



Opening statement by Sinéad Gibney, Chief Commissioner, Irish Human Rights and Equality Commission.

To be delivered to the Oireachtas Special Committee on Covid-19 Response – 9 September, 2020.

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Thank you to the Chair and Members for your invitation to be here today.

While this marks the Commission's second appearance before this Committee, it is my first opportunity, since appointment as Chief Commissioner in July, to engage directly with Oireachtas Members. I'm joined today by my fellow Commission Member, Sunniva McDonagh.

Conscious of time, I won't cover the Commission's powers and role, except to say that the Commission has a statutory mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality.

On behalf of the Commission I'd like to make three specific points today relating to the COVID-19 legislative framework, and human rights and equality – on emergency powers, legislative vulnerabilities and tools to safeguard rights.

Firstly on emergency powers related to COVID

The key message we want to communicate to you, as legislators, is that emergency legislation should be the exception, not the norm. Where emergency legislation is used, it must meet international human rights requirements of legality, necessity, proportionality and non-discrimination.

It's also essential that, once introduced, there is effective oversight of how new powers are implemented to ensure that they continue to meet these standards.

The recent emergency legislation was introduced under the State's ordinary constitutional structure rather than any formal emergency status. While not recommending the need to declare any formal state of emergency, we do need clarity on what "emergency legislation" means in terms of legislative practice, monitoring of implementation and its active oversight.

The Commission has consistently raised the need for more detailed, disaggregated data on the implementation of emergency powers afforded to An Garda Síochána in the course of the pandemic.

After all, how can you, as lawmakers, know if emergency powers are being enforced in line with human rights and equality principles if you don't have access to information about the people most impacted by them? This could include, at a minimum, information about ethnicity, age, gender, disability and geographical location.

Secondly, the pandemic has exposed problems in our existing legislative framework when it comes to the ability of all people to assert their own rights

For those amongst us who have disabilities, for example, a pandemic, with its restrictions on movement and personal liberty, raises the spectre of a return to a more institutionalised past.

It is critical that legislation is enacted without delay which will strengthen human rights protections for this group, such as the Disability (Miscellaneous Provisions) Bill.

It's also essential that legislation which protects people rendered more vulnerable by their circumstances, and which shines a light on places of detention, are prioritised, including the commencement of the *Assisted Decision Making (Capacity) Act 2015*, and the reform of the *Mental Health Act 2001*.

A glaring legislative gap is the ratification of the Optional Protocol to the Convention Against Torture which Ireland signed in 2007, achievable by passing the *Inspection of Places of Detention Bill*. This would also formally establish Ireland's National Preventative Mechanism. This mechanism provides a structure through which public bodies that inspect places of detention and institutions can come together to identify human rights concerns, and propose ways in which potential human rights violations can be avoided and prevented.

The UN Sub-Committee on the Prevention of Torture says that an effective National Preventative Mechanism is the most significant single measure a State can take to prevent ill-treatment in places of detention occurring over time.

These legislative gaps are not cost free. And the reason that they are not cost free, is because they deliver real and meaningful impact to people's lives. We recommend that they be resolved by the Government and the Oireachtas as a matter of urgency.

Finally, we must look at what legislative tools we already have to safeguard rights during this crisis, and in the future

Since 2014, all public bodies have a statutory obligation to implement the Public Sector Equality and Human Rights Duty.

If you are a public body providing a public service, from delivering healthcare to shaping new laws, you have an obligation to identify how what you do might impact on the equality and human rights of your service users, people affected by your policies, your staff, and to take positive steps to protect human rights and prevent discrimination.

We recognise that public bodies are innovating in the delivery of their services, and developing new services to address the challenges of Covid. By implementing this Duty, they can proactively avoid new and possibly unforeseen discrimination, and raise institutional consciousness of the rights and equality of both people who use public services, and those who deliver them.

The pandemic has exposed underlying rights and equality issues that made it a much more challenging experience for some groups and individuals in our communities. It also exposed a solidarity and an appetite to improve opportunities and outcomes for those people. The Public Sector Duty, and the other legislative improvements that I've mentioned today, can help us build that just and compassionate Ireland so that for future crises, and indeed simply for the future, we take better care of all members of our society.

I'd like to pay tribute to the work of this Committee. You have provided critical democratic oversight of the impact of, and response to, this pandemic.

The Irish Human Rights & Equality Commission remains, as ever, ready to offer any assistance we can to the Oireachtas.

ENDS