

Minutes of the Twenty Second Meeting of IHREC's Disability Advisory Committee

Monday, 27th March 2023

Committee members present:

- Chair: Dr. Rosaleen McDonagh, Commission Member, IHREC (RMcD)
- Vice Chair: Adam Harris, Commission Member (AH)
- Chief Commissioner, Sinéad Gibney (SG)
- Adrian Carroll (AC)
- Aoife Price (AP)
- Brian Hayes (BH)
- Dr. Frank Conaty, Commission member, IHREC (FC)
- Dr. John Bosco Conama (JBC)
- Dr. Vivian Rath (VR)
- Eliona Gjeczaj (EG)
- Fiona Anderson (FA)
- Gary Allen (GA)
- Jacqui Browne (JB)
- James Cawley (JC)
- Michael Seifu (MS)
- Michelle Gaynor (MG)
- Peadar O'Dea (PO'D)
- Shelly Gaynor

Apologies:

- James Cawley (JC)

In attendance:

- Éimear Fisher, Acting Director, IHREC (ÉF)
- Céamonn Feiritéar (meeting support) (CF)
- Eithne Madden, IHREC (minute taker) (EM)
- Two ISL interpreters

The twenty second meeting of the Irish Human Rights and Equality Commission's Disability Advisory Committee took place between 11.00am and 16.00pm on Monday, 27th March 2023. This meeting was held in the Gibson Hotel in Dublin and was Hybrid in format.

1.1 Greetings, Apologies, Quorum and Declaration of Interest

Quorum was reached and no conflict of interest was raised. There were a number of minor amendments raised for Secretariat in the minutes of the previous meeting on 13th February 2023. The minutes from the meeting on the 13th February 2023 were approved by BH and seconded by EG.

An around the meeting introduction of all in attendance was led by the Chair.

1.2 Matters Arising

The following items were raised:

- The Chair acknowledged the recent death of Judy Heumann who was an American disability rights activist. The Chair also complimented EG's recent appearance at the Disability Matters Committee in the Oireachtas regarding violence against disabled women.
- EF provided an update on the Stipend policy, outlining that IHREC are awaiting the confirmation from DEPR (who have indicated that they have given sanction).
- The Chair provided that an update on the ISL report would be circulated by the Secretariat in due course.

2.1 The Optional Protocol to the Convention against Torture, IHREC's role as co-ordinating National Preventative Mechanism, and better protections for disabled people in places of detention

The Committee discussed the Optional Protocol to the Convention against Torture (OPCAT), IHREC's role as the co-ordinating National Preventative Mechanism (NPM), and better protections for disabled people in places of detention. The Session opened with an overview of the Optional Protocol to the Convention against Torture and of the draft Inspection of Places of Detention Bill which will introduce the National Preventative Mechanism system.

The Committee were also briefed on IHREC's recent attendance at the GANHRI (Global Alliance of National Human Rights Institutions) Annual Meeting where learnings and insights were received from other institutions on their National Preventative Mechanism systems. The following general comments were made:

- Training in prisons and within An Garda Síochána needs to be improved upon with regards to disabled people.
- It was highlighted that the Optional Protocol to the Convention against Torture provides a positive opportunity to focus on residential homes and congregated settings for disabled people where inherent abuse occurs.
- There are obvious players in places of detention and focus should be on who else should be captured under the legislation given there are invisible discriminatory practices that are going on in places that aren't visible.

The Committee then welcomed three guest speakers from Australia who are experts in the area of the Optional Protocol to the Convention against Torture, namely, Carolyn Frohmader (CEO of Women With Disabilities Australia), Steven Caruana (Specialist Advisor – Immigration and Optional Protocol to the Convention against Torture at the Australian Human Rights Commission) and Sophia Rinaldis (Director of the Disability Rights Team at the Australian Human Rights Commission).

The guest speakers brought the Committee through a number of areas, including;

- Disabled women and girls and the need for a gendered view of the National Preventative Mechanism system;
- deprivation of liberty in terms of context and situation (and not as just being physical);
- establishing the National Preventative Mechanism system and ensuring places where disabled people are de facto detained are considered in the National Preventative Mechanism system; and
- how disability matters should be embedded across every aspect of a National Preventative Mechanism including in its outward activity with regards to inspections, and in its inward activity with regards to employment and leadership.

The Committee engaged in an extensive Q&A session with the guest speakers on the range of topics. The following points were discussed:

(a) Civil Society

- Civil society have an important role to play in ensuring both the National Preventative Mechanism system and the Governments implementation of Optional Protocol to the Convention against Torture are effective.
- Having a relationship between the National Preventative Mechanism system and Civil Society is crucial for the National Preventative Mechanism's to have credibility, for example, Civil Society can amplify findings and reports of National Preventative Mechanism's.
- The National Preventative Mechanism system can bring together various groups who are advocating on similar matters - which is a powerful tool.
- Civil Society will also be able to criticise potential gaps in the National Preventative Mechanism system, and to also advocate on issues and ask questions of the National Preventative Mechanism system on its practices.
- The National Preventative Mechanism system should also have representation of lived experience so that inspections and visits can be viewed through the lived experience lens and the disability lens.

(b) Deprivation of Liberty and Places of Detention

- It was highlighted that there is an ongoing conversation regarding the definition of, and understanding of, what constitutes 'deprivation of liberty' and 'places of detention' are.
- The SPT focuses on *places* where people are deprived of liberty, but deprivation of liberty may go beyond a *place* and be in a context and situations.
- For example, guardianship and decision making regimes – disabled people are deprived of liberty in these regimes, but it is a situational deprivation of liberty.
- With regards to disabled women and girls, legal practices such as forced sterilisation, forced contraception, and suppressed menstruation still occur.
- NPMs have an important role in prevention and should examine the underlying laws and systems which allow these typed of deprivation of liberty and identify through its mandate systemic issues, law reform, and develop and enact laws that prevent the practices.

(c) Indivisibility of Rights

- It is important to look at all the human rights treaties a State is party to as they interest and are intended to be viewed as joint holistic response to protecting human rights and equality.
- With regards to Disability, the CRPD should be drawn upon for ensuring Optional Protocol to the Convention against Torture is implemented in compliances with the provisions of the convention.
- For example, the CRPD sets out under Article 4 (3) that the State will consult with and actively involve disabled people in the development and implementation of legislation and policies, and other decision making processes relevant to them.
- National Preventative Mechanism's should look at the full range of resources available (such as jurisprudence, general comments, concluding observations) to ensure structurally vulnerable groups are protected in line with international best practice.

(d) Intersectionality

- The Committee Members discussed how National Preventative Mechanism's should address intersectionality and multi deprivation of Liberty. For example, a disabled asylum seeker - legal deprivation as an Asylum Seeker would take precedence and how is it ensured that their rights as a disabled person are upheld.
- Advice provided set out that National Preventative Mechanism's should look at their work thematically and not in specifics. For example children – National Preventative Mechanism's should be looking at pathways they take through places of detention and what the impact is on children and what are their needs in order to assess if minimum standards are being upheld.
- This highlights the need for National Preventative Mechanism's to be multidisciplinary so that expertise and consideration of intersectionality and structurally vulnerable groups is mainstreamed into the work of the National Preventative Mechanisms and not just as a specific aside.

(e) Funding

- It was highlighted that funding is a significant issue across the board regarding the Optional Protocol to the Convention against Torture and the National Preventative Mechanism system.
- The importance of conducting baseline assessments was raised. An example was provided where in the Victorian Ombudsman in Australia conducted an Optional Protocol to the Convention against Torture like inspection and was able to calculate the how much funding would be required for a National Preventative Mechanism.
- It was advised that funding for the National Preventative Mechanism functions should be a separate entity to funding provided for the main body - having separate funding and staff to work carry out the National Preventative Mechanism function is crucial for its successful implementation.

It was agreed that the Committee would try to come back to Optional Protocol to the Convention against Torture at a future meeting to enable a more in depth internal discussion.

3.1 The Equality Acts Review

The Chair invited Chief Commissioner, SG to chair this session of the meeting. The Committee was briefed on the ongoing work of IHREC's Future of Equality Legislation Advisory Committee (FELAC) and an overview was provided of how FELAC is assessing how the Acts operate and are implemented in a practical way to ensure real and meaningful impact.

The extensive discussion on the Equality Acts covered areas including: accessibility, the definition of disability within the acts, access to justice, reasonable accommodation, employment discrimination, lived experience example of the Acts being used. The following was discussed:

(a) Accessibility of the Acts

- The Committee discussed how disabled people need to be able to understand the Acts and for the Acts to be fully accessible and inclusive, such as easy-read versions.
- It was noted that providing this level of accessibility would further Ireland's compliance with [CRPD Article 21](#) Freedom of expression and opinion, and access to information.

(b) Definition of Disability

- The Committee discussed how, from a legal point of view, the definition needs to be one that does its best to eliminate discrimination and addresses ableism.
- It is positive that the broad definition does allow for the use of mental and emotional health as grounds in discrimination cases.
- Having a legal definition of disability leaves disabled people trusting (predominantly) able-bodied people to interpret the definition in the Acts.
- There was a concern expressed that if the definition is not adequate, a case may not be represented in a way a disabled person wants it to be.
- However, although the current definition may not sit well with all disabled people, it is an improvement on the definition that is set out in the Disability Act.

(c) Access to Justice

- EU legislation (such as European social rights) and Accessibility Acts and Directives have brought rights forward for disabled people. However, in the absence of the CRPD Optional Protocol mechanism there are barriers to making complaints under the Equality Acts when rights are violated as many can't access courts.
- In addition, intersectionality plays a part as disabled people may face additional barriers due to accessing justice due to socio-economic status.
- It was noted that disabled people must be respected as subjects with human rights in accessing all legal processes and there was an agreed view that the Acts must ensure the principle of 'on an equal basis with others' is fully realised in the implementation of the Acts.

(d) Reasonable Accommodation

- The Committee discussed the difficulties disabled people often face with getting reasonable accommodations, such as being misdiagnosed or being on long waiting lists for diagnosis which creates issues as a formal diagnosis is often required to be eligible for services and/or reasonable accommodations.
- There was a general consensus that the 'undue' burden clause allows a loophole for service providers and employers to discriminate against disabled people.
- It was highlighted that the Public Sector Equality and Human Rights Duty could be used or referenced in some way to strengthen the responsibility on service providers and employers with regards to providing reasonable accommodations.

(e) Employment discrimination

- The Committee discussed how lived experience should be acknowledged with regards to employment.
- It was discussed that disabled people may be encouraged to apply to jobs but it appears to be a tick box exercise in practice and where appropriate, lived experiences should be valued on equal footing as work experience.

(f) Lived Experience example

- An example was provided which highlights the difficulty with accessing services and where a discrimination claim was able to be brought under the Acts.
- The HSE was declining a PA based on several grounds (medical conditions, mental health). This was reported as discrimination with the help of IHREC.
- In this situation it would be more financially viable for the HSE to provide a PA and to avoid putting the individual into home, as they have the ability to live independently.
- It was highlighted that the Acts and the pathways to services under the Act need updating, as reasonable accommodation should not be excluded under such strict grounds.
- It was added that having legal departments, such as IHREC's, monitoring the implementation of the Acts was a positive for disabled people.

AOB

The Committee raised the following items:

- Disabled Persons Organisations wish to meet with IHREC regarding the Human Rights and Equality Grant Scheme. It was agreed that the DAC member would contact the Acting Director to progress this.
- The Secretariat had prepared a Guidance Note for Guest Speakers. Feedback was provided and the Secretariat will circular the revised Guidance Note to members and issue it to further guest speakers.
- The Chair highlighted that the next DAC meeting on 8th May 2023 would be Frank Conaty's last Committee meeting and invited him to speak at the next meeting.

6.1 Information Sharing

No items raised.

7.1 Reflections

The following reflections were raised:

- The Chair raised the following:
 - It was helpful to have the papers sent out in advance
 - Asked that the secretariat use full titles as oppose to acronyms in the issues papers.
 - Asked that the secretariat remind speakers that to keep presentations to 15 minutes so that the committee has time for the internal discussions.
 - The acoustic of the room are still causing a problem regarding sound, something for the secretariat to keep in mind for the next meeting.
- The guest speakers on the Optional Protocol to the Convention against Torture were commended and there was general consensus that the session and expertise was a great addition to the meeting.

The Chair thanked everyone for their time and input. The meeting came to a close.

Meeting ended at 15.50