

# **Consultation on Terms of Reference and Work Programme for the Joint Oireachtas Committee on Disability Matters**

Submission by the Irish Human Rights and  
Equality Commission

*November 2020*



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

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## Introduction

The Irish Human Rights and Equality Commission ('the Commission') welcomes the opportunity to contribute to the development of Terms of Reference and a work programme for the Joint Oireachtas Committee on Disability Matters.

The Commission is Ireland's national human rights institution, national equality body, and designate Independent Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities ('CRPD'). The Commission has established a statutory Disability Advisory Committee to assist the Commission in its role of monitoring the implementation of the CRPD.<sup>1</sup>

In line with the principles that underpin the CRPD,<sup>2</sup> the Commission envisions a society in which there is respect for the inherent dignity and individual autonomy of all persons with disabilities. Disabled people should be supported to live independently and participate fully in society on an equal basis to others. There must be respect for difference and acceptance of persons with disabilities as part of human diversity, as well as respect for the evolving capacities of children with disabilities. Society should be accessible and offer equality of opportunity and outcome for all disabled people, including equality between men and women with disabilities.

The Covid-19 pandemic has highlighted the limited realisation of disabled people's rights and given rise to significant risks of discrimination and the undermining of rights for persons with disabilities. The Commission has worked to promote a disability-inclusive response to the Covid-19 pandemic and our transition from it.<sup>3</sup>

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<sup>1</sup> The Terms of Reference for the Commission's Disability Advisory Committee are to a) assist and advise the Commission on matters related to its function of keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of people with disabilities, and b) advise the Commission on the fulfilment of its CRPD Article 33 independent monitoring role. Disabled people comprise the majority of members of the Advisory Committee.

<sup>2</sup> Article 3 CRPD.

<sup>3</sup> IHREC, [\*The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response, June 2020.\*](#)

## Terms of Reference

It is the Commission's view that the Terms of Reference for the Joint Oireachtas Committee ('JOC') on Disability Matters should take account of the following.

### Definition of persons with disabilities

It is important for the Committee to establish with clarity who exactly is included in the scope of its work. In this regard, the Commission notes the definition of persons with disabilities set out in Article 1 of the CRPD: "Persons with disabilities include people who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".<sup>4</sup>

In addition, the Committee's work should be based upon positive, inclusive language and terminology that fosters respect for the dignity of disabled people and avoids stereotypes and prejudice. The Committee has the opportunity to provide leadership on disability matters in parliament and in public discourse more broadly. Inclusive language can mean that people feel well represented and included in the work of the Committee, but without this the Committee risks quickly becoming distant from the community it hopes to represent.

**The Commission recommends that the Terms of Reference for the JOC on Disability Matters should refer to the definition of persons with disabilities provided in Article 1 CPRD and commit to the Committee using inclusive, rights-focused language in its work that recognises the inherent dignity of disabled people.**

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<sup>4</sup> Article 1 CRPD.

## Principles

A key task for the Committee will be monitoring Ireland's implementation of the CRPD. As such, the work of the Committee should be guided by principles that align to the general principles that underpin the CRPD, as set out in Article 3 of the convention:

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Equality between men and women;
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

**The Commission recommends that the Terms of Reference for the JOC on Disability Matters should provide for the work of the Committee to be underpinned by the general principles set out in Article 3 CRPD.**

## Participation of persons with disabilities

Article 4 (3) CRPD requires that in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties must closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.<sup>5</sup>

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<sup>5</sup> Article 4 (3) CRPD.

In this regard, representative Disabled Persons Organisations (DPOs) are organisations that are led, directed and governed by persons with disabilities, with a clear majority of their membership being persons with disabilities themselves.<sup>6</sup> The State should give priority to the views of DPOs on matters relating to persons with disabilities, while it should also actively support the further development and involvement of DPOs by providing an enabling environment for such organisations, for example by providing sustainable core funding, capacity-building and training.<sup>7</sup>

In prioritising direct engagement with persons with disabilities and DPOs, the Committee will need to support and facilitate the participation of disabled people in its work, including people with specific support needs. This presents an opportunity for the Committee to learn from the experience of facilitating participation and to develop good practice in this respect, which could then be utilised across other Dáil committees and fora. Enabling effective participation in this Committee is particularly important given the low level of representation of people with disabilities in elected office, which means there is little direct participation of disabled people in policy development as parliamentarians.

Towards this end, the Committee should proactively seek to maximise the accessibility of its working methods and to meet any requests it receives for reasonable accommodations.

**The Commission recommends that the Terms of Reference for the JOC on Disability Matters should require that the Committee prioritise direct engagement with persons with disabilities themselves, through their representative Disabled Persons Organisations or through other forms of engagement where necessary. To facilitate this engagement, the Committee's Terms of Reference should commit to the proactive provision of accessible working methods and reasonable accommodation supports.**

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<sup>6</sup> As noted by the Committee on the Rights of Persons with Disabilities, Disabled Person's Organisations "should be distinguished from organizations "for" persons with disabilities, which provide services and/or advocate on behalf of persons with disabilities, which, in practice, may result in a conflict of interests in which such organizations prioritize their purpose as private entities over the rights of persons with disabilities". See Committee on the Rights of Persons with Disabilities, [\*General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention\*](#), at paras.11, 13.

<sup>7</sup> Committee on the Rights of Persons with Disabilities, [\*General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention\*](#), at paras.60-64.

## Diversity of persons with disabilities

The CRPD recognises the diversity of persons with disabilities,<sup>8</sup> and includes specific articles on women with disabilities (Article 6) and children with disabilities (Article 7). This diversity should be accounted for in the work of the Committee and should include diversity in terms of the experience of women with disabilities,<sup>9</sup> children with disabilities,<sup>10</sup> different impairment groups,<sup>11</sup> people from across the grounds under Irish equality legislation,<sup>12</sup> and persons living in poverty.<sup>13</sup>

**The Commission recommends that the Terms of Reference for the JOC on Disability Matters should require that the Committee account for the diversity of persons with disabilities in the execution of its work.**

## Work Programme

The Commission is of the view that the work programme for the Joint Oireachtas Committee on Disability Matters should give consideration to the following.

### Realisation of the State's obligations under Article 4 (3) CRPD

As noted above, under Article 4 (3) CRPD States Parties must closely consult with and actively involve all persons with disabilities, through their representative organizations, in the development and implementation of legislation and policies to implement the convention and in other relevant decision-making processes. The Committee on the Rights of Persons with Disabilities has provided detailed guidance on what is required of States

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<sup>8</sup> See preamble to the convention, at paragraph (i).

<sup>9</sup> Article 6 CRPD.

<sup>10</sup> Article 7 CRPD.

<sup>11</sup> As identified under Article 1 CRPD to include people with physical, intellectual, sensory and mental impairments.

<sup>12</sup> The grounds under equality legislation include gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community.

<sup>13</sup> The preamble to the CRPD, at paragraph (h), highlights the fact that the majority of persons with disabilities live in conditions of poverty.



Parties to realise their obligations in this regard with its *General Comment No.7*.<sup>14</sup> This guidance offers a framework with which to assess the State's efforts to realise its obligations to involve disabled people in policymaking, including via the newly established Consultation and Participation Network.

The Commission notes the State's funding of a Consultation and Participation Network and its intention for this initial network to ensure, through the development and implementation of a new participation and consultation model, that Ireland fulfils its CRPD obligations regarding participation.<sup>15</sup>

**The Commission recommends that the JOC on Disability Matters assesses the adequacy and effectiveness of the State's Consultation and Participation Network and other existing participation mechanisms. Such an assessment should inform the development of a participation system that is fully inclusive of and accessible to all persons with disabilities in order to realise the State's obligations under Article 4 (3) CRPD on an ongoing basis.**

## Covid-19: impact, response and transition

Informed by the advice of our Disability Advisory Committee, the Commission has noted how Covid-19 has given rise to significant risks of discrimination and the undermining of rights for persons with disabilities in areas ranging from health and wellbeing to education and employment.<sup>16</sup> For example, the current withdrawal and partial reopening of services, such as therapeutic supports and adult day services, is significantly impacting both adults and children with disabilities.

Acknowledging this impact, the Commission has recommended that an explicit human rights and equality-based approach be taken to building a transition out of Covid-19 that is fully inclusive of disabled people, as the alternative risks a permanent erosion of the human rights and equality of persons with disabilities.

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<sup>14</sup> Committee on the Rights of Persons with Disabilities, [\*General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention\*](#).

<sup>15</sup> Department of Justice and Equality, [\*Launch of Disability Participation and Consultation Network\*](#).

<sup>16</sup> IHREC, [\*The Impact of COVID-19 on People with Disabilities Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response, June 2020\*](#).

The response to Covid-19 in respect of disability requires more than ‘getting back to normal’, as for many persons with disabilities ‘normal’ wasn’t working prior to the pandemic. Disabled people need a ‘new normal’ in which their rights as members of Irish society are realised on an equal basis to others. Covid-19 has demonstrated how rapidly policy and practice can change, and limitations on resources be overcome, when deemed necessary.

**The Commission recommends that the JOC on Disability Matters reviews the impact of Covid-19, and the State’s subsequent response, on the rights of disabled people, with a view to informing the development of a transition from Covid-19 that is inclusive of all persons with disabilities.**

## **Article 19 CRPD – Living independently and being included in the community**

Article 19 CRPD sets out the equal right of all persons with disabilities to live in the community, with choice and control over where and with whom they live, facilitated by the provision of appropriate individualised supports and services to ensure their full participation in society.<sup>17</sup> Article 19 requires a transition away from the medicalised and charitable model of disability services to a human rights-based model of disability,<sup>18</sup> in which disabled people access State services and supports by right as members of society. The Commission has noted how the Public Sector Equality and Human Rights Duty offers a pathway to this new model, including by way of its incorporation into public procurement processes in the context where publicly funded services are provided through non-State actors.<sup>19</sup>

To this end, the State must phase out institutional disability services and re-allocate funds into the development of both disability specific and accessible mainstream community-

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<sup>17</sup> Article 19 CRPD.

<sup>18</sup> On the human rights model of disability, see Theresia Degener, ‘Disability in a Human Rights Context’, *Laws*, 2016, 5 (35). Available from: <https://www.mdpi.com/2075-471X/5/3/35>.

<sup>19</sup> IHREC, *The Impact of COVID-19 on People with Disabilities Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response, June 2020*, at paras.46-48.

based alternatives.<sup>20</sup> It is almost 10 years since the State's framework for the deinstitutionalisation of disability services was published in 2011, namely the HSE's *Time to Move on from Congregated Settings - A Strategy for Community Inclusion* document. Given that it preceded Ireland's ratification of the CPRD in 2018, there is a need for a CRPD-aligned strategy that will realise Article 19 ensuring that persons with disabilities live independently and be included in the community.

**The Commission recommends that the JOC on Disability Matters considers the measures required to realise the implementation of Article 19 CRPD including the completion of deinstitutionalisation.**

## Article 27 CRPD – Access to work and employment

Meaningful inclusion and participation in the community involves access to decent work and employment for disabled people. However Ireland's employment rate gap between people with and without disabilities is the highest in the EU (42.2 percentage points compared to 24.2 percentage points in the EU).<sup>21</sup> Persons with disabilities are less likely to be in employment compared to those without disabilities and, once in the labour market, are more likely to be unemployed.<sup>22</sup> Since its establishment, the Commission has received a persistently high level of requests for assistance in relation to disability discrimination in employment.<sup>23</sup> The Commission has expressed concern that discrimination on the grounds of disability remains persistent, pernicious and prevalent in Ireland's workplaces and recruitment practices, and has noted the importance of integrating reasonable

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<sup>20</sup> Committee on the Rights of Persons with Disabilities, *General comment No. 5 (2017) on living independently and being included in the community*, CRPD/C/GC/5. Available to download from: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>.

<sup>21</sup> EU Commission 'Commission Staff Working Document: Country Report Ireland 2020' { Com (2020) 150 Final} p.40. Available to download from: [https://ec.europa.eu/info/sites/info/files/2020-european-semester-country-report-ireland\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2020-european-semester-country-report-ireland_en.pdf)

<sup>22</sup> See NDA, [NDA Factsheet 2: Employment](#).

<sup>23</sup> Of the 474 queries the Commission's Your Rights service received regarding discrimination under the Employment Equality Acts in 2019, 36% concerned the disability ground, making it the most commonly inquired about ground regarding potential discrimination in employment. See IHREC, [Annual Report 2019](#).

accommodation into routine recruitment, selection and employment processes in order to address the employment gap for people with disabilities.<sup>24</sup>

**The Commission recommends that the JOC on Disability Matters examines why Ireland has such poor employment rates for people with disabilities and that it works with disabled people to identify meaningful measures to effectively remedy this.**

## Article 29 CRPD – Political Participation

Article 29 CRPD obliges the State to guarantee to persons with disabilities all political rights and the opportunity to enjoy them on an equal basis with others. However, disabled people are significantly under-represented in the Oireachtas and in local Government, in the context where persons with disabilities comprise 13.5% of the population. Despite representing a significant voting bloc, disabled people face a range of barriers to realising their political rights as voters and as electoral candidates.<sup>25</sup> In this context, the Commission has recommended that the Government's proposed Electoral Commission<sup>26</sup> be mandated to promote more equal political participation for groups including persons with disabilities, and to set and monitor accessibility standards for the use of polling stations.<sup>27</sup>

**The Commission recommends that the JOC on Disability Matters examines the barriers to political participation for persons with disabilities and develops proposals for how these might be addressed.**

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<sup>24</sup> IHREC, [Submission to the Department of the Taoiseach on the European Semester 2020 and the National Reform Programme, March 2020](#).

<sup>25</sup> As documented by a member of the Commission's Disability Advisory Committee; see Kitty Holland, '[People with disabilities faced 'enormous barriers' to voting in general election](#)', *Irish Times*, 9 March 2020.

<sup>26</sup> The Commission notes that the legislation to establish an Electoral Commission, the Electoral (Reform) Bill, is expected to undergo Pre-Legislative Scrutiny in Autumn 2020, according to the Government's legislation programme.

<sup>27</sup> IHREC, [Recommendations on the Establishment of an Electoral Commission, March 2019](#).

## Article 6 CRPD – Women with Disabilities, Article 7 CRPD – Children with Disabilities

While recognition of the diversity of persons with disabilities should underpin all of the Committee's work by way of inclusion in its Terms of Reference, it is vital that issues concerning the rights of women with disabilities and children with disabilities specifically are identified, considered and acted upon in Ireland's implementation of the CRPD, as required under Article 6 and 7 of the convention. Such issues should be addressed on the basis of close engagement with and the active involvement of women and children with disabilities, in keeping with the guiding principle of participation. The relevant advice of the Committee on the Rights of Persons with Disabilities offers a framework within which to conduct this work.<sup>28</sup>

**The Commission recommends that the JOC on Disability Matters undertakes to examine issues specific to the rights of women with disabilities and children with disabilities, with this work to be informed by meaningful participation for these groups in the Committee's work.**

## Legislative Framework

The Commission has noted how Covid-19 has exposed gaps in the State's legislative framework in respect of human rights and equality. Regarding disability rights, these gaps include the non-commencement and delayed reform of enacted legislation, for example the *Assisted Capacity Decision Making (Capacity) Act 2015*, and the *Mental Health Act 2001*. Further, outstanding legislation, if enacted, would see the State better equipped to protect disability rights in the future, for example the *Inspection of Places of Detention Bill*, which would ratify the Optional Protocol to the Convention Against Torture (OPCAT) and establish the National Preventative Mechanism; and the *Disability (Miscellaneous Provisions) Bill*, which would establish the Commission as the Independent Monitoring Mechanism for the

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<sup>28</sup> See Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3. Available to download from: <https://www.ohchr.org/en/hrbodies/crpd/pages/gc.aspx>.

CRPD. In addition, considerable preparation is required for comprehensive implementation of the *Irish Sign Language Act 2017* when it comes into force at the end of 2020.

Further significant disability legislation such as the *Education for Persons with Special Education Needs Act 2004* and the *Disability Act 2005* predates the CRPD. A review of this legislation is required to consider what reform is required in order that disability legislation is aligned to CRPD.

**The Commission recommends that the JOC on Disability Matters undertakes to review the adequacy and effectiveness of the State's legislative framework on disability, with a view to ensuring the timely development, implementation and reform of all legislation required to give full effect to the CRPD.**

## Ratification of the Optional Protocol

Ireland did not ratify the Optional Protocol to the CRPD when ratifying the convention in March 2018, despite previously stating an intention to ratify both at the same time.<sup>29</sup> The Optional Protocol gives the Committee on the Rights of Persons with Disabilities the authority to receive and consider communications from individuals or groups alleging violations of any of the convention's provisions. The Optional Protocol also enables the committee to undertake inquiries with States Parties where there is information or evidence indicating grave or systematic violations of the convention.

The Programme for Government contains a commitment to ratify the Optional Protocol after the first reporting cycle under the convention.<sup>30</sup> It is of vital importance that there be no undue delay in this regard, especially given that Ireland was one of only six EU Member States not to have ratified the Optional Protocol as of the end of 2019.<sup>31</sup>

**The Commission recommends that the JOC on Disability Matters examines the State's progress on ratification of the Optional Protocol to the CRPD, including the State's**

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<sup>29</sup> Department of Justice and Equality, [Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities \(UN CRPD\)](#), p.13.

<sup>30</sup> *Programme for Government – Our Shared Future*, p.90.

<sup>31</sup> EU Fundamental Rights Agency, [Fundamental Rights Report 2020](#), p.219.

**adoption of any measures deemed prerequisite for that ratification, and produces a 'roadmap' for the State's ratification of the Optional Protocol.**



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