

Civil Liberties during the Covid-19 Pandemic

*Opening Statement of the Irish Council for Civil Liberties (ICCL) to the
Oireachtas Joint Committee on Justice*

22 June 2021

1. Over the past 16 months, the Government has taken a number of drastic and far-reaching measures to protect life and health, and to maintain economic activity and income – with some of these measures involving very significant interference with human rights. The choices that Government and the Oireachtas have faced have been onerous and the decisions complex, often executed in the face of a rapidly changing environment.

2. Ireland did not opt to suspend constitutional rights or to derogate from its human rights obligations during this crisis – unlike some other states. Everything that has been done by Government has been executed within the Constitution and under Ireland’s human rights obligations.

3. Against these standards the impact of Covid and the State response to the pandemic on our human rights has been enormous. To step back and reflect on how extraordinary the impact on our human rights and civil liberties has included:
 - The role of our elected representatives in considering and enacting our laws has been diminished
 - Access to the justice system has been frustrated, including with regard to matters of liberty and the punishment of crime
 - We have been prevented from leaving our homes without a ‘reasonable’ excuse under threat of fines or criminal prosecution
 - We have been prevented, again under threat of criminal sanction, from meeting family and loved ones or exercising our constitutional rights to worship and to protest
 - New systems of detention have been established for the sick and for people arriving into Ireland.

4. Since the onset of the pandemic in March 2020, ICCL has assessed a wide range of the measures undertaken by Government and we have made recommendations to Government and to the Oireachtas coverings a wide range of issues. We have also published reports, held public meetings online, and participated in public discussions on these matters through the media.
5. These are captured in our recent report [*Human Rights in a Pandemic*](#), which we published with support from the Community Foundation for Ireland on 2 June and which has been shared with the Committee.
6. The purpose of *Human Rights in a Pandemic* was to identify the full extent of the human rights impact of COVID and the State Response in order to evaluate if we can 'build back better' – by learning from the failings and the exposed weaknesses in our State infrastructure.
7. At all times, ICCL has supported the public health efforts; but we also consistently articulated our view that human rights standards provide a framework for how the difficult decisions and choices facing Government should be made.
8. Our analysis is that in some respects Govt has done well, but in other areas restrictions have been disproportionate or have impacted disproportionately on some sections of society. Today, I wish to focus on just a number of these issues and reflect on where we are now.

9. Government has failed to follow good practice in the development of laws under Covid. This has undermined the constitutional role of the Oireachtas and damaged public confidence in the rule of law. ICCL is deeply disappointed that the Oireachtas has approved, albeit narrowly, the Government's recent proposal to extend the extraordinary ministerial powers in the Health Act to November. The refusal by the Government to accept modest amendments which would have provided for Oireachtas review of regulations or the removal of criminal sanctions for public health matters calls into question the Government's good faith in relation to an urgent return to normal democratic practice. The extension also raises questions about the temporary nature of these restrictions.

10. The choice to rely on the criminal law and police enforcement as public health tools is a key theme in our report. ICCL believes in following the science – and we have relied in our work throughout the pandemic on the work of behavioral scientists, including the publications of both ESRI and NUIG's iCARE project. We believe that their analysis shows that while law and enforcement may play some part in underpinning a public health effort, the key elements in securing public compliance with public health guidelines is clear and simple messaging and peer influence on behaviour.

11. We must remember that the behaviour addressed in public health guidelines is not criminal in any ordinary sense, and public health is not the proper preserve of police enforcement. The decision to involve the Garda in enforcement of guidelines, rather than simply as a front line service, carries great dangers of damaging Ireland's model of community policing by consent. These dangers have largely been managed well by strong leadership from Garda management and robust oversight by the Policing

Authority, but a return to normal policing practice must be a key stage in the recovery process.

12. Extraordinary police powers over daily life carry particular risks of discrimination. In the early stages of the pandemic, this risk was managed by the publication of regular statistics and a requirement on the Garda to consult with the DPP before prosecution. Since the introduction of fixed penalty fines we have seen an emerging pattern of disproportionate punishment of young men from certain areas.

13. While at present the restrictions on movement have largely been lifted, restrictions with criminal sanction on events continue. ICCL is concerned that the policing of protests in particular has seen an uneven application of powers. Arrests or threats of arrest of people engaged in religious activities are also concerning.

14. ICCL is also deeply concerned about the continuing system of deprivation of liberty under mandatory hotel quarantine. The government's failure to provide a clear and compelling justification for the detention of people coming into the State, and its failure to ensure minimum rights protections while in quarantine have led us to call for the suspension of the system.

15. Finally, in all of these areas, access to justice is crucial to vindicate rights. There is an urgent need for additional resources in the court system to allow it to address the backlog of cases that have built up during the period of closures.

16. We are now at a crucial stage of reopening Irish society but we are not yet seeing a commitment to return to full enjoyment of human rights and civil liberties. ICCL calls on the Committee to send out a clear message that at this critical point in the pandemic response, Government must commit to ending any use of criminal sanctions and Garda enforcement of public health guidelines, and must move swiftly to restore full access to justice and parliamentary oversight of legislation.

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.