Nations with responsibility for human rights are:

1. The Human Rights Council, created by the General Assembly, consists of 47 Member States of the United Nations and is mandated to address human rights violations. Ireland is currently a member of the Human Rights Council; and
2. The Office of the High Commissioner for Human Rights (OHCHR), which works to promote and protect human rights by standard-setting, monitoring, and implementing.

The United Nations Treaty System

States must ensure that the domestic system complies with international human rights law.

The main ('core') human rights treaties of the United Nations are:

1. International Covenant on Civil and Political Rights (1966);
2. International Covenant on Economic, Social and Cultural Rights (1966);
3. Convention on the Elimination of All Forms of Racial Discrimination (CERD)(1965);
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979);
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)(1984);
6. Convention on the Rights of the Child (1989);
7. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
8. Convention on the Rights of Persons with Disabilities (CPRD)(2006); and
9. Convention for the Protection of All Persons from Enforced Disappearance (CPPED)(2006).

Ireland has ratified the first six of these Conventions.

The ICCPR and ICESCR are two treaties that were elaborated on in order to develop the rights set out in the UDHR into legally-binding instruments. Together with the UDHR they are referred to as the International Bill of Human Rights.

United Nations Treaty Monitoring

Under each UN core treaty, states are required to provide regular reports to the relevant treaty body on their implementation of the treaty in law, policy and practice. A treaty body, which is a group of independent experts, then assesses the report in dialogue with the state and produces observations and recommendations on the implementation of the treaty by the state.

The relevant treaty body can receive reports from national human rights institutions, for example from the Irish Human Rights and Equality Commission in this country, from other UN agencies, and from civil society groups in reaching its conclusions.

The treaty body then produces Concluding Observations setting out its assessment of the implementation of the treaty by the state. The state is then expected to address any human rights concerns that have been highlighted. In the case of Ireland, the Irish Human Rights and Equality Commission and Civil Society publicise the conclusions and monitor the State's response.

The Universal Periodic Review

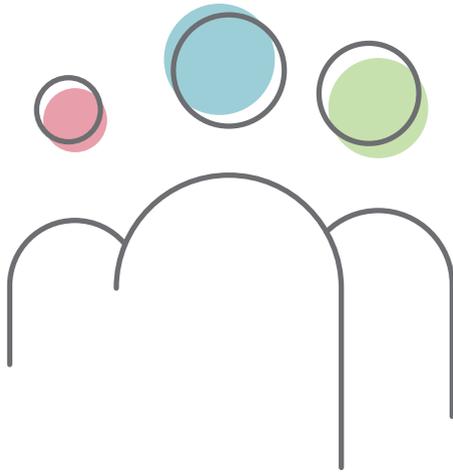
The Universal Periodic Review (UPR) was created in 2006 by the United Nations (UN).

It is a mechanism of the UN Human Rights Council. It involves a peer review of the human rights record of all UN Member States every four and a half years. The review is based on the human rights commitments a State made when it signed up to (ratified) various UN human rights treaties.

The State, the UN, the National Human Rights Institution and civil society in the State, all prepare reports which provide information on the national human rights situation. The State sends government representatives to the UN Human Rights Council in Geneva. Here the State engages in an interactive dialogue with other UN Member States. They can ask questions and make recommendations. The State may accept or reject the recommendations made to it.

The State must implement the recommendations it accepts, before the UPR of the State takes place again on a four year cycle. At the next UPR, the State must then report on how it has implemented the recommendations from its previous review.

Ireland was examined under the UPR for the first time in 2011. The Human Rights Council issued a set of recommendations to Ireland on actions it should take to improve its compliance with international human rights standards. Ireland will be examined again in 2016. The Irish Human Rights and Equality Commission and civil society organisations will submit reports on their assessment of Ireland's record since it last reported.



6. The role of the Irish Human Rights and Equality Commission

The role of the Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC) is an independent statutory body set up to promote and protect human rights and equality in Ireland. It is Ireland's National Human Rights Institution recognised as such by the United Nations. It is also Ireland's National Equality Body for the purpose of EU Law.

The IHREC carries out its functions by:

- **Keeping under review the adequacy and effectiveness of law, policy and practice** in the State relating to human rights and equality, by reviewing legislation and policy and by making recommendations to Government;
- **Consulting with relevant national and international bodies** around human rights and equality issues;
- **Offering expertise in human rights law to the Irish Courts** through its mandate to act as *amicus curiae* (or 'friend of the Court') before the High Court, Court of Appeal and Supreme Court;
- **Monitoring Ireland's record on meeting its human rights obligations** and reporting on it;
- **Conducting inquiries into human rights and equality issues** in the State;
- **Promoting understanding and awareness** of human rights and equality;
- **Granting legal assistance to individuals seeking** to vindicate human rights in the State such as by providing (1) legal advice, (2) legal representation before the Courts or Workplace Relations Commission and/or (3) other related practical assistance; and,
- **Initiating legal proceedings in the name of the IHREC** in relation to a matter concerning the human rights of a person or group, or initiating

a complaint under the equality legislation in relation to apparent discrimination.

Legal Assistance

In a small number of cases, the IHREC can provide representation to people taking cases to the Courts. Legal representation is granted subject to its founding legislation and the guidelines it has adopted.

Information and support

The Irish Human Rights and Equality Commission provides information to the public on human rights. This guide gives an outline of the system for protecting human rights in Ireland. If you are seeking specific information about human rights in Ireland additional information is available on our website www.ihrec.ie or by contacting our **Public Information Centre** at:

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