



ER 20
AMBER

MS DOIREANN ANSBRO

SENIOR RESEARCH AND POLICY OFFICER
IRISH COUNCIL FOR CIVIL LIBERTIES

AL
MITTEE

Human Rights and Civil Liberty considerations

19 RESPONSE

ICCL addresses the Special Oireachtas Committee on COVID-19

SPRING & SUMMER 2020

IRELAND IN A TIME OF COVID: A TIMELINE OF EVENTS THROUGH
THE EYES OF ICCL OP-ED ARTICLES | ICCL'S GENERAL ELECTION
CAMPAIGN 2020 | VIRGIN MEDIA DIFF FILM AWARDS

In just a few short months, Covid19 has had a devastating impact on all aspects of our lives, including on our human rights. Emergency powers and regulations reaching into the most private areas of our lives have presented civil liberties challenges that we never expected to face in peace time. The Garda have been empowered to regulate where we go and for what reasons.

At the same time, both the disease and the stringent government response have exposed some of the extreme inequalities in our society, with the effects being felt

most acutely by older people, people seeking international protection, people in homelessness, and those in precarious or unsafe work.



Our society is facing a grave public health crisis with implications for every aspect of our human rights. From the outset of the crisis in March, ICCL has played a leading role in advocating for human rights to be protected in all aspects of the State response. We fought for and secured safeguards in emergency legislation, accountability for policing powers, and privacy

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protections in tracing systems. We highlighted the need to protect groups at most risk – including those in direct provision. We have had a strong and clear message at all times - the State can and must respect human rights when it is enforcing public health measures. We are making a strong case to Government and the Oireachtas that putting human rights, transparency and public education at the centre of their response will lead to higher public support.

ICCL's independence and our commitment to standing up for principles of human rights at times of greatest challenge has never been more essential. We are very proud of what we have achieved over the past few months, but it is clear that these challenges will continue. We believe that

more can be done to ensure that the most at-risk are protected, while at the same time ensuring that any restrictions are necessary and proportionate.

Your support means more now than ever. Like so many organisations around the world, ICCL has been working tirelessly over the past months, but we have not been able to host funding events normally held throughout the year. Right now we can all appreciate just how truly fragile our freedoms are and how important ICCL's voice is. If you are able, please consider chipping in to help support our ongoing work by going to iccl.ie/donate.

Liam Herrick
Executive Director
Irish Council of Civil Liberties

About ICCL

The Irish Council for Civil Liberties is committed to an Ireland that is more just, more free, and where human rights and civil liberties are enjoyed by everyone.

Fully independent of government and fearless in our advocacy for human rights, we have been at the forefront of all key human rights campaigns in Irish society, making a significant impact on law, policy and public opinion. These have included the campaigns for legal divorce, decriminalisation of homosexuality and for marriage equality; working for equality legislation and institutions; resistance to emergency legislation and the removal of constitutional due process protections; and consistent advocacy for women's rights, including reproductive rights.

We act as an essential defender of human rights and civil liberties and as an effective champion for the advancement of justice and freedom in Irish society.

Founded in 1976, we have worked tirelessly to defend and strengthen constitutional rights protections and to ensure the full implementation of international human rights standards. We draw on the tradition of civil liberties activism in many countries, including the civil rights movements in Northern Ireland, the United Kingdom and the United States. Domestically focused and internationally informed, we have developed strong partnerships with civil society organisations in Ireland and networks and alliances with similar organisations internationally.

For more information, visit our new website: <https://www.iccl.ie>

ICCL'S GENERAL ELECTION CAMPAIGN 2020

Hard to believe now that we started the year with a General Election campaign!

Many of you joined the call for ICCL's 8 asks by emailing your local candidates. Read on to realise the impact we had together!

CROSS-PARTY COMMITMENT ON 5 ASKS

Four of the major parties committed to ICCL's 8 straightforward but crucial asks which would advance the cause of human rights in Ireland if implemented.

Sinn Féin, the Green Party, the Social Democrats and People Before Profit/Solidarity all committed to bringing in **safe zones**; outlawing **hate crime** and **image-based sexual abuse**; abolishing the **Public Services Card**; creating an independent inspection system for places of detention; establishing an **Independent Police Ombudsman** and an **Ombudsman for Victims of Crime**; and reforming the Electoral Act if elected.

Labour committed to six of the reforms and Fianna Fáil and Fine Gael committed to five apiece.

10 ICCL CALLS INCLUDED IN PROGRAMME FOR GOVT

During negotiations to form government, ICCL submitted a more detailed set of 18 calls for human rights reform to the three negotiating parties for government. We were very pleased to see strong commitments to ten of those calls in the Programme for Government including a commitment to end **Direct Provision**; the establishment of an **Electoral Commission**; **Garda reform**; the creation of an **independent inspection system** for all places of detention; the establishment of **safe zones** for access to abortion; a **referendum on the Right to Housing**; the decriminalisation of drugs for personal use; the **outlawing of image-based sexual abuse** (commonly known as revenge porn); and strong protections against **facial recognition technology**.

But we were disappointed that some straightforward reforms that would have real impact on all of our lives were not mentioned. We had called for an end to the illegal and discriminatory Public Services Card project; a Citizen's Assembly on Brexit; and the full implementation of EU fair trial standards in our justice system. We also called for an Ombudsman for Victims of Crime which has not been included though we were glad to see a commitment to full implementation of the Victims of Crime Directive.

Overall, the Government has set itself a range of ambitious but achievable human rights goals, which could make a real difference to the lives of everyone in Irish society. Of course, only time will tell if these commitments are to become reality. ICCL will be campaigning to make sure they do...



"...WE CALLED FOR AN OMBUDSMAN FOR VICTIMS OF CRIME WHICH HAS NOT BEEN INCLUDED THOUGH WE WERE GLAD TO SEE A COMMITMENT TO FULL IMPLEMENTATION OF THE VICTIMS OF CRIME DIRECTIVE..."



⚙️ MORE INFORMATION:

<https://www.iccl.ie/wp-content/uploads/2020/01/ICCL-8-Asks.pdf>

<https://www.iccl.ie/icclsubmission-on-programme-for-government-may-2020/>

ARE THE EMERGENCY MEASURES IN LINE WITH HUMAN RIGHTS?

FIRST PUBLISHED IN THE IRISH EXAMINER ON MONDAY 23 MARCH 2020

ICCL'S SENIOR RESEARCH AND POLICY OFFICER DOIREANN ANSBRO PROVIDES AN ANALYSIS OF THE EMERGENCY LEGISLATION TO DEAL WITH COVID-19



A new law giving the Government sweeping powers to tackle the spread of Covid-19 has been approved by the Dáil, sitting with just 30% of our TDs.

These powers, if invoked, will significantly restrict our rights to liberty, free movement and assembly. They allow for the detention of those who refuse to self-isolate.

They allow the Government to ban events, restrict travel and require people to stay in their homes.

These are truly extraordinary measures that the government believes are necessary to protect our health and our right to life during this public health emergency.

At the Irish Council for Civil Liberties, we agree that these extraordinary times call for extraordinary measures. Human rights law, however, still applies during times of emergency. This means our rights can't be suspended.

They can be limited to protect health and life but any limits must be demonstrably necessary and they must be as minimal as possible.

At ICCL, we analysed the draft bill and made a number of recommendations to bring it in line with human rights law and standards. Our chief concern was that in its initial form the bill allowed for indefinite extensions of its duration without prior approval by the Oireachtas.

In practice, this would have meant that the extraordinary powers that the law provides could have lasted long into the future without proper parliamentary scrutiny.

Emergency powers can become normalised and our rights whittled away. We've seen that before in Ireland with the Offences against the State Act and the Special Criminal Court. They were introduced during the period of an emergency but continue to curb fair trial rights in some cases to this day.

We've seen it in other countries too where emergency powers brought in to deal with counter-terrorism, for example, have crept into normal law or have been misused to curb the work of civil society and journalists.

This is why we were glad to see the introduction of a proper sunset clause following our submission to the Dáil debate last Thursday. The law now specifies that the powers to restrict events, movement and liberty will last only until November 9. Any extension beyond that period must be approved by the Dáil.

ICCL raised other concerns too - we wanted to see a clear non-discrimination clause and a commitment to protecting those who don't have equal access to

shelter and sanitation.

This would have included homeless people, the Traveller community and people living in shared living spaces such as prisons and Direct Provision Centres.

The potentially devastating consequences for those without homes or sanitary facilities are painting the socio-economic inequalities in Ireland in a rare, stark and disturbing light.

The Minister for Health made a clear statement in the Dáil on Thursday that the Government will assist people to self-isolate and people must be treated equally in this regard.

But this commitment isn't reflected explicitly in the law.

The new powers to ban events, restrict travel, and restrict movement in places designated as 'affected areas' are extensive.

Anyone contravening such an order will be charged with a criminal offence.

The need to prevent the spread of Covid-19 to save lives and the possibility that some people won't follow the clear medical advice regarding social distancing and self-isolation is what makes these powers necessary.

However, they must be used sparingly and only where clearly required in order to prevent their misuse.

ICCL recommended introducing additional safeguards to mitigate against this. For example, we suggested that the Minister shouldn't have the power to make orders to clamp down on events and gatherings when it is 'necessary or expedient' but only when it is necessary.

Unfortunately, this wasn't taken on board.

The law also significantly expands

existing detention powers for those with 'infectious diseases'. In the Public Health Act of 1947, a chief medical officer can order the detention of someone who is a 'probable' source of infection and can't be effectively isolated in their home.

The new law allows 'medical officers of health' to detain individuals who they believe in 'good faith' to be a 'potential source of infection'. This is clearly a much broader power than the 1947 Statute and it's a criminal offence not to comply with an order for detention.

Given that the right to liberty is one of our most fundamental rights, ICCL recommended adding significant extra safeguards to this power.

We suggested requiring a reasonable belief (meaning most reasonable people would believe the same) before an order for detention could be made.

This is the standard required of Gardaí when they want to arrest someone. We recommended that detention or isolation should be considered necessary and not just 'appropriate', as the law currently provides.

We also wanted to see a stronger review and appeals process. Currently, a person can request a review of their detention by one other medical officer.

We expressed concern that people who may not have full capacity should have the right to an advocate to protect their rights if detained.

These recommendations were not added to the law despite being

suggested by a number of TDs and Senators during the debates in the Oireachtas last week.

The Minister could still add such safeguards to specific regulations and we urge him to do so.

Human rights law and standards will still apply to the exercise of these powers even though they are not explicitly included in the legislation. This means that the power to restrict events and free movement and the power to detain can

only be used when strictly necessary and in a proportionate manner – or as little as possible to protect public health.

We at ICCL will be monitoring their use and campaigning for an end to the powers when the emergency is over.

The Dáil debate on Thursday and the

Seanad debate on Friday showed a commitment to civil liberties across a broad political spectrum.

Minister Harris concluded the Dáil debate by saying "these are powers we don't ever wish to use".

We support the Government's efforts to ensure their response to this crisis is prescribed by law and we wholeheartedly commend and thank all of those in the medical profession who are making trojan efforts to keep us safe.

These are extraordinary measures for extraordinary times and a human rights approach to their implementation will protect each one of us now and well into the future.

"...EMERGENCY POWERS CAN BECOME NORMALISED AND OUR RIGHTS WHITTLED AWAY..."



People who may not have full capacity should have the right to an advocate to protect their rights if detained.

PANDEMIC TIMELINE

March

12th

Taoiseach closes schools and advises remote work where possible.



13th

ICCL calls for rights-based response to protect the most at-risk, particularly where they are living in congregated settings such as Direct Provision and nursing homes.

17th

ICCL calls for sunset clause in any emergency legislation. Call is reproduced in the media and sent to all members of the Oireachtas.

18th

ICCL sends comprehensive analysis of emergency legislation to members of the Oireachtas. A sunset clause of 9 November is secured after many members of the Oireachtas cite our submission during the debates. The legislation is passed.



CONTD. OVER...

HUMAN RIGHTS AND PUBLIC HEALTH MEASURES CAN AND SHOULD BE COMPLEMENTARY

FIRST PUBLISHED IN THE IRISH TIMES ON WEDNESDAY 1 APRIL 2020

EXECUTIVE DIRECTOR **LIAM HERRICK** WRITES THAT THE STATE'S OBLIGATION TO VINDICATE THE RIGHT TO LIFE AND THE RIGHT TO HEALTH APPLIES WITHOUT DISCRIMINATION



It has been suggested by some commentators that human rights present an obstacle to the necessary public health response to COVID-19. This narrative belies a fundamental misunderstanding of human rights.

Human rights are not about individualism; rather they represent democratically agreed rules about how we can live together equally, fairly and with dignity. Human rights law places obligations on the State to vindicate and protect our rights as a bulwark against abuse of power. It also provides a framework to balance individual and community interests. This is why we talk about balancing rights rather than suspending one right in favour of another.

In the main, human rights principles have informed our government and community responses to COVID-19 up to this point and it is essential that they continue to do so. The State's obligation to

vindicate the right to life and the right to health applies without discrimination. It requires respect for the inherent dignity of everyone. This means the right to life must be put above economic considerations. Everyone enjoys an equal right to care regardless of wealth, age, disability, or underlying medical condition.

Human rights are expressive of solidarity and require the State to take special measures to protect those most at risk. It was Michael Ryan of the WHO who most clearly linked public health and human rights, saying, "We cannot forget migrants, we cannot forget undocumented

workers, we cannot forget prisoners...the only way to beat [CORONAVIRUS] is to leave no one behind... we are in this together". This is our social contract.

Human rights also demand accountability and transparency. When governments take steps to restrict our rights, even in the most extreme circumstances, they must remain subject to the rule of law. That is why ICCL argued strongly that the duration of Ireland's period of emergency should be controlled by the Oireachtas - the people's representatives - and not by Government. It's also why we must ensure that individuals affected by emergency measures retain the right of access

to the Courts to protect themselves against unjust State action. Our right to information also requires the Government to be honest with us.

The powers that have been introduced in Ireland are extreme by any measure. Government can ban public events, restrict our movement, confine us to our homes, and even order detention of those who refuse to self-isolate. Our rights to work, to recreation and to worship have been impacted too. Human rights law foresees that these restrictions can be necessary but requires them to be always proportionate to the risk to health and life.

We all accept coordinated collective action is necessary at this time, but even under emergency legislation, the State can choose to pursue coercion or cooperation. The Government introduced extraordinary powers to provide for a worst case scenario, but both the Taoiseach and Garda Commis-

sioner have expressed their preference for policing by consent. Every use of those powers demands close vigilance and accountability, but our aim must be that the powers be used sparingly or not at all.

At the same time, we have seen radical State action to protect access to

"...WHEN GOVERNMENTS TAKE STEPS TO RESTRICT OUR RIGHTS, EVEN IN THE MOST EXTREME CIRCUMSTANCES, THEY MUST REMAIN SUBJECT TO THE RULE OF LAW..."



If homelessness, evictions, and waiting lists are intolerable now and can be redressed, why would we tolerate them in a few months' time?

housing and basic income. The human right to housing is now being directly vindicated by the State, with those rights trumping fiscal considerations and the established orthodoxy about legal protection of property. Eviction bans and rent freezes have suddenly become possible. The rigidity of our two-tier health care system has also evaporated in the face of an urgent demand to ensure respect of the right to access healthcare.

We are glimpsing what a system of laws and policies that are built from real respect for universal human rights might look like. Solidarity is empowering and collective effort breeds a sense that how we live together can be reimaged. If

homelessness, evictions, and waiting lists are intolerable now and can be redressed, why would we tolerate them in a few months' time?

For now, our focus must be on protecting each other, based on what each person needs. This response can and must be informed by human rights. The Government must be open about its actions and use its powers sparingly. Above all, we must look out for those whose situation is most pressing - people experiencing homelessness, people in our nursing homes, in direct provision centres, in halting sites and in prisons. We must leave no one behind.

March

24th

Businesses, sports clubs and religious organisations shut. People asked to limit their close contacts to a handful of people. ICCL analyses these measures and welcomes the introduction of the pandemic payment, a rent freeze and a ban on evictions to mitigate the impact of this advice.



27th

People asked to stay at home unless an essential worker. 2km limit on movement introduced.

30th

ICCL writes to Department of Justice outlining our concerns that the above advice and guidelines are to be made law, with penal sanctions.

ICCL writes to Garda Commissioner objecting to the procurement of 16,000 spit hoods.



CONTD. OVER...

THE PANDEMIC IS NOT A WAR; OUR SHARED HUMANITY IS THE SOLUTION

FIRST PUBLISHED IN THE THE IRISH TIMES ON TUESDAY 7 APRIL 2020

COMMUNICATIONS OFFICER SINÉAD NOLAN WRITES THAT THE WAR ANALOGY IS NOT ONLY UNHELPFUL, BUT DANGEROUS



In declaring the lockdown in France, President Macron declared war on Covid-19. When we discuss the pandemic, we use language normally associated with warfare: defeat, enemy, front lines. Medical personnel in our emergency departments have said they are working in conditions akin to those of open conflict.

We cannot imagine the trauma medical professionals endure as they watch people suffocate and die alone, or as they

make unthinkable decisions between one human life and another. No doubt they make this comparison to impress upon the rest of us the horror and urgency of the situation.

But the war analogy is not only unhelpful, it is dangerous. It forces us to accept things we should not unthinkingly accept, and it blinds us to the solutions to this crisis. The pandemic is perhaps as great an ill as war. But it is different to war, and our response should also be different.

The war analogy means thinking along divisive lines and forgetting our



The war analogy means thinking along divisive lines and forgetting our shared humanity.

shared humanity. That is the last thing our society needs right now.

Behavioural scientists agree that empathy is the only emotion likely to spur us into the kind of altruistic action needed now. Not fear, not anger. So why are world leaders choosing a metaphor that engenders militancy and taking up arms, the very opposite of what is needed?

Many will say that we need to unite against a common enemy to make the collective changes needed. But behavioural scientists also say that what humans need to spur us into collective action is a shared goal and a shared strategy.

In this scenario, the goal is clear: to save lives. The strategy is easy to understand and easy to implement: flatten the curve by staying at home. What most of us need to do now is to be very, very still for a while.

But when we focus on imagined divisions between us, we may think there are those we can leave behind. We may think we don't need to provide shelter and sanitation to anyone who does not have it.

We must support those who are vulnerable to the disease as well as those at high risk of contracting it.

In our lifetimes, it has never been so clear that human beings operate as a single entity. If one of us is sick, we are all sick. The virus does not recognise our perceived differences. It does not respect power, wealth or race – though these privileges may help some of us run from it.

QUASH DISSENT

The belief that we are at war may also dull our critical instincts. Going to war is often a strategy intended to unite people behind their leaders, thereby quashing dissent. In a pandemic we need to feel free to challenge those who choose strategies not supported by science. We must be free to urge our politicians to protect everyone, particularly those on the economic margins, from the virus. In a pandemic both our compassionate and our critical faculties must be fully engaged.

There is no need to imagine we are fighting an invisible enemy. If the virus can be cured, it is through rest or with medical care. We are protected from it through compassion – by ensuring everyone has shelter and access to running water.

We know the solution to the pandemic lies in unity and empathy, even if at a distance. For our heroic medical professionals and essential workers, it means taking great risk to care for others. We should support them however we can. And we must support those who are vulnerable to the disease as well as those at high

risk of contracting it.

We must slow down, look after each other and remember that our differences are imagined. And when the time comes, we can embrace each other in the warmth of our shared humanity.

April

8th

ICCL opposes introduction of garda powers to police the lockdown over the Easter weekend.

12th

Garda powers extended beyond the Easter weekend. ICCL demands a human rights analysis of when and why powers are used, and of their impact on different groups. In the months to come the Policing Authority will collect these statistics.

22nd

ICCL launches email-your-TD tool calling for an impact assessment for at-risk groups

23rd

As Debenhams workers' right to protest is violated, ICCL calls for protest to be included in list of exceptional reasons to leave home.

27th

ICCL writes to gardai expressing concern about armed gardai at checkpoints.

29th

ICCL writes to HSE asking for publication of covid tracker app's source code, design spec and DPIA.



CONTD. OVER...

COVID-TRACING APP MAY BE INEFFECTIVE AND INVASIVE OF PRIVACY

FIRST PUBLISHED IN THE IRISH TIMES ON TUESDAY 5 MAY 2020

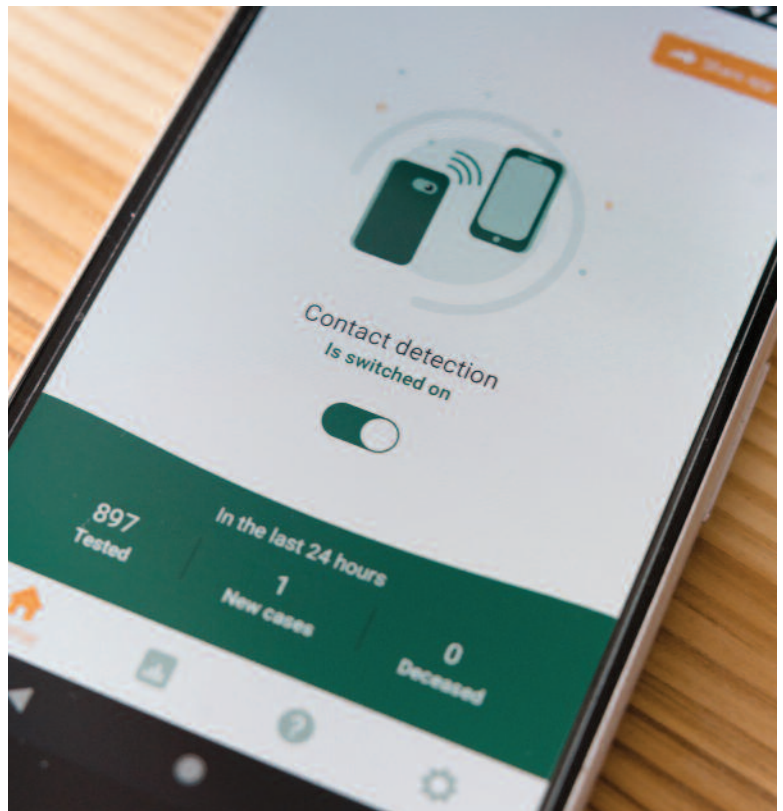
DIRECTOR OF ICCL'S INFORMATION RIGHTS PROGRAMME, **ELIZABETH FARRIES**, WRITES THAT GOVERNMENT MUST BE TRANSPARENT TO AVOID UNINTENDED CONSEQUENCES



Flattening the curve may be frustratingly slow, but deploying ineffective or invasive tech won't accelerate solutions for Ireland. Minister for Health Simon Harris, said in the Dáil last week that the Covid Tracker Ireland App being developed by the Health Service Executive (HSE) will work only if there is maximum public buy-in.

To facilitate buy-in, a communications campaign is forming to make it as easy as possible for people to use the app. However, this approach puts the horse before the cart for an app which is very much under testing and development.

It is true that the public needs to further consider production of an app solution. Covid apps have many technical limitations which, together with their extremely invasive potential for generalised surveillance, demand more public



consideration of their usefulness before release.

Accordingly, a group of civil societies, scientists and academics has written an open letter asking that HSE follow the European Data Protection Board recommendations by publishing the app's draft specification and user requirements, data protection impact assessment (DPIA) and source code. This would allow expert input and wide public scrutiny.

We have written these requests openly precisely because of the few

details the public has received from HSE. The 11-page Dáil statement and briefing for Mr Harris do not answer these asks. However, what we do know raises concerns that the app may be neither effective nor rights respecting.

BLUETOOTH TECHNOLOGY

We know that one possible function reported for the app is Bluetooth contact-tracing technology. This technology can be used to detect devices that are in

close proximity with each other and to alert you if you have come into contact with someone with Covid-19.

But there are problems with Bluetooth accuracy. Its signals can cross walls and it doesn't always run continuously on devices. It would not be helpful to alert you to a contact with an infected person on the other side of a wall whom you've never actually encountered. Nor would it be helpful to miss a contact alert because your app wasn't running on your phone at a particular time.

To compensate for Bluetooth deficiencies, a second possible reported solution under consideration for the app is movement and location data tracking. When reliant on GPS, this tech also has accuracy problems. In certain conditions including poor weather, busy urban spaces or indoor environments it loses precision. This would not be helpful either on a busy Dublin street.

With all these accuracy issues, we have to question whether poorly-functioning tech is a useful solution. We also need to consider the potential interferences with our rights.

There is, for example, our right to health, which must be enjoyed without discrimination. Some people, including children, the elderly and the very poor, may not have access to mobile health apps or have the digital skills to use them. The Minister's briefing says the Government is working hard to manage the digital divide but provides no details regarding how.

There are also our rights to privacy and data protection, which shouldn't be sacrificed in the name of tech solutions. Trinity College Dublin academics recently said that while Bluetooth contact tracing can be more appealing than location tracking from these rights perspectives, we must be leery of Bluetooth apps engaging commercial services that can hold rough location data. The data held by these commercial interests potentiates

the use for covert user tracking and deanonymisation.

Deanonymisation, a process which reidentifies an individual's personal data, is a very real threat to location tracking. The Minister's briefing does not appear to acknowledge this risk when it says it will use "voluntarily supplied small statistical area location information". But who will hold this data and for how long? Who else will be able to access it and how exactly will it be used?

This kind of mission creep, away from an app's originally intended function, and sometimes precisely detectable only if the code is released, demonstrates the

potential for a Covid-tracing app to transform into a covert surveillance tool with linkages to commercial interests.

Transparency

To avoid unintended consequences, it's important that the Government be thoroughly transparent with us – at the outset and in an ongoing way.

On Thursday, numerous TDs questioned Harris in the Dáil about the app. As they called for transparency, concerns were raised that, as Sinn Féin TD Louise O'Reilly put it, the Government "has not exactly covered itself in glory with respect to data protection, particularly when we consider the public services card".

We are therefore encouraged to read that the Minister for Health is aware of the "vital importance of data protection and privacy" in relation to the Covid Tracker Ireland app. It's also encouraging to read that it is being developed with European Commission recommendations in mind.

However, concerns about data protection and privacy will remain until the DPIA, design specifications and source code are published and made available for independent expert scrutiny.

Until then, a national communications plan aimed at deploying the app seems entirely premature.

May

1st

Residents who had been locked into a Direct Provision centre at Cahersiveen are released following an ICCL letter to the Dept of Justice.

7th

ICCL speaks to RTE's Seán O'Rourke about mandatory passenger locator forms at airports.



13th

Ahead of renewal of garda powers, we reiterate our call for a return to policing by consent, and request a meeting with the Minister for Health.

18/19th

ICCL writes to the Department of Health, the Department of Public Expenditure and Reform, the Central Statistics Office for records and correspondence related to the Covid Tracker app.

27th

Having never seen any human rights tests, ICCL demands an end to police powers on 8 June.

28th

Refusal to fill in a passenger locator form becomes a criminal offence.



CONTD. OVER...

STATE HAS RESPONSIBILITIES TO HUMAN RIGHTS OF 'AT-RISK' PEOPLE

FIRST PUBLISHED IN THE IRISH EXAMINER ON TUESDAY 2 JUNE 2020

ICCL'S CIVIL SOCIETY POLICY OFFICER **DEIRDRE NÍ CHEALLACHÁIN** SAYS THERE IS A CLEAR NEED FOR US TO ASK WHETHER THE CARE OF AT-RISK PEOPLE ACROSS THE STATE SHOULD BE FOR PROFIT.



The crisis has seen nearly 55% of Covid-related deaths occurring in nursing homes, and exposed pre-pandemic systemic flaws of the direct provision system.

What can we learn from last Tuesday's special Oireachtas Covid-19 response committee meeting on congregated settings?

PRIVATISATION OF CARE AND SOCIAL PROVISION

The difficulties that can arise when the State outsources its responsibilities towards the human rights of vulnerable individuals was evident at the special Oireachtas committee meeting last Tuesday.

Eighty percent of nursing homes are privately-owned and the vast majority of direct provision centres are run for profit by private operators. The frustrations of

Nursing Homes Ireland in sourcing PPE, accessing testing, and retaining staff were well ventilated.

Although the Health Information and Quality Authority (Hiqa) clarified this is the responsibility of the care home, confusion over whose role it is to decide the ratio of resident to nurse and care assistant is concerning.

With regard to direct provision, the Department of Justice confirmed that staff requiring garda vetting had not been vetted until last Monday, nor had they undergone adequate training before starting work.

We should all be worried by this. Staff should be vetted and trained to deliver safe and effective services to adults and children.

There is a clear need for us to ask whether the care of at-risk people should be for profit.

Uncertainty around duties and delegation of responsibilities in the context of the provision of vital social and health care is not acceptable.

THE HSE DID NOT KNOW THIS SECTOR

Oversight of institutions is critical. Given our harrowing past in this country, there is acute awareness of the need for robust oversight mechanisms for individuals living in institutions.

However, Ireland remains the only EU country not to have ratified the UN Optional Protocol to the Convention Against Torture, which would require regular independent and unannounced inspections of direct provision centres and nursing homes.

At last week's committee meeting, we were reminded of the fact that the HSE has no clinical oversight of private nursing homes. In the words of Hiqa, "the HSE did not know this sector".

Inspections of private homes is left to Hiqa alone, which is in turn dissatisfied with its regulatory powers of enforcement.

Meanwhile, calls for an inspection of the Caherciveen direct provision centre have gone unheeded, despite the serious issues raised in relation to the centre's suitability during the crisis.

There is a clear need for inspections by statutory bodies with strong powers of enforcement that are encoded in national legislation.

Moreover, Ireland needs to urgently ratify the Optional Protocol to the UN Convention Against Torture, which would include inspections of direct provision centres and nursing homes, as a matter of urgency.

THE ROLE OF INDEPENDENT ADVOCATES

The absence of representation of older people in decision making was also highlighted.

Nursing homes were not mentioned until Nphet's 12th meeting, on March 10. Nursing Homes Ireland was simply not represented on the Nphet subgroup on nursing homes.

What's more, the Minister of Health has stated that Hiqa is the voice of the elderly at the Nphet table, yet Hiqa did not visit any nursing home where there was a Covid-19 infection reported during

the crisis. How can it represent people it has not met?

Sage Advocacy, a support and advocacy services organisation for vulnerable adults, called for the role of independent advocates to be legitimised through legislation.

It's obvious that the interests of affected groups should be directly and adequately represented in decision-making processes that concern their human rights. Yet, it's not happening.

CONGREGATED CARE MODEL

Longstanding issues with the congregated care model were raised by committee witnesses and deputies alike, underscoring the need for a continuum of care model to be established.

At present, there are little to no community-based options or supports that enable individuals to remain in their own homes when care is needed.

In the direct provision context, a congregated setting is manifestly unsuited to the needs of people seeking international protection and steps should be taken to abolish this system as soon as possible.

OPERATION IN SILOS

In the words of one deputy, we watched a game of "pass the parcel" at last week's committee meeting.

A list of high-risk nursing homes, both private and public, was submitted by hiqa to the Department of Health (which was notably not represented at the committee meeting), to which hiqa only received an acknowledgement.

With regards to direct provision, there is a pronounced absence of clarity surrounding who knew what when.

It appears that the HSE did not inform the Department of Justice of the confirmed Covid-19 case in the Swords Travelodge where a group of people

seeking international protection were being housed.

Members of this group were then moved to Cahersiveen from this affected hotel at the height of a pandemic, with full knowledge of the HSE.

If State bodies, the Department of Justice and the HSE in this instance, had communicated and effectively engaged with each other throughout this time, steps could have been taken to mitigate infection risks and the suffering of residents at the Cahersiveen centre could have been avoided.

Reports of residents being locked in the Cahersiveen centre by operators have raised serious concerns regarding where the responsibility for this lies and suggest a lack of effective communication between the Department of Justice, the HSE and private centre operators.


At the core of these deferrals and deflections at the committee meeting was vulnerable individuals living in con-

gregated settings whose rights were not sufficiently safeguarded at the height of a public health crisis.

Responsibility, accountability and transparency should be at the heart of all State responses, especially when it comes to protecting the rights of vulnerable individuals in a public health crisis.

There are some key learnings that require urgent State action.

For-profit care of 'at-risk' people should be seriously questioned and the direct provision system should be abolished.

A continuum of care model should be developed to address gaps in health and social care provision. Moreover, there is a pressing need to legitimise the role of independent advocacy and to ratify the Optional Protocol to the UN Convention Against Torture. 

"...FOR-PROFIT CARE OF 'AT-RISK' PEOPLE SHOULD BE SERIOUSLY QUESTIONED AND THE DIRECT PROVISION SYSTEM SHOULD BE ABOLISHED..."

June

3rd

ICCL launches a principled framework containing nine principles for legislators developing technology, including the covid-tracker app. On 25 June, the Department of Health will tell the Oireachtas Special Committee that these principles were observed.

ICCL voices support for threatened Black Lives Matter protesters.



8th

After two months of ICCL advocacy, Garda powers are allowed to lapse.

9th

ICCL signs a joint letter to the Minister for Social Protection calling for the extension of school meals programme in light of rise in food poverty during the pandemic.



16th

ICCL and DRI submit joint submission to the Special Committee on Covid-19 Response in respect of the Covid Tracker app.

18th

ICCL meets Minister for Health Simon Harris and officials to raise issues re: app and at-risk groups.

CONTD. OVER...

STRUCTURAL RACISM IS LAID BARE BY THE PANDEMIC

FIRST PUBLISHED IN THE JOURNAL ON 11 JUNE 2020

ICCL'S FUNDING DEVELOPMENT OFFICER **GRACE TIERNEY** WRITES FROM HER LOCKDOWN HOME IN THE US, WHERE SHE OBSERVES RACISM IS NOT JUST A US PROBLEM



SINCE THE KILLING of George Floyd last month, cities across the United States and the world over have erupted into a protest with a clear message: enough is enough. The racism and discrimination that have endured for so long will no longer be tolerated. Here in the US where I grew up and am working from home, we have reached boiling point

In Ireland, where I live normally, we can feel somehow immune against these twin plagues. But minority groups in Ireland, such as the Traveller community and people living in Direct Provision, are at the sharp end of the persistent inequality within Irish society.

The US demonstrations are not happening in a vacuum; images of protesters demonstrating while wearing facemasks are a reminder of the wider context of

our times. The potential criminalisation of solidarity protests in Dublin reminds us that Ireland is not immune.

COVID-19 DISCRIMINATES

These protests are occurring during a deadly global pandemic – one that has disproportionately affected minority groups in the US and in Ireland; a direct result of the entrenched inequalities that affect the lives of vulnerable and minority groups every day.

At the beginning of lockdown, many remarked that this pandemic was the great equaliser – that it didn't matter who you were or where you were from, if you caught Covid-19, it would not discriminate. We now know that this is not true. Evidence emerging from the US and UK suggests the disease affects some minority communities more than others.

Proper access to sanitation and space to socially distance is key to combating the spread of the disease and not all communities have the same access. Many have also remarked that society and the economy have been paused. But racism, discrimination, and inequality do not have pause buttons.

Racism and intolerance are key obstacles to meaningful equality in Irish society. Covid-19 has presented unprecedented peacetime challenges to human rights like the rights to liberty and free movement, but also exciting opportunities to address longstanding structural inequalities in areas such as housing, poverty, and refugee and minority rights.

The specific gaps and weaknesses in Ireland's legislative response to hate

crime are a key sticking point in effectively tackling racism and discrimination in the country.

Ireland has among the highest rates of hate crime against people of African background and transgender people in the EU, but no laws to address it. In Ireland from the moment a hate crime is reported, the hate element is filtered out by the system. This makes it impossible for victims of hate crimes to get the justice that they deserve.

During the February 2020 general election, every major party in Ireland committed to outlawing hate crime. Slowly and quietly in the background of everything else going on, a government is forming. We must all hold those in power to the promises that they have made.

COVID-19 AND RACE ISSUES

A particular gap in Ireland's response to Covid-19 has been its treatment of people in congregated settings, like those in Direct Provision centres. Of significant concern were the reports from the 'Skellig Star' in Cahersiveen that people had been locked into the centre with padlocks on gates. Lack of proper cleaning following an outbreak of Covid-19 within the centre and mishandling of transfers caused significant trauma for residents.

We don't yet fully understand the extent to which Covid-19 has affected people in these settings, but it has served to highlight again the fact that the Direct Provision system is failing asylum seekers in Ireland.

It facilitates a range of human rights violations, including the right to dignity;



to work; to education; to health; to private and family life; and to justice. We must end it. A post-Covid Ireland working toward justice, freedom, and equality is one where newcomers who arrive at our shores fleeing danger are housed with dignity.

Racism has a particularly Irish flavour when we think of the Traveller community. There were serious concerns about basic sanitation at halting sites when the pandemic began. It's simply not acceptable that there are people without sufficient access to running water in our country. Overcrowding also made it difficult to observe social distancing. County councils for years have not provided proper facilities.

BLACK LIVES MATTER BRINGING CHANGE

This is a turning point in history. While those of us who are fortunate enough to be able to do so are at home following public health guidelines and keeping safe, we must think about the issues that

have been laid bare in recent months.

Is this really who we want to be? We must use this time to decide what kind of a world we all want to inhabit in the post-Covid era.

This emergency period has seen a number of positive changes – ones that we were previously told were not possible. Ireland, for now, has a single-tiered healthcare system, increased social welfare payments, and a ban on evictions.

These are just a few of the positive measures that could be extended after the emergency period is over; it's up to us to ensure that they do. We get to choose what Ireland looks like going forward – that's the beauty of a democratic society.

American author, poet, and activist Cleo Wade said: 'The voice within you that says "this is not okay" is a direct call from the basic goodness of your spirit.'

We must all now listen to that voice, stand up, and move forward toward progress.

June

25th

It emerges spit hoods provide no protection against Covid-19. We write to the Garda Commissioner again. He commits to a review in September.



26th

Following ICCL advocacy, Minister announces extension of school meals programme.

Covid-tracker app source code and DPIA is published, as called for by ICCL.

July

2nd

ICCL and others give the covid-tracker app a C+ as we have still have concerns about privacy and efficacy.

4th

ICCL speaks to media about mandatory quarantine and the human rights problems it presents. Mandatory quarantine is not introduced in the months that follow.

10th

Face masks become mandatory on public transport. ICCL voices concern that laws are not being published before they are signed off.



21st

ICCL raises concerns about Google tech underlying the HSE app.

CONTD. OVER...

TRACKER APP IS A GIANT LEAP FOR TRANSPARENCY, BUT BEWARE ITS PRIVACY IMPLICATIONS

FIRST PUBLISHED IN THE IRISH EXAMINER ON FRIDAY 10 JULY 2020

THE AUTHORITIES ROLLING OUT IRELAND'S COVID-19 SMARTPHONE TOOL HAVE TAKEN ON BOARD CIVIL LIBERTIES CONCERNS — BUT DATA PROTECTION EXPERTS SAY THERE IS STILL NO ROOM FOR COMPLACENCY, WRITES **OLGA CRONIN**, INFORMATION RIGHTS PROGRAMME OFFICER AT ICCL



The State's plans to launch a voluntary Bluetooth-based Covid-19 contact-tracing app first came to light via media reports in March.

Shortly after, a group of data protection and legal experts, academics, computer scientists, and representatives from civil societies, such as the Irish Council for Civil Liberties, and Digital Rights Ireland, met to discuss what was known and what wasn't known about the proposed app.

Four months, and more than a million downloads, later, the same group knows a lot more about the app — but still has concerns.

The group's initial concerns about the technology and the implications for data protection and privacy were several-fold, not least because it was, as yet, unknown what the app would be specifically used for, how long it would be in existence, and, at the most basic level, what evidence existed to show such apps were fit for purpose. These concerns weren't groundless.

Surveillance tools have been rapidly deployed across the world as a consequence of Covid-19 while, at the same time, people's movements have been restricted and extraordinary powers have been bestowed on police to enforce these restrictions.

Some of these tools have put a host of people's fundamental rights at serious risk.

- In India, a Covid-19 contact-tracing app, Aarogya Setu, which involves Bluetooth and location data, started off as a voluntary app. Within weeks, it became mandatory for all employees, public and private, with non-compliance resulting in a criminal penalty. People accused of crimes have been ordered to download it as part of their bail terms;
- Hungary launched a quarantine-monitoring app with facial recognition technology whereby a user checks in, with their identity and location data being automatically verified. At the same time, the prime minister, Viktor Orbán, suspended individuals' data rights under the General Data Protection Regulation (GDPR) in relation to the processing of personal data for the purposes of recognising, preventing, and stopping the spread of Covid-19;
- In Kenya, electronic and mobile phone surveillance has been used to target people who have escaped from quarantine centres, or to enforce a mandatory 14-day quarantine rule;
- In Israel, there were attempts to enable the country's internal security service to retrospectively track Covid-19 patients through their mobile

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Coronavirus
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Advice

There is no evidence to support the theory that contact-tracing apps, in general, curb the transmission of Covid-19.

phones in order to see whom they had interacted with prior to testing positive. Anyone found to have breached quarantine orders could have faced a six-month jail term.

Thankfully, the HSE and the Department of Health's Covid Tracker app does not resemble the tools above. However, the general global trend of normalising surveillance during Covid-19 requires that we treat any new surveillance tool with caution. This is crucial because emergency measures often outlast emergencies. What kind of new normal do we want post-pandemic?

To help engage with the HSE and the department, our group published a set of nine principles which, we say, must be followed when the Government implements new technologies in order to ensure the technology aligns with legal and human rights requirements, and protects our privacy.

It's not like data protection and privacy concerns are alien to Ireland. One only has to consider how the Data Protection Commission found that the processing of personal data by the Department of Employment Affairs and Social Protection for the Public Services Card violated privacy laws in a number of ways, and ordered the destruction of data related to 3.2m cardholders. The Government has refused to comply, and the matter is now before the Circuit Court.

Some of our principles were adhered to and, on July 2, we applauded the HSE and the health department for uploading key documents about the app. It was one small click for the relevant authorities, but one giant leap for the State in terms of transparency. This was, as we previously said, unquestionably the model for all future DPIA processes by the State.

However, we still have concerns.

There is no evidence to support the theory that contact-tracing apps, in general, curb the transmission of Covid-19. We have been told the HSE app can "accurately detect 72% of close contacts using the Google Apple API," but we have seen no public data supporting this figure. The DPC has also said the claim by the HSE and the department that an app can improve the speed and accuracy of manual contact tracing is "unproven".

Instead, we have evidence from Stephen Farrell and Professor Doug Leith, of Trinity College Dublin, that it would be challenging for Bluetooth apps to discern whether contacts are closer or further than 2m away; that app signals recorded between users can vary depending on whether people have their phones in their pocket or handbag, or whether they are on a bus or Luas, where metal reflects radio waves, or whether they are standing side-by-side or one behind the other.

They have also found that for Bluetooth apps using the Google/Apple API, false negatives — where people's contacts are not detected — may be unavoidable.

False positives are another concern. This may have implications for people in terms of work or visiting family, and also affect the demand for Covid-19 testing. The HSE and the department themselves state that they will advise Luas drivers who download the app to turn off the contact-tracing element while working, in order to avoid getting false positive notifications.

We also do not believe the symptom-tracking element of the app, which has no proven efficacy, should be included in this app's design. According to the European Data Protection Board, a Covid-19 app should have the single purpose of contact tracing.

The HSE and the Department of Health have stated time and again that location data is not used by the contact-tracing app. Yet, within minutes of downloading the app on an Android phone, a journalist from this newspaper was asked to turn on his location data. We also have concerns that the Google/Apple API can affect the performance of the contact-tracing element of the app by silently updating the API and affect the app's false positive and false negative rate.

There is a provision that the app will be 'self-destructed' within 90 days if found not to work. September will therefore be an opportunity to review, reflect, and consider whether the app is an effective part of Ireland's response to Covid-19. Until then, ICCL welcomes ongoing engagement with the State about the app.

July

27th

ICCL raises serious questions over the Department of Social Protection decision to cut hundreds of people off from the Pandemic Unemployment Payment (PUP) because they have been abroad.

29th

Government performs self-described u-turn on PUP, though many discriminatory provisions remain.

August

18th

ICCL opposes mooted return to garda powers. Powers are not reintroduced.

28th

Government suggests giving gardai powers of enforcement to limit gatherings in the home to six people. ICCL strongly opposes the move. Government forced to row back.



9TH ANNUAL ICCL HUMAN RIGHTS ON FILM AWARDS!

We were extremely lucky to have been able to host our annual film awards night on 6 March. One week later, and we would have had to cancel! Thanks to all of you who made it along for a great evening.

Game of Thrones actor Liam Cunningham received the first-ever ICCL Lifetime Contribution to Human Rights Award. The new award is intended to honour a person in the film industry who has used their platform to passionately advocate for a better world.

It was presented to Liam by his friend Husam Alhraki, a Syrian refugee now living in Germany, in acknowledgement of the actor's campaigning work on the rights of migrants and refugees. Liam and Husam met when Liam was visiting refugees in Jordan with World Vision. ICCL staff had the pleasure of showing Husam around Dublin when he got here, exchanging observations on the systems for international protection in Ireland and Germany.

Director of ICCL, Liam Herrick, said of the night:

"We presented this award to Liam because of his passionate and outspoken advocacy for migrants and refugees, as well as his fearlessness in pointing out injustice and naming the systems that are to blame for it. In these turbulent times, we need people like Liam who are unafraid to use their platform to help protect our human rights and fragile freedoms."

The 9th ICCL Human Rights Film Award was presented to Clare Emma

Dunne, writer and star of Irish film, *Herself*, with a special commendation going to *Street Leagues*, another Irish film. Both films deal with the issue of homelessness. The award was presented by lifelong human rights campaigner and ICCL member Ailbhe Smyth.

Liam Cunningham's humanitarian work has included fundraising and advocacy work for migrants and refugees in South Sudan, Syria and Greece. While in Greece, he called on EU leaders to do much more for the people who are stranded there. He is currently an ambassador for World Vision.

"...WE PRESENTED THIS AWARD TO LIAM BECAUSE OF HIS PASSIONATE AND OUTSPOKEN ADVOCACY FOR MIGRANTS AND REFUGEES, AS WELL AS HIS FEARLESSNESS IN POINTING OUT INJUSTICE AND NAMING THE SYSTEMS THAT ARE TO BLAME FOR IT..."

**LIAM HERRICK
DIRECTOR, ICCL**



Liam Cunningham, with his award, and his friend Husam Alhraki, a Syrian refugee now living in Germany.



Liam and Husam Alhraki recounted some entertaining tales at the Virgin Media Dublin International Film Festival awards ceremony, which was held in the Royal Hibernian Academy, Dublin.



The 9th ICCL Human Rights Film Award was presented to Clare Emma Dunne, writer and star of Irish film, 'Herself', with a special commendation going to 'Street Leagues', another Irish film.

Both films deal with the issue of homelessness.

ICCL:
OUR
RESPONSE
TO THE
COVID
PANDEMIC

This year has not been easy for anyone. The ground has been constantly shifting.

But more than ever it has been critical to keep track of events in a rapidly-changing landscape.

ICCL, through the Irish media, has been monitoring events carefully, and responding in kind.

On this page are just a few examples of our news coverage during this difficult time.

As always, we will continue to ensure that all our rights are upheld, and that COVID is not used in any way to dilute these rights.

To quote our Director, Liam Herrick, from his editorial: "...From the outset of the crisis in March, ICCL has played a leading role in advocating for human rights to be protected in all aspects of the State response..."



RIGHTS NEWS

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