

# Tar Isteach

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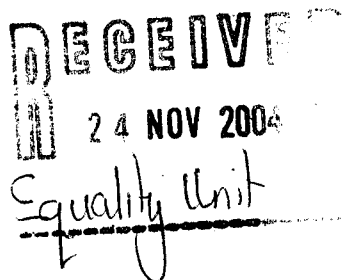
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Monday, 22 November 2004

Single Equality Bill  
SEB Team  
OFM/DFM  
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Ref: Response to Single Equality Bill Consultation

Dear Sir or Madam:

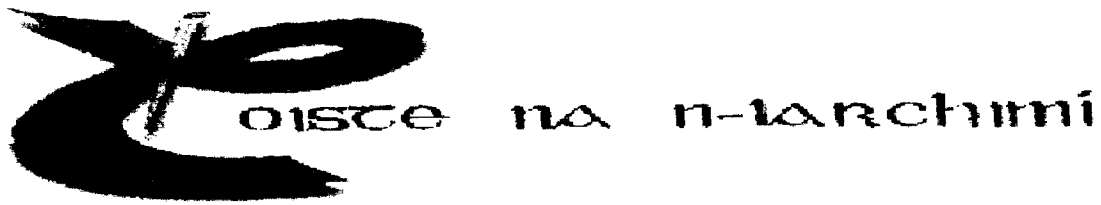
Our organisation fully endorses Coiste Na n-Iarchimí's response to the Single Equality Bill Consultation.

The issues contained in the response are of great importance to our organisation the constituency we represent.

Enclosed is a copy of the Coiste's response.

Yours sincerely,

**PAUL O'NEILL**  
**CHAIRPERSON TAR ISTEACH**



## ***Response to Single Equality Bill Consultation***

### **1. Introduction**

Coiste na n-Iarchimí is the national network for republican ex-prisoners. We represent the interests of 15,000 republican ex-prisoners, displaced persons, activists and their families. Our network, largely funded through EU Peace funds, comprises 15 local projects employing 65 people who provide services and deliver projects which touch the lives of over 10,000 participants each year. Our work is focussed on the empowerment of local communities and peace-building through dialogue and the promotion of national reconciliation.

### **2. The equality context**

As well as the historic discrimination against the catholic and nationalist community – which led many to become republican activists in the first place – ex-prisoners also suffer specific discrimination because of their involvement in the conflict.

We thus have a dual reason for interest in legislation designed to address continuing inequality. Despite recent research which shows that Fair Employment legislation has made significant inroads into historic inequality experienced by the catholic community, this research also shows that the improved situation is disproportionately located in certain sectors of the public service (**Fair employment: A Generation On**, edited by Bob Osborne and Ian Shuttleworth, Blackstaff, 2004). Moreover, the research shows that catholic women and catholics from younger age groups have benefited disproportionately from improvements.

Thus, the age and gender profile of political ex-prisoners indicate that they are unlikely to have benefited from any improvement. Though no accurate figures exist for the numbers of political ex-prisoners, we estimate that 15,000 people were imprisoned during the conflict for republican activity. Of these, perhaps 5% were women. The age profile is overwhelmingly 45+.

### **3. Specific barriers to equality**

In addition to religious and political opinion disadvantage, ex-prisoners face a further barrier to obtaining employment. This arises from possession of a “criminal” conviction and the widespread pre-employment record checks which have developed due to concerns about child protection. Routine pre-employment vetting is carried out, for example, in the civil service and by many other public employers. We completely accept the need for robust child protection systems. However, these systems catch our constituency in an administrative web that bars them from many aspects of full citizenship.

Because the vast majority of sentences imposed by the courts during the conflict were over two and a half years, these will never become “spent” (under the Rehabilitation of Offender regime) and therefore must always be declared.

Given this variety of factors, it is unsurprising that rates of long-term unemployment amongst ex-prisoners – according to localised research conducted in the late 1990s amongst our network – are so high: 87% in Upper Springfield West Belfast; 65% in New Lodge, North Belfast; 82% in County Monaghan, 40% in Co Louth. More recent forthcoming research indicates that, in North Belfast, current unemployment stands around 40%. Similarly, our contacts indicate that the levels in Co. Monaghan will have significantly improved. However, this must be seen in the context of much lower general unemployment rates (5% for the general population in the 6 counties). The research will also show that ex-prisoners and their families remain disproportionately dependent on state benefits and that those who have employment are therefore in very low income sectors. Similarly, very few will typically work in the public sector (where 40% of jobs are located in the 6 counties).

The result is that many ex-prisoners are pushed into the informal economy or self-employment. However, the latter option is fraught with difficulties as well arising from

the possession of a “criminal” record. Accessing finance, accessing consumer credit licenses, securing service contracts are all subject to vetting procedures which adversely affect our client base. It should also be noted that political ex-prisoners’ family members are also affected by the various barriers.

As well as the employment-related issues, ex-prisoners also have to negotiate the barrier of possession of a “criminal” record in the following areas:

- applying for taxi licences and bus operator licences from the Department of the Environment;
- they have difficulty accessing insurance or mortgage facilities. All application forms request “criminal” conviction information;
- they cannot adopt children. Health Boards bar those convicted of violent offences from eligibility for adoption;
- they cannot access compensation when they are themselves victims of attacks on their person or their property;
- they face difficulties travelling because their records appear on security checks leading to harassment at ports. In addition, there are countries – such as the USA, Canada and Australia – which refuse to issue visas to political ex-prisoners.

#### **4. The political context**

Relevant legislation makes no distinction between political ex-prisoners and social (or ordinary) ex-prisoners. Thus, all references are to “criminality”, “offences”, “rehabilitation”, the use of a “criminal” record to assess whether someone is a “fit and proper person and so on.

This language is inimical to our client-base and to us as their representative network. The prison protests in the 1970s and the hunger-strikes in 1980-1981 were focussed on this ideological struggle between government and republican prisoners. While

government never acknowledged in public or in legal form the distinction, the facts were clear:

- Republicans were processed under emergency law, not ordinary legislation;
- They were convicted in special courts with no juries;
- They were housed in a separate prison;
- The regime in that prison was different; and
- Separate release arrangements were established as part of the Good Friday Agreement.

It is also widely acknowledged that the profile of republican ex-prisoners is different from that of offenders. They are not seen by their community as requiring “rehabilitation”; they very often have positions of community leadership; their involvement in the conflict is seen as a political choice not a sign of deviant behaviour; there is no public safety concern that they will get involved in criminality. One only needs to look at the number of political ex-prisoners who have been elected when standing for Sinn Féin to see that their imprisonment is no barrier to political advancement as far as their electorate is concerned.

Given all this, the fact that possession of a “criminal” record impacts on our client base in precisely the same way as on a rapist, a paedophile or fraudster is contrary to political and community reality as well as insulting and dispiriting.

Apart altogether from the legal discrimination, ex-prisoners will have to cope with political prejudice of employers and human resource personnel who access personal information on application forms and through vetting procedures.

## **5. Political ex-prisoners and the Peace process**

The Good Friday Agreement contained the following commitment:

*“The governments continue to recognise the importance of measures to facilitate the re-integration of prisoners into the community by providing support both prior to and after release, including assistance towards availing of employment opportunities, re-training and/or re-skilling, and further education.” (Good Friday Agreement, section on prisoners at paragraph 5)*

Despite this, neither government has brought forward any policy initiative to address the barriers outlined above. Nor has there been any review of legislation and administrative procedures directed at the concerns of political ex-prisoners.

The requirement of integration has been endorsed in the courts by reference to the status of the Good Friday Agreement and subsequent legislation. (See Kerr J., **In the matter of an application by Damien McComb for Judicial Review** in the High Court in Belfast on Monday 7<sup>th</sup> July 2003, appended to this document.) In this case, the judge said that there is a positive duty on public authorities to take account of early release arrangements and their consequence for “re-integration” in their guidelines and policies.

Given the nature of legal challenges, the ruling is narrowly framed.

In our view, the spirit of the peace process should inform considerations of legislative reform relating to equality and dealing with discrimination. This consultation and proposed legislation is therefore an opportunity to address some of our concerns.

## **6. The proposed Single Equality Bill: general comments**

We welcome the proposals as a way of simplifying an increasingly complex area of law. We are in favour of levelling up rather than down across the grounds in order to reflect the commitment of society to equality and justice as an entrenchment of peaceful development on the island. We are in favour of emphasising positive duties on employers rather than opting for minimal statements of negatives. We agree that the purpose and principles outlined are positive. We believe that the scope of the legislation should be as wide as possible and should certainly include the widest possible inclusion of GFS. We are also in favour of seeking to promote mediation as a way of avoiding litigation.

In relation to the Equality Commission, we would point to a major problem with the institution as we have experienced it. This is that the Commission as a whole is not “representative of society”. This is the formulation which is used for both Human Rights Commission and the Judicial Appointments Commission. In our experience, the republican community by and large finds it hard to see its perspective reflected in the attitudes and commitments which dominate the Commission. Certainly, there is

little understanding of the concerns of our client base in their approach to the questions we raise.

In our view, the question of Commission membership is one which should legitimately be addressed in a Single Equality law. If all sectors of society do not have confidence in the body established to police the law, this will contribute to a dilution of its impact.

Furthermore, our experience, like that of many other interest groups, is that the Commission has a reluctance to take on unpopular cases – such as one exploring discrimination against two of our clients. The process lasted three years before we got a (negative) decision. We were completely dissatisfied with explanations, including an unwillingness to meet with us to explain decisions. Finally, legal opinion was sought from an English-based barrister with little knowledge of the experience of our client base. It was therefore almost inevitable that the legal opinion would be adverse from our point of view.

This is a question, no doubt, of resourcing. But it is also, in our view, an indication of the lack of representativeness on the Commission overall.

## **7. Specific issues of concern to political ex-prisoners**

There are two specific issues which we wish to highlight.

- The first is the importance of including “possession of a conviction” as a non-discrimination ground.
- The second concerns the exemption currently located at Art. 2.4a of FETO.

In relation to extending the grounds to cover possession of a conviction, we are clearly in favour of this. From our point of view, we are interested in non-discrimination against those in “possession of a conflict-related conviction”. We recognise, however, the need for the legislation to address other convictions. We refer you to a recent review of equality legislation issued by the Irish Department of Justice, Equality and Law Reform (**Extending the Scope of Employment Equality Legislation - Comparative Perspectives on the Prohibited Grounds of Discrimination** which is accessible on the departmental web-site at [www.justice.ie](http://www.justice.ie)). This indicates that “possession of a conviction” is used as a non-discrimination

ground in a number of pieces of legislation in Canada and Australia. In particular, as the Equality Commission's own discussion paper on the issue of extending grounds points out, the Northern Territories in Australia has the formulation "*possession of an irrelevant criminal conviction*" as the wording for the relevant ground. In our opinion this would be a less objectionable wording which allows for:

- Assessment as to the continuing relevance of the conviction; and
- legitimate concerns regarding particular convictions such as fraud offenders seeking financial employment or convicted child molesters seeking residential child-care employment.

In our view, conflict-related convictions will be irrelevant in the context of continuing steps towards a just peace. Such a formulation would therefore provide protection to loyalist and republican ex-prisoners from prejudice and discrimination.

The second issue concerns the exception which states that a political opinion supporting the use of violence for political ends is not protected under the legislation. A recent case before the Fair Employment Tribunal (**Morrow v. Sperrin Lakeland Health & Social Care Trust** Case Ref:411/02FET) has provided verification of our view that employers will use FETO Art.2.4a as grounds for refusing to employ political ex-prisoners. In this case the Tribunal accepted the respondent's argument that Art 2.4 precluded the ex-prisoner from bringing a claim under FETO. The Tribunal ruled, therefore, that the case did not even need to proceed to a full hearing.

In our view, this now provides *carte blanche* for employers to discriminate against those with conflict-related convictions. Moreover, it indicates the danger of having such an exception in the legislation. The correct place for dealing with the use of violence is the courts, not equality legislation. It goes completely against the spirit of the Good Friday Agreement that continued exclusion should operate against prisoners released at the close of conflict in the way that Art. 2 (4) allows.

We strongly recommend that the existing exclusion be excised.

**18<sup>th</sup> November 2004**