



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

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28 March 2024

Sent via email: Elizabeth.Canavan@Taoiseach.Gov.IE

Re: Evaluation of the State's response to the Covid-19 pandemic

Dear Elizabeth,

As you will be aware, the Irish Human Rights and Equality Commission is both the 'A' status National Human Rights Institution and the National Equality Body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*. We are the Independent Monitoring Mechanism for Ireland under the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD'),¹ the independent National Rapporteur on the Trafficking of Human Beings,² and we will be assigned the role of the Co-ordinating National Preventive Mechanism

¹ Section 103 of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* amends section 10(2) of the *Irish Human Rights and Equality Act 2014* to provide that one of our functions is to promote and monitor the implementation in the State of the UNCRPD.

² IHREC, [Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings](#) (22 October 2020).

under the Optional Protocol to the Convention against Torture, pending ratification³. We also have a role in working to uphold equality and rights protections on the island of Ireland post Brexit.⁴

Under our Act, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality. Since the outset of the Covid-19 pandemic, we have raised a range of specific human rights and equality concerns arising from the State's legislative and policy responses to the pandemic [see [Appendix 1](#) for list of our positions on the response to the Covid-19 pandemic]. In particular, our commissioned research report '[Ireland's Emergency Powers During the Covid-19 Pandemic](#)' which evaluated Ireland's use of pandemic-related emergency powers, identified some of the key human rights and equality challenges presented by the Covid-19 pandemic.⁵ Forthcoming Commission-supported research will examine the impact of the pandemic on structurally vulnerable groups in the labour market.⁶

Covid-19 and the response to the pandemic has both exposed and increased existing structural inequalities in Ireland, including by disproportionately affecting certain structurally vulnerable groups and sectors of Irish society.⁷ Due to significant human rights and equality concerns that

³ To be provided under the *Inspection of Places of Detention Bill*, when enacted.

⁴ In the wake of the UK's withdrawal from the EU, the Commission, along with the Northern Ireland Human Rights Commission ('NIHRC') and the Equality Commission for Northern Ireland ('ECNI') comprise the Article 2(1) Working Group of the Dedicated Mechanism. This group is mandated to provide oversight of, and report on, rights and equality issues falling within the scope of the Article 2 [Windsor Framework] commitment that have an island of Ireland dimension.

⁵ The report was authored by Conor Casey, Oran Doyle, David Kenny and Donna Lyons (COVID-19 Law and Human Rights Observatory at Trinity College Dublin).

⁶ The report is authored by Anousheh Alamir, Frances McGinnity and Helen Russell (Economic and Social Research Institute).

⁷ The pandemic had a disproportionate effect on a number of groups including older people; women; disabled people; those from disadvantaged socio-economic backgrounds; those living in, or at risk of poverty; Travellers; Roma; members of minority ethnic groups; International Protection applicants; residents in Direct Provision and emergency accommodation; living in inadequate housing; people living in homelessness; victims and survivors of Domestic, Sexual and Gender-Based Violence; those with caring responsibilities; people that are digitally excluded; people in precarious employment; people employed in the health and care sectors; and people in institutional and detention settings (such as nursing homes, residential disability facilities, mental health settings and prisons).

have arisen during the pandemic, we welcome comments by An Taoiseach regarding the establishment of a comprehensive evaluation of Ireland's legislative and policy responses to the Covid-19 pandemic.⁸ We welcome that a focus of the evaluation will include applying the learning from the response to the pandemic to how we respond to future crises. In our Strategy Statement 2022–2024, we have committed to identify protective measures for the State to adopt to prevent equality and human rights abuses against structurally vulnerable groups in the event of future crises and pandemics.⁹

While we welcome the proposed establishment of an evaluation of the response to the Covid-19 pandemic, we are concerned that no concrete details about the scope, timeframe or approach have been made available to the Commission. The terms of reference have not been agreed and there has been no commitment from the State for a rights-based framework for the evaluation. We note that in 2022, the United Nations Human Rights Committee recommended that the State “should consider carrying out a comprehensive review of its response to the COVID-19 pandemic, including a human rights impact assessment that evaluates the effect of restrictions on rights, specifically with regard to minority groups.”¹⁰ We recommended that the State carries out an independent, thorough, transparent and rights-based evaluation into the pandemic response,

⁸ An Taoiseach: ‘A comprehensive evaluation of how the country managed Covid-19 will provide an opportunity to learn lessons from our experiences in dealing with the pandemic. It will include a review of the whole-of-government response to the pandemic and how we might do better and be in a stronger position if another pandemic or other similar event were to occur. It will include a consideration of the health service response, covering hospitals, the community and nursing homes, along with the wider economic and social response. It is intended to have a public element to hear the lived experiences of all of society. The review should be undertaken by those independent of the national response and with relevant expertise. A consultation with Opposition parties has been scheduled for this week and I intend to bring the terms of reference to Government shortly thereafter.’ Dáil Éireann Debate, [Covid-19 Pandemic](#) (23 January 2024).

⁹ IHREC, [Strategy Statement 2022–2024](#) (2022) pp. 16–17.

¹⁰ Human Rights Committee, [Concluding observations on the fifth periodic report of Ireland](#), CCPR/C/IRL/CO/5 (26 January 2023) para. 28.

including examining the impact of emergency measures on the rights of people in order to plan for future crises.¹¹

We have previously highlighted a number of areas that the evaluation should examine including: the impact of the pandemic on the rights of structurally vulnerable groups;¹² the impact of emergency measures on children's rights;¹³ the proportionality of public health restrictions on maternal healthcare;¹⁴ the impact the Covid-19 pandemic had on Travellers as a direct consequence of their inadequate living conditions;¹⁵ and, older people's care and support, including the impact of the privatisation model¹⁶. This is a non-exhaustive list of areas that the evaluation should examine; the proposed areas of focus of the evaluation should be informed by consultation with affected groups.

The design, functioning and outcomes of the independent evaluation should be underpinned by relevant Constitutional, European, and international human rights and equality standards including:

- The right to an adequate, effective and prompt remedy;¹⁷ which encompasses the right to truth, reparations and guarantees of non-repetition, restitution and rehabilitation.

¹¹ IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) p. 23; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (February 2024) p. 32.

¹² IHREC, [Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies](#) (September 2020); IHREC, [Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties](#) (May 2021); IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) pp. 21–23.

¹³ Including the impact of the restrictions on children's access to, and participation in education; and the rights of children in detention. IHREC, [Ireland and the Rights of the Child](#) (August 2022) pp. 11, 88, 102; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (February 2024) p. 152

¹⁴ IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women](#) (September 2023) p. 71.

¹⁵ IHREC, [Comments on Ireland's 20th National Report on the Implementation of the European Social Charter](#) (June 2023) p. 16.

¹⁶ IHREC, [Policy Statement on Care](#) (July 2023) p. 63.

¹⁷ See for example Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), Article 14 of the Convention against Torture, Article 13 of the European Convention on Human Rights ('ECHR') and Article 47 of the EU Charter of Fundamental Rights. See also Principle 32 of the United Nations Commission on Human Rights, [Updated Set](#)



- The right to a prompt, thorough, effective, independent and impartial investigation into allegations of the violations of rights.¹⁸
- The duty to effectively and independently investigate deaths or instances of inhuman and degrading treatment.¹⁹
- Public Sector Equality and Human Rights Duty.²⁰
- Fair procedures and accountability.²¹
- Equality and non-discrimination.²²
- Accessibility and support.²³
- Representation and active participation of people, including structurally vulnerable groups.²⁴

[of principles for the protection and promotion of human rights through action to combat impunity](#), E/CN.4/2005/102/Add.1 (8 February 2005); and the United Nations, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, para. 11(b); United Nations Human Rights Committee, [General Comment No 31 \[80\] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para. 15; United Nations Committee against Torture, [General comment No. 3 \(2012\) on the implementation of article 14](#), CAT/C/GC/3 (13 December 2012) para. 6; Council of Europe, [Guide to good practice in respect of domestic remedies](#), adopted by the Committee of Ministers on 18 September 2013 (2015) p. 12.

¹⁸ United Nations Human Rights Committee, [General Comment No 31 \[80\] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para. 15.

¹⁹ Articles 2 and 3 of the ECHR. See also United Nations Human Rights Committee, [General Comment No 31 \[80\] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para. 15.

²⁰ Section 42 of the *Irish Human Rights and Equality Commission Act 2014*.

²¹ The right to fair procedures in decision-making and the right to natural and constitutional justice as protected under the Constitution and Article 6 of the ECHR. See also Principle 5 of the United Nations, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), adopted by General Assembly resolution 40/34 of 29 November 1985.

²² Article 40.1 of the Irish Constitution, *Equal Status Acts 2000-2018*, and Article 14 of the ECHR.

²³ United Nations Human Rights Committee, [General Comment No 31 \[80\] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para. 15.

²⁴ Article 25 of the ICCPR, Article 5 (c) of the Convention on the Elimination of Racial Discrimination ('CERD'), Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'), Articles 12 and 23 (1) of the Convention on the Rights of the Child ('CRC'), and Article 4 (3) and Article 33 (3) of the Convention on the Rights of Persons with Disabilities ('CRPD'). See guidance in United Nations Office of the High Commissioner for Human Rights, [Guidelines for States on the effective implementation of the right to participate in public affairs](#) (2018).

- The ‘do no harm’ principle.²⁵

We recommend that human rights and equality standards and expertise be embedded in the terms of reference and membership of the State’s Covid-19 evaluation.²⁶ We note that guidance on a human rights based approach can be drawn from the work of our European network body, the European Network of National Human Rights Institutions (ENNHRI).²⁷ A human rights based approach is underpinned by five key human rights principles, the PANEL principles (Participation, Accountability, Non-Discrimination and equality, Empowerment, and Legality).²⁸ The UK Covid-19 Inquiry²⁹ and the Scottish Covid-19 Inquiry³⁰ have committed to employing a human rights based approach, drawing from the PANEL principles, in their respective work.

The Covid-19 pandemic posed and continues to present new and difficult human rights and equality challenges, particularly for those already marginalised in Irish society. The fundamental societal challenges laid bare by the pandemic – systemic inequality, the strains on our social harmony, and the serious gaps in democratic scrutiny and accountability – did not fade away as restrictions were lifted.³¹ A thorough examination of the human rights and equality impacts of the

²⁵ United Nations, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005; Principle 10: “Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”

²⁶ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (February 2024) p. 32.

²⁷ See [ENNHRI – Human Rights Based Approach](#).

²⁸ The Panel principles were adopted by ENNHRI from the work of the [Scottish Human Rights Commission](#).

²⁹ While human rights are not specifically referred to in the [Terms of Reference for the UK Covid-19 Inquiry](#), the [UK Covid-19 Inquiry’s Equalities and Human Rights statement](#) sets out how the inquiry will adopt the PANEL principles in its work.

³⁰ The [Scottish Covid-19 Inquiry’s Terms of Reference](#) require the Inquiry to demonstrate how a human rights-based approach by the inquiry has contributed to the inquiry’s findings in facts and recommendations. See reference to PANEL principles in [Scottish Covid-19 Inquiry’s Policy Statement on its trauma informed and human rights based approach](#). See also [Human rights and equalities](#).

³¹ IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) p. 7.



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legislative and policy responses to Covid-19 provides an opportunity to futureproof our human rights commitments by putting in place protective measures to prevent rights abuses, as other crises emerge and intensify.

I and IHREC staff are available to meet with you to discuss the proposed evaluation and the issues raised in this correspondence.

Many thanks in advance for your consideration of these issues.

Yours sincerely,

Deirdre Malone
Director



Appendix 1: List of IHREC positions on the response to the Covid-19 pandemic

- [Letter to An Taoiseach, Leo Varadkar TD](#) (25 March 2020)
- [Statement from the Irish Human Rights and Equality Commission on COVID-19 Oversight in Respect of Human Rights and Equality](#) (press release, 27 April 2020)
- [Letter to Garda Commissioner, Drew Harris](#) (28 April 2020) & [press release](#)
- [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (press release, 8 May 2020)
- [Letter to the Minister for Health, Simon Harris TD](#) (18 May 2020)
- [Letter to the Minister for Finance, Paschal Donohue TD, regarding the legality of the Temporary Wage Subsidy Scheme insofar as it relates to employees returning from maternity leave](#) (27 May 2020)
- [Letter to the Minister for Education and Skills, Joe McHugh TD, regarding the planned system of school-based calculated grades](#) (27 May 2020) & [press release](#)
- [Letter to the Minister for Employment Affairs and Social Protection, Regina Doherty TD, regarding the exclusion of applicants for International Protection residing in direct provision from the Covid-19 Pandemic Unemployment Payment Scheme](#) (28 May 2020)
- [Observations by the Irish Human Rights and Equality Commission on National Guidance on Prioritisation in Access to Critical Care in a Pandemic](#) (May 2020) & [press release](#)
- [Travel Restrictions: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response](#) (June 2020)
- [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) & [press release](#)
- [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter](#) (June 2020) pp. 12–13, 20–21
- [Submission by the IHREC on the relevance of the Public Sector Equality and Human Rights Duty to service planning for non-Covid healthcare, and considerations relevant to future pandemic planning](#) (July 2020) & [press release](#)



- [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (press release, 19 August 2020)
- [Letter to An Garda Síochána on the use of Anti-Spit Guards](#) (27 August 2020) & [press release](#)
- [Guidance Note on COVID-19 and the Public Sector Equality and Human Rights Duty](#) (August 2020)
- [Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies](#) (September 2020)
- [State COVID Planning Must Not Discriminate Against People with Disabilities](#) (press release, 14 January 2021)
- IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021) & [press release](#)
- [Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties](#) (May 2021)
- IHREC/ESRI, [Monitoring Decent Work in Ireland](#) (June 2021)
- [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (June 2021) pp. 18–20, 29–30, 36
- [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (August 2021) pp. 17–18, 28, 37, 43, 51, 57, 81
- IHREC/ESRI, [Monitoring Adequate Housing in Ireland](#) (September 2021)
- [Ireland and the International Covenant on Civil and Political Rights](#) (June 2022) pp. 7, 21–23, 34, 40, 49, 52–55, 66–67, 70, 72, 84–85, 98–99
- [Comments on Ireland's 19th National Report on the implementation of the European Social Charter](#) (July 2022) pp. 5–6, 7–8, 11–12, 14–16
- [Ireland and the Rights of the Child](#) (August 2022) pp. 10–12, 17, 38, 54–55, 57, 63–65, 74, 87–88, 90, 102



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- [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (December 2022) pp. 53, 63, 66, 68, 72, 90
- [Ireland and the Sustainable Development Goals](#) (May 2023) p. 27
- [Policy Statement on Care](#) (July 2023) pp. 17–18, 42, 52, 57, 61–63, 65–66
- [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women](#) (September 2023) pp. 25, 70–71
- [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (February 2024) pp. 31–32, 130–131, 151–152