

# ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2020 • STORIES FROM THE LOCKDOWN





**IRELAND**

## Civic space in Ireland is rated "Open" on the CiViCUS Monitor.

Civil society in Ireland is very diverse, ranging from informal local groups to formally-registered national charities or quasi-public bodies, like universities and hospitals. It was greatly affected by the decade of social and economic crisis following 2008. Due to the policies of austerity, the public support to the sector dropped by 41% between 2008 and 2014.<sup>1</sup> The state remains the primary funder for many organisations. While civic actors are active in the political life of the country, state funding has prioritised (and has sometimes been restricted to) service provision over advocacy work. In this context, as elsewhere in Europe, the Irish charity sector was hugely impacted by the COVID-19 crisis, with a drop in fundraised income amounting to 445 million Euro. While the Government is among the few in Europe to provide a special fund for charities, the situation for many organisations remains precarious. Despite the difficulties, civic actors continue playing a vital role whether delivering services to the population or advocating and keeping the Government accountable. The current crisis also opens opportunities to reinforce the partnership between the sector and authorities.

<sup>1</sup> EU FRA, Challenges facing civil society organisations working on human rights in the EU (January 2018): [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf).

## THE SECTOR IN NUMBERS

Population of the country (2019)

**4.92 Million**

Number of Non-Profits (2020):

**32,841**

At the end of 2019, the number of charities was

**10,470** (+715 since 2018)

SOURCE: BENEFACTS, IRELAND'S NONPROFIT SECTOR 2020

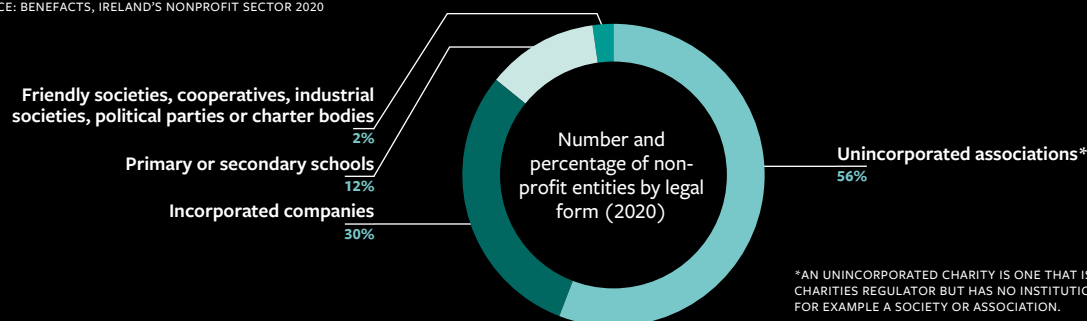
Number of people employed by charitable organisations (2018)

**Over 190,000 Employees**

Number of volunteers (2018)

**Over 500,000 operational volunteers can be mobilised**

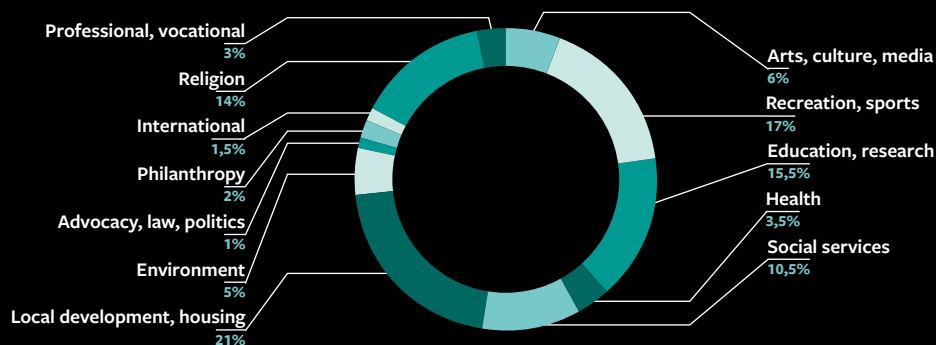
SOURCE: THE WHEEL



\*AN UNINCORPORATED CHARITY IS ONE THAT IS REGULATED BY THE CHARITIES REGULATOR BUT HAS NO INSTITUTIONAL STATUS IN LAW – FOR EXAMPLE A SOCIETY OR ASSOCIATION.

SOURCE: BENEFACTS, IRELAND'S NONPROFIT SECTOR 2020

## DISTRIBUTION OF NON-PROFITS BY FIELD OF ACTIVITY (2020)



SOURCE: BENEFACTS, IRELAND'S NONPROFIT SECTOR 2020

## THE ECONOMIC WEIGHT OF THE SECTOR (2018)

Reported total income of charitable organisations

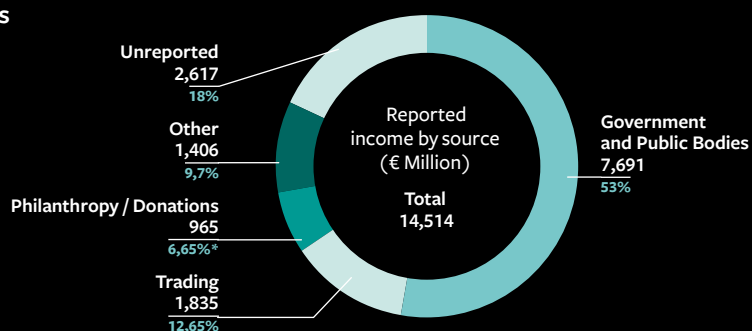
**14.5 billion euros** (8.3 Billion if health and education organisations are excluded;

16 billion euros estimated if account is taken of charitable organisations who did not report their financial data)

% of the national GDP (2018)

**16 billion euros = 5.8% of GDP**

SOURCE: INDECON, REGISTERED IRISH CHARITIES - SOCIAL AND ECONOMIC IMPACT REPORT (2018)



\* THERE IS A TENDENCY TOWARDS CONTRACTION OF THE CONTRIBUTION OF PHILANTHROPY.

# CIVIL LIBERTIES ARE CRASH-TESTED DURING THE PANDEMIC

## The vital role of civic advocacy

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By Deirdre Ní Cheallacháin, Irish Council for Civil Liberties

### **CIVIL SOCIETY IN IRELAND: AN OVERVIEW**

The role that civil society plays in Irish life is significant; through service provision, through awareness campaigns and advocacy. Civil society has also contributed to public debate during recent referendum campaigns in Ireland<sup>1</sup>. In the 2015 same-sex marriage referendum, three civil society organisations coordinated the Yes Equality: The Campaign for Civil Marriage Equality campaign<sup>2</sup> and a formal alliance of civil society formed during the referendum campaign on the constitutional ban on abortion in 2018, Together for Yes.<sup>3</sup> Key developments in the civil society space in recent years include the establishment of The Charities' Regulator in

2014 to improve accountability and transparency in the non-profit sector under the Charities' Act 2009. Stronger governance practices and increased powers granted to the Charities' Regulator (to demand information, to investigate and to issue sanctions from organisations) have been introduced to increase public trust<sup>4</sup> in the sector following a series of expenses scandals involving non-profit organisations<sup>5</sup>.

Human rights is a "signature" Irish foreign policy priority<sup>6</sup> and Irish diplomats have also led the drafting and

negotiations on UN Human Rights Council resolutions on the creation of a safe and enabling environment for civil society in recent years.<sup>7</sup> While this proactive engagement is viewed as positive by Irish civil society, there is a pressing need for the principles Ireland promotes internationally to be fully applied domestically as there are significant regulatory restrictions impacting civil society freedom in Ireland. Many Irish organisations receive state funding which can cause issues in terms of advocacy due to restrictions outlined in statutory service level agreements and grant agreements. It has been reported that state agencies increasingly

<sup>1</sup> The Citizens' Assembly model, were used as a deliberative forum as key steps towards the two referendums.

<sup>2</sup> <https://www.iccl.ie/archive/yes-equality-the-campaign-for-civil-marriage-equality-formally-launches/>

<sup>3</sup> [https://www.nwci.ie/discover/member\\_detail/coalition\\_to\\_repeal\\_the\\_8th](https://www.nwci.ie/discover/member_detail/coalition_to_repeal_the_8th)

<sup>4</sup> Charities Regulator Annual Report 2019 <https://www.charitiesregulator.ie/media/1947/charities-regulator-annual-report-2019.pdf> (July 2020).

<sup>5</sup> Charities Institute Ireland, Charities 2037: A report from amárach research (December 2017) <https://static1.squarespace.com/static/57ff6b30bebafba9d10c7dcd/t/5b28ed2eaa4a996a288e8d9c/1529408815482/CII%20CHARITIES%202037%20B%281%29.pdf>

<sup>6</sup> Global Ireland: Ireland's Global Footprint to 2025 (Government of Ireland): <https://www.gov.ie/en/campaigns/09371607-taoiseach-launches-global-ireland-irelands-global-footprint-to-2025/> 65

<sup>7</sup> Human Rights Council Resolution 24/21: Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment, A/HRC/RES/24/21 (2013); Human Rights Council Resolution 27/31: Civil Society Space, A/HRC/RES/27/31 (2014); Human Rights Council Resolution 38/12: Civil Society Space: Engagement with International and Regional Organisations" (2018).

## CIVIL SOCIETY HAS ALSO CONTRIBUTED TO PUBLIC DEBATE DURING RECENT REFERENDUM CAMPAIGNS IN IRELAND

stipulate that state funds cannot be used for advocacy purposes.<sup>8</sup>

Section 22 of the Electoral Act 1997 (as amended) prohibits any “third party” from receiving donations from abroad and significantly restricts the use of domestic donations for “political purposes”. Due to the broad definition of “political purposes”, the Act’s third party provisions have been increasingly applied to human rights campaigns conducted by CSOs, including on reproductive rights and the right to education,

<sup>8</sup> The Wheel, The Sector’s Lobbying role, (August 2018): <https://www.wheel.ie/policy-and-research/issues/sectors-lobbying-role>

**The Irish Council for Civil Liberties** (ICCL) is Ireland’s leading independent human rights non-governmental organisation, which monitors, educates and campaigns in order to secure the full enjoyment of human rights for everyone. The ICCL is an entirely independent organisation and does not rely on government support or funding. Since it became clear in mid-March 2020 that the Irish Government would introduce unprecedented emergency legislation in response to the public health crisis, ICCL has been working to ensure the public health response complied with human rights principles, including by assessing emergency measures and powers introduced and calling on the Government to avail of the avenues open in this regard to assess the potential human rights impact. ICCL has been at the centre of public discussion and political debate on the impact of these restrictions on human rights, most notably on the restrictions placed on the right to freedom of movement, the right to freedom of association and assembly, and the right to privacy.

even outside of the electoral and referendum context. In 2017, Amnesty International Ireland was compelled to initiate judicial review proceedings following an order by the Standards in Public Office Commission (SIPOC), the regulatory body tasked with overseeing compliance with the Electoral Act, to return a grant received from the Open Society Foundation for a reproductive health campaign. While SIPOC accepted that its process was “procedurally flawed”,<sup>9</sup> the fact that Amnesty was compelled to launch proceedings illustrates the impact the Electoral Act’s current wording is having on CSOs seeking to engage in public policy discussions in Ireland. The Irish Council for Civil Liberties (ICCL) coordinates an alliance of organisations entitled The Coalition for Civil Society Freedom, which works to address regulatory restrictions impacting the civil society space in Ireland, and is actively campaigning for Electoral Act reform to address the impact of the Electoral Act’s third party provisions on freedom of association and freedom of expression.<sup>10</sup>

Additionally, the advancement of human rights is not listed as a charitable purpose under the Charities’ Act 2009 which means that human rights organisations which do not have another charitable purpose cannot avail of the advantages attached to charitable status. The position is anomalous among common law jurisdictions, with the equivalent Acts in England, Wales and Northern Ireland all containing specific references to human rights as a statutory charitable purpose. The reasons for this omission in the Act have never been made clear.

<sup>9</sup> <https://www.amnesty.ie/amnesty-welcomes-quashing-of-sipos-decision-on-osf-grant/>

<sup>10</sup> Coalition for civil society freedom, Statement on the electoral act, <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>

## COVID-19: THE STATE RESPONSE

Under the Irish Constitution, an official state of emergency can only be declared during times of war or armed rebellion. However, the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, which came into effect on 20 March<sup>11</sup>, confers power on the Minister of Health to introduce Regulations to introduce any measure that he deems necessary in response to the spread of COVID-19. The Act thereby gave express power to the Minister to restrict the right to liberty, freedom of movement, association and assembly. The first draft of the

**DUE TO THE BROAD DEFINITION OF “POLITICAL PURPOSES”, THE ACT’S THIRD PARTY PROVISIONS HAVE BEEN INCREASINGLY APPLIED TO HUMAN RIGHTS CAMPAIGNS CONDUCTED BY CSOS**

law would also have afforded the Government the power to determine how long the emergency lasted by giving the Ministers for Health and Public Expenditure the ability to extend the period.<sup>12</sup> However, the ICCL successfully campaigned for a sunset clause to be included, whereby any extension would need approval from the Oireachtas (the Irish legislature). The

<sup>11</sup> Note that a general election took place on 8 February 2020. Government formation talks culminated in the formation of a three-party coalition on 27 June. The caretaker government conducted the COVID-19 response since the first case was reported in Ireland on 29 February.

<sup>12</sup> <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-analysis-emergency-COVID19-legislation.pdf>

powers to introduce regulations under the Act will now expire on 9 November.

The sweeping nationwide restrictions on movement and gatherings announced on 27 March became legally enforceable on 8 April when Regulations signed by the then Health Minister came into effect, conferring extraordinary powers on gardaí (the Irish Police) to enforce the restrictions. The



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regulations foresaw penalties of up to a €2,500 fine or/and up to 6 months in prison for breaching these restrictions. The new gardaí powers were retained in three subsequent sets of Regulations and were not ceased until 8 June.<sup>13</sup> The ICCL had continuously questioned the necessity and proportionality of the use of criminal sanctions to enforce public health guidelines, especially given the high levels of public compliance, and the lack of evidence that criminalisation and prosecution are justified or likely to be effective.

Although the subsequent sets of Regulations (8-29 June, 29 June-20 July, 20 July-10 August and 10-31 August) have been less invasive, they still contained criminal penalties for the organiser of an event exceeding 50 people indoors and 200 people outdoors. The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 also provides for the designation of affected areas of infection, and Regulations were in force restricting

movement and gatherings in three counties - Laois, Offaly and Kildare - for 2 weeks. These Regulations contained penal provisions in relation to gatherings (6 indoors and 15 outdoors) and certain business services.

A criminal investigation is reported to be underway on the basis of revelations on 20 August that senior State representatives attended an 80 person indoor event, in breach of the above-mentioned Regulations on indoor gatherings.<sup>14</sup> These revelations have significantly undermined the public health messaging and public confidence in the Government, especially as these revelations emerged mere days after the announcement of the intention to introduce new Regulations providing additional policing powers of enforcement.<sup>15</sup>

In mid-September, the government unveiled a 5-level plan for living with COVID-19 for the next 6 to 9 months. Since 21 October, all 26 counties in the Irish Republic have been on level 5, until 1 December. People can be fined for being beyond a 5km radius of their home and for not wearing a facemask where required. The ICCL has opposed the fines system on the basis that it is not effective in ensuring compliance, disproportionately impacts the socio-economically disadvantaged and is expensive to administer.<sup>16</sup>

The approach of An Garda Síochána (the Gardaí – national police) has been to promote public health by a process of Engage, Educate, Encourage and Enforce. We at the ICCL are particularly encouraged by the Garda commitment to the “sparing use” of powers of enforcement.

The Emergency Measures In The Public Interest (Covid-19) Act 2020

<sup>14</sup> <https://www.irishexaminer.com/news/arid-40035389.html>

<sup>15</sup> The ICCL has issued a statement expressing opposition to their introduction and reiterating our position that public health advice should be consent and education-based: <https://www.iccl.ie/news/iccl-calls-on-government-not-to-reintroduce-garda-powers/>

<sup>16</sup> <https://www.iccl.ie/wp-content/uploads/2020/10/ICCL-letter-to-Cabinet-subcommittee-re-covid-fines.pdf>

<sup>13</sup> 12 April-5 May; 5-18 May; 18 May-8 June.



amended The Mental Health Act 2001, allowing medical officers to detain individuals whom they believe in ‘good faith’ to be a potential source of infection and was enacted on 27 March. Due to the significant impact these powers have on the right to liberty, the ICCL raised concerns that numerous safeguards were not included, namely that detention should be necessary (not just appropriate), a stronger review and appeals process and the right to an advocate for people who may not have full capacity to advocate for themselves.<sup>17</sup> T

his Act initially contained a sunset clause of 9 November. A legal challenge against these laws, claiming that they were unconstitutional and disproportionate, was dismissed by the High Court in May.<sup>18</sup> The powers under part 3 of this Act have since been extended until 9 June 2021, following parliamentary debates on 22/23 October. The ICCL raised concerns about the time allocated to this debate, given the wide-ranging powers part 3 affords the Minister for Health to restrict fundamental freedoms.<sup>19</sup>

<sup>17</sup> <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-Explanatory-Note-on-Emergency-Measures-in-the-Public-Interest.pdf>

<sup>18</sup> Judgment of the High Court of 13 May 2020, O’Doherty & Waters v. Minister for Health & Attorney General.

<sup>19</sup> <https://www.iccl.ie/news/iccl-opposes-attempt-to-steamroll-emergency-legislation-through-dail/>

**THE APPROACH OF AN GARDÁ SÍOCHÁNA HAS BEEN TO PROMOTE PUBLIC HEALTH BY A PROCESS OF ENGAGE, EDUCATE, ENCOURAGE AND ENFORCE**

**THE ICCL HAS ALSO CALLED FOR PROTEST TO BE PERMITTED DURING THE PANDEMIC WHERE PUBLIC HEALTH MEASURES ARE COMPLIED WITH**

### **POLICING IN THE PANDEMIC**

Historically, the ICCL has played a key role in monitoring policing in Ireland.<sup>20</sup> The emergency legislation significantly expanded police powers. It gave the police additional powers of arrest where a person refused to comply with the Regulations restricting movement and gatherings. There were numerous issues in relation to over-policing during the pandemic, including reports of stop and searches that went beyond lawful powers, ungrounded requests for IDs and the presence of armed gardaí (Irish police) at checkpoints. While An Garda Síochána is traditionally a largely unarmed community-based policing organisation, the pandemic in fact exposed what appears to be a growing trend in the use of armed officers around the country, despite the absence of rigorous democratic debate on this issue. The ICCL has questioned the use of armed Gardaí at checkpoints designed to support the public health effort.

Reports that the Gardaí had ordered 16,000 spit hoods for use during the pandemic also gave rise to alarm. A spit hood is a full hood that covers the head and face of individuals to prevent them

<sup>20</sup> The recognition of this role is evident in a letter sent by the Department of Justice to the Policing Authority advising consultation with civil society, including an express reference to the ICCL, on their assessment of the use of policing powers: [http://www.justice.ie/en/JELR/Letter\\_from\\_the\\_Minister\\_for\\_Justice\\_and\\_Equality\\_to\\_the\\_Policing\\_Authority.pdf/Files/Letter\\_from\\_the\\_Minister\\_for\\_Justice\\_and\\_Equality\\_to\\_the\\_Policing\\_Authority.pdf](http://www.justice.ie/en/JELR/Letter_from_the_Minister_for_Justice_and_Equality_to_the_Policing_Authority.pdf/Files/Letter_from_the_Minister_for_Justice_and_Equality_to_the_Policing_Authority.pdf)

from spitting at Gardaí. However, they have been called “anti-spit guards” by the authorities and the media, which gives the false impression that a spit hood is a protective device worn by officers. Their use may constitute inhumane and degrading treatment. Additionally, their effectiveness in preventing the spread of the disease has been questioned, not least by the Police Service of Northern Ireland.<sup>21</sup> Figures indicate that they were used 84 times between 8 April and 27 June 2020.<sup>22</sup>

Between 8 April, when the first set of Regulations came into effect, and 11 July 2020, Gardaí had invoked powers under the Regulations 353 times (out of more than a million interactions with the public). These include both incidents without arrest where name and address details were taken (for consultation with the Director of Public Prosecutions on the decision to issue charges) and arrests.<sup>23</sup>

**THE EMERGENCY LEGISLATION SIGNIFICANTLY EXPANDED POLICE POWERS**

### **THE RIGHT TO PROTEST IN THE PANDEMIC**

With regards to Freedom of peaceful assembly, the government and An Garda Síochána are generally supportive of large protests but, when it comes to protesters living on the margins of society

<sup>21</sup> <https://www.amnesty.ie/gardais-use-of-spit-hoods-may-increase-risks-of-spread-of-covid-19/>

<sup>22</sup> <https://www.irishtimes.com/news/crime-and-law/coronavirus-garda%C3%AD-to-receive-controversial-spit-hoods-during-crisis-1.4212183>; [http://www.justice.ie/en/JELR/Pages/Information\\_regarding\\_the\\_Justice\\_Sector\\_COVID-19\\_plans](http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans)

<sup>23</sup> [http://www.justice.ie/en/JELR/Pages/Information\\_regarding\\_the\\_Justice\\_Sector\\_COVID-19\\_plans](http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans)



## A GROUP OF CIVIL SOCIETY REPRESENTATIVES AND ACADEMICS HAS BEEN ADVOCATING FOR THE DEVELOPMENT AND DEPLOYMENT OF AN APP WITH HUMAN RIGHTS PRINCIPLES

or protesting outside of the media spotlight (for example, sit-ins against evictions), the garda and state response can be much more heavy-handed. The ICCL has recommended an expanded definition of what constitutes a protest to ensure the right to protest is fully enjoyed, including at protests which do not meet the “traditional” notions of a protest.<sup>24</sup>

The ICCL has also called for protest to be permitted during the pandemic where public health measures are complied with.<sup>25</sup> The Regulations restricting freedom of movement contained a list of reasonable excuses for leaving one’s home, which did not include engaging in protest. However, this list was non-exhaustive, and gardaí were afforded a degree of discretion to decide who may or may not have the right to leave their homes. In some instances, protests were allowed to take place, while other groups of protesters, who were observing social distancing, were instructed to move on. The ICCL highlighted the inconsistency in approach and urged the Government to consider defining what form of protest may be acceptable to lend clarity to policing,

inspire confidence in citizens and protect a precious touchstone of our democracy.<sup>26</sup>

The ICCL has voiced concern at reports that the organisers of the Black Lives Matter protest on 6 June were being investigated under the Regulations. An Garda Síochána has confirmed that a file was sent to the Director of Public Prosecutions in early October.

We have also been concerned by violent incidents at anti-mask protests in August and September in which counter-protesters were attacked. We wrote to the Garda (Police) Commissioner reiterating the Garda duty to facilitate peaceful protest and to protect peaceful protesters.

### **SURVEILLANCE ISSUES DURING THE PANDEMIC**

Since the Health Service Executive’s announcement that a COVID-19 tracking app would be launched, a group of civil society representatives and academics has been advocating for the development and deployment of an app with human rights principles and robust privacy protections at its core.<sup>27</sup> CSOs have continued to constructively question and assess the legality and efficacy of the app.<sup>28</sup> Although many of our privacy concerns were taken on board, the ICCL has not been in a position to recommend downloading the app due to unaddressed issues. The Data Protection Commission ruled that the use of drones by a local authority to monitor compliance with the movement restrictions in April were unlawful as a data protection impact assessment had not been carried out, as required under the GDPR.

Regulations came into effect on 28 May making the refusal to complete a passenger locator form upon arrival in

Ireland a criminal offence and the State has given assurances that data collected will not be stored for longer than 28 days. These Regulations have been extended on numerous occasions. While self-isolation for 14 days upon arrival in Ireland is a public health guidance, it is not legally enforceable. The ICCL deems the State’s decision not to introduce a centralised mandatory system of quarantine to be prudent and believes that the Gardaí should have no role in enforcing public health guidance.

In late July, it also emerged that people had their Pandemic Unemployment Payment (PUP) cut off by the Department of Social Protection because they had taken holidays (in some instances, people had made travel reservations but had not travelled). The ICCL has questioned the lawfulness of the measures, how the information was obtained, and their discriminatory impact. The Data Protection Commission has also raised “serious doubts” regarding the lawfulness of the Department’s blanket surveillance of people travelling to certain destinations under the Social Welfare Acts 2005 and has sought further clarity from the Department.

On 17 August, it emerged through

## CIVIL SOCIETY ORGANISATIONS HAVE REPEATEDLY CALLED FOR A HUMAN RIGHTS IMPACT ASSESSMENT

a Freedom of Information request submitted by a journalist that the Department of Justice has been carrying out extensive social media monitoring of commentary on issues concerning the Department during the crisis, such as on the impact of COVID-19 on those living in the direct provision system.

<sup>24</sup> <https://www.iccl.ie/wp-content/uploads/2019/06/190626-ICCL-National-Consultations-Preliminary-Report.pdf>

<sup>25</sup> <https://www.iccl.ie/wp-content/uploads/2020/04/ICCL-Protest-and-the-Emergency-Health-Regulations.pdf>

<sup>26</sup> <https://www.iccl.ie/wp-content/uploads/2020/04/ICCL-Protest-and-the-Emergency-Health-Regulations.pdf>

<sup>27</sup> <https://www.iccl.ie/wp-content/uploads/2020/06/Principles-for-legislators-on-the-implementation-of-new-technologies.pdf>

<sup>28</sup> <https://www.iccl.ie/2020/experts-issue-pre-release-report-card-on-the-hse-covid-19-tracker-app/>

This monitoring includes the logging of civil society representatives' names and their social media accounts. The Department has stated that it "started a new policy of monitoring social media during Covid-19 to improve its communications strategy".<sup>29</sup> An ICCL staff member has submitted a data access request to the Department of Justice under the GDPR in response to the inclusion of their name in the report.

### **THE IMPACT OF THE EMERGENCY ON VULNERABLE COMMUNITIES**

CSOs have raised concern from the outset that the crisis could further disadvantage certain vulnerable groups, particularly those living in congregated settings and those already marginalised in society (whether socially, economically or in terms of their general health or housing situations).<sup>30</sup> While a National Public Health Emergency Team (NPHE) subgroup on vulnerable people was established in March to provide oversight and assurance with regard to the specific measures to be taken to protect vulnerable groups and individuals in society,<sup>31</sup> the underrepresentation of civil society was noted by civil society organisations, with only 3 out of the 28 members in the subgroup from the sector.

#### **Example of congregated settings: those living in the Direct Provision system**

The pandemic has highlighted anew the serious human rights violations to which the direct provision system gives rise, where most individuals seeking asylum in

Ireland are housed. It was not announced until 11 August 2020 that weekly testing of residents in direct provision centres would take place, where cramped living facilities make adhering to public health advice extremely difficult and, in some cases, impossible. There is an urgent need for own door accommodation and self-contained units for families to mitigate against the risk of spread of the disease. 55% of respondents to a comprehensive survey conducted among the Direct Provision population by the Irish

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Refugee Council report that they felt unsafe during the pandemic and 50% have been unable to socially distance themselves from other residents.<sup>32</sup>

In March, one centre in Caherciveen saw residents locked in the centre where COVID-19 cases had been confirmed. A group of civil society organisations and refugee law experts wrote to the then Minister of Justice voicing serious concerns at these reports and the issues faced by those living in the system.<sup>33</sup>

#### **Example of already marginalised groups: Traveller and Roma communities**

The Traveller and Roma communities in Ireland are at a disproportionate risk of infection for numerous reasons, including on-going health inequalities; higher rates of chronic diseases; poor living circumstances including overcrowded living conditions which makes self-isolating challenging; as well as inadequate access to sanitation facilities; low educational attainment which impacts on the understanding of public health materials. The crisis has highlighted the poor living conditions experienced by Travellers & Roma, the lack of progress made in implementing Traveller accommodation programmes, and the general lack of national engagement with/knowledge of the Roma in Ireland.

### **THE IMPACT OF THE CRISIS ON CIVIL SOCIETY'S ADVOCACY**

The ICCL, together with other civil society organisations, has repeatedly called for a Human Rights Impact Assessment to ensure the protection of those most vulnerable to the disease, as well as identifying those who are most impacted by restrictions and accompanying garda powers.<sup>34</sup> Such an assessment would also feed into a proper proportionality assessment as to any restrictions on rights and of the impact on particular groups. Concerns regarding the crisis having a disproportionate effect on vulnerable populations and in congregated settings were borne out in the nursing home sector, with over half of COVID-related deaths in Ireland occurring in this setting.<sup>35</sup>

The crisis has underlined the vital importance of the advocacy role played by CSOs in ensuring the needs of the most vulnerable are highlighted and addressed.

<sup>29</sup> <https://www.independent.ie/irish-news/department-of-justice-officials-monitor-posts-criticising-direct-provision-on-social-media-39452868.html>

<sup>30</sup> <https://www.communityworkireland.ie/covid-19-ngo-group-marginalised-groups-and-promoting-equality-inclusion-and-human-rights-in-the-covid-crisis-a-joint-submission/>

<sup>31</sup> <https://www.gov.ie/en/collection/301f5e-the-national-public-health-emergency-team-nphet-subgroup-vulnerable/>

<sup>32</sup> <https://irishrefugeecouncil.eu.rit.org.uk/News/powerless-experiences-of-direct-provision-during-the-covid-19-pandemic>

<sup>33</sup> <https://www.iccl.ie/wp-content/uploads/2020/05/Letter-closure-of-Skellig-Star-Hotel-8-May-2020.pdf>

<sup>34</sup> <https://www.iccl.ie/wp-content/uploads/2020/04/CSOs-letter-to-Taoiseach-calling-for-HRIA.pdf>

<sup>35</sup> <https://www.gov.ie/en/publication/3af5a-covid-19-nursing-homes-expert-panel-final-report/>

## DURING THE COVID-19 CRISIS, NUMEROUS CSOS WERE INVITED TO MAKE SUBMISSIONS TO THE SPECIAL OIREACHTAS COMMITTEE THEMATIC SESSIONS ON THE COVID-19 RESPONSE

The importance of working in partnership with the State while also holding them to account has been manifest in the work of organisations throughout the pandemic. The ICCL continues to take part in the COVID-19 NGO group, coordinated by Community Work Ireland, which has been meeting regularly online to share experiences and to coordinate collective advocacy initiatives.

Numerous CSOs have expressed frustration with regard to a lack of opportunity to consult with decision-makers and to input into policy decisions that impact their area of work. While some organisations report that their expertise and experience were not availed of by the authorities and experiencing a significantly shrunken space in which to advocate and to engage with authorities, others report positive experiences with the authorities during the crisis.

### **Access to information and transparency during the pandemic**

The Department of Health initially held daily public health briefings by the National Public Health Emergency Team (NPHE) to inform the public of the latest infection and fatality figures. These briefings now occur twice weekly. There have also been awareness-raising campaigns on public health advice on national TV and radio stations. However, the decision-making process underpinning the

public health guidance, as well as the guidance itself, has become increasingly opaque. Difficulties in distinguishing between public health advice and enforceable statutory law have been experienced by the public throughout the crisis.

A worrying pattern has emerged from a rule of law perspective. The texts of the Regulations introduced under the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 have been consistently unavailable at the point of commencement on the Irish Statute Book and Department of Health websites. For a legal instrument to meet the standard of lawfulness, it must be accessible to those who are subject to that law. It is unacceptable that the public should learn about the content of laws of such far-reaching effect from media reports and after their purported commencement.

### **Formal civic engagement**

There are numerous forms of formal civic engagement. Community and voluntary organisations take part in the National Economic Dialogue, established to enable their policy priorities to be discussed and to inform budgetary considerations. Public Participation Networks (PPNs) were established in 2014 to enable community groups to connect with local authorities, with the aim of “allowing diverse views and interests to be considered as part of the decision-making process of local government”.<sup>36</sup> A PPN is comprised of three pillars (community and voluntary, environment and social inclusion) and the PPN’s secretariat consists of three members from each pillar. While there are positive examples of PPNs enhancing civic participation in decision making, members of PPNs and local representatives report the need for a greater understanding of each other’s specific mandate and role.

<sup>36</sup> <https://www.gov.ie/en/policy-information/b59e9-community-network-groups/>

CSOs regularly take part in public consultations, carried out as part of the departmental policy and legislation development process, and deliver presentations before Oireachtas Committees. During the COVID-19 crisis, numerous CSOs were invited to make submissions to the Special Oireachtas Committee thematic sessions on the COVID-19 response (the Special Oireachtas Committee was established to consider the State’s response to the pandemic and is comprised of members of the Irish parliament (TDs)). On 9 September, the ICCL took part in the session on human rights and civil liberties considerations upon the Committee’s invitation and set out 7 recommendations to improve human rights protections in the State response to the pandemic.<sup>37</sup> The impact of our engagement throughout the Oireachtas Special Committee’s remit is evidenced by the inclusion of some of our recommendations in its final report (e.g. that all legislation should be human rights proofed, the importance of broad Oireachtas pre-legislative consultation, and of clear and effective government communication).

Social Justice Ireland has called for the establishment of a robust social dialogue process that would enable all

<sup>37</sup> submission

THE CRISIS HAS UNDERLINED THE VITAL IMPORTANCE OF THE ADVOCACY ROLE PLAYED BY CSOS IN ENSURING THE NEEDS OF THE MOST VULNERABLE ARE HIGHLIGHTED AND ADDRESSED



sectors of society to engage with Government, emphasising the crucial role of civil society in building a sustainable recovery from the public health emergency.<sup>38</sup>

## **CONCLUSION**

The crisis has highlighted the vital advocacy role played by the sector; through campaigning for a human rights-based law and policy response, through monitoring the impact of State decisions on different groups in society, and through holding the State to account. The ICCL, together with civil society colleagues, is continuing to advocate for human rights considerations to be at the centre of the State's response to the pandemic and to campaign for retaining certain economic and social policy measures introduced in response to the crisis which have strengthened human rights protections. ■

The analysis is updated to 30 October 2020. On 21 October, the country placed on Level 5 of the Plan for Living with COVID. See: <https://www.gov.ie/en/press-release/66269-ireland-placed-on-level-5-of-the-plan-for-living-with-covid/>.

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<sup>38</sup> <https://www.socialjustice.ie/content/policy-issues/robust-social-dialogue-process-could-drive-sustainable-recovery>

*“During the COVID-19 crisis, the civic sector worked alongside statutory bodies and agencies to deliver essential services to the most vulnerable in society, including older people, those with underlying medical conditions, homeless families and those requiring psychological, social and material supports. While there has been’ widespread public enthusiasm for volunteering, organisations across the community and voluntary sector have been struggling to deal with increased demand for their services coupled with a decline in fundraised and earned income. Furthermore, there is often a lack of understanding of the important role played by these existing organisations in supporting hard-to-reach populations. **The Wheel**, alongside 14 other organisations, secured a €40 million package of supports for community and voluntary organisations, charities and social enterprises in Ireland. This fund signifies important recognition by government of the vital work being done by organisations across civil society to support the most vulnerable during the Covid-19 crisis*

Lily Power,  
The wheel

# CIVIC ACTORS WERE CRUCIAL TO RESPOND TO THE CRISIS

Towards a partnership approach between the State  
and the civic sector

Interview with Ivan Cooper, The Wheel

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## Can you tell us about The Wheel and your mission?

The Wheel is Ireland's representative and support organisation for civil society - we sometimes refer to the sector as the community and voluntary sector, but it also includes social enterprises and charities. The Wheel has 1800 members organisations to whom we provide information, advice and support. We also represent the sector's interests to build public support and to secure the optimum legislative, policy and regulatory environment. We estimate that 30'000 people in Ireland are employed by organisations that are members of the Wheel.

## How has the civic sector been affected by the pandemic?

## What challenges did it face in providing this crucial support?

In Ireland, the community and voluntary sector is a huge sector. The turnover of these organisations is about 14 billion Euro. About half of that, roughly 7 billion Euro comes from fundraising that these organisations do themselves or income they earn every year. Similarly to many countries in Europe, there are lots of essential services that the population depends on: health services, community services, social services... These types of services are provided by voluntary organisations in Ireland, partly funded by the State.

When social isolation began in March, civic organisations faced two significant challenges. First, how to

deliver essential services in the socially isolated world. Second, how to cope with the collapse in the fundraised and

**CIVIL SOCIETY  
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IN COMMUNITIES  
AROUND THE COUNTRY**





Ivan Cooper

earned income to cover the cost of their work. Indeed, all the activities that they would normally be able to do that made them able to raise these funds disappeared overnight. Gathering for events where people could make donations was no longer possible: they could not go for sponsored walks or run together, they could not do collections house to house, they could not gather for coffee mornings... there was a serious fear that there would be a major catastrophe, while the government was not fully aware of the extent of the crisis.

### How has the Wheel supported the sector?

There are two aspects to what the Wheel worked on in relations to civil society in Ireland during the pandemic. Firstly, civil society organisations in Ireland were well placed to form part of the initial response to support vulnerable people in communities around the country. We in the Wheel collaborated with a few partner organisations and then worked with hundreds of organisations to ensure that people in communities, especially in rural Ireland, had access to a network of individuals, helpers and volunteers that could help them with their shopping and other urgent needs. Secondly, as I said, civil society organisations were hit very hard by the collapse in fundraised and earned

income. We pulled together a coalition of 15 Irish membership organisations to identify the scale of the problem and then to seek some governmental support for organisations so they could keep going with their activities. So, there were two dimensions to this work. I was centrally involved in the second one.

Concerning the collapse of income, we immediately opened up discussions with the lead department in Ireland, the Department for the Rural and Community Development. They told us that they would need more information on the extent of the loss for the sector. Clearly, this was going to be a challenge: how do you assemble information of the extent of an unfolding crisis in the middle of an unfolding crisis when all of these organ-

**MANY ORGANISATIONS  
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HAVE BEEN DOING  
SO THROUGHOUT THE  
CRISIS PERIOD**

isations are worried about how they are going to continue to support people in need?! We approached some holders of good quality information about the typical income of the Irish charity sector, broken down by sub-sector, over a typical year; we also conducted surveys of our members to identify the extent of the fundraising collapse they anticipated during that period. We did some mathematics to identify a fairly robust estimation of the collapse in fundraised and earned income. That number came to 400 million Euro for March, April and May.

Some organisations were going to be worse hit than others. As I indicated, some community and voluntary organisations get a significant amount

of their money from the State. One of the early things we were able to do was to communicate to the state funders the importance of signalling to the supported organisations that they were flexible: so the main government partners that provide grants to voluntary organisations sent out letters saying that they would honour the terms of their funding agreements even though the circumstances had changed and organisations might do different things with the money that had been agreed in advance.

That was good. However, those organisations that were not receiving significant funding from the State were going to be much more severely hit. We went again to the lead department with the research, backed with the results of the survey that the coalition had done, describing the impact on the work of charities as a result of the collapse of the income. The Department was happy to accept the legitimacy of the figure of 400 million Euro.

There was then a complicating factor: in Ireland, as in many other countries in Europe, there have been different schemes to support employers to continue paying their employees. In Ireland, this is referred to as the *Wage subsidy scheme*. The scheme applies to charities and civil society organisations if they can demonstrate two things: First, that they suffered a collapse of income above 25%; second, that they are delivering services deemed “essential” to local communities. This was not going to include all of the civil society organisations: some might not have been able to show that they were going to suffer 25% income drop and many are not providing what the State might regard as “essential services”. Advocacy, for example, is sometimes not considered to be an essential service. The government calculated that when the wage subsidy scheme was taken into account, the 400 million Euro income loss dropped to 125 million.

The Department for rural and community development accepted the case made by the coalition. Its job then was to go and talk with all other government departments that also fund civil society organisations: the Department of Health, the Department of children, the Department of education... After a two-week consideration period, the cabinet announced that there would be a special emergency fund for charities in Ireland to cover the period when the income was lost: the Stability fund for charities for the amount of 40 million. There was an acknowledgement by the government that the 40 million Euro was not the amount that was required. This was just an important start.

Civil society welcomed the scheme. It was quickly opened, and there were over 1200 organisations that applied for that funding, so the need was most definitely there. From the information we have from the government department, a total application of 180 million Euro was made.

This collapse in income is going to persist into the future. Many organisations are reorganising their services and have been doing so throughout the crisis period. So phase two of this work is in

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the context of the budget for the next twelve months that the government will be producing in October. We will be identifying with our members to what extent civil society will be impacted in the long-term and we will make the case with each government department to increase or change the nature of the funding that they provide to civic organisations. For example, to continue to provide services, some organisations have higher needs for personal protective equipment (PPE), or they need to provide employees and staff with additional technical equipment to enable them to work on-site, like laptops, computers, tablets and phones and so

on. That involves additional costs. We will need to look into how much any individual subsector will require, and the main lines of communication will be with each sectoral need departments.

### **Will the fund for civil society support advocacy work?**

No - they must be delivering front line services. The primary aim of the Stability Fund is to assist the community and voluntary organisations, charities and social enterprises who are experiencing financial difficulties due to a reduction in their fundraising income and/or traded income as a direct result of the COVID-19 pandemic. Organisations must be delivering critical front-line services in the Republic of Ireland, before the 1st January 2019, to be eligible to apply.

### **What strategies has the Wheel put in place to leverage support for the sector?**

One important aspect was the fact that, in Ireland, the Wheel as the lead organisation for the sector of civil society has very well-developed relationships with senior officials in key government departments.

A second part of the strategy was that we were not on our own as an organisation. Although we are a prominent organisation in Ireland, we formed an alliance with all the key organisations that work in civil society. We involved the main umbrella organisations working with volunteers, with children and family relations, with people with disabilities, in the area of good governance and charities... By getting all these organisations together into a coalition, we solved a problem for the government department: like any government department, when a crisis hits, it prefers to have one or two strong partners that it can communicate with without being inundated with communication from many different partners. We worked very hard with the members of the coalition to articulate a clear message and to give the

## **THE IMPACT OF THE COVID-19 CRISIS**

### **A survey by The Wheel found that:**

- ▶ **48%** of charities anticipate an income/funding loss of up to 75%
- ▶ **12%** anticipate an income/funding loss of up to 100% by the end of 2020
- ▶ **40%** of organisations with paid staff have reduced their staff's working hours
- ▶ **64%** reduction in volunteers as a result of COVID-19 restrictions

### **Paid staff:**



- ▶ **50%** have experienced increased demand for their services
- ▶ **65%** reported that restrictions have reduced their abilities to deliver services

Source: The Wheel, The impact of the COVID-19 crisis, (2020), <https://www.wheel.ie/sites/default/files/media/file-uploads/2020-10/MemberSurvey2020Report.pdf>

government the confidence they needed to devise a solution. No solution will ever be perfect. So when the solution came back, as imperfect as it was – 40 million Euro against 125 million Euro – we were able to provide leadership in our coalition so to make sure that the reaction in civil society was not overly negative.

The other part of the strategy was to conduct a solid piece of research that could stand of the scrutiny of senior government officials – and this was very difficult in the time frame that we had at our disposal. People were working 12 to 15 hours days for weeks on end: on weekends, on Saint Patrick day, on Easter holidays... The research had to be suitable to senior officials in government to go themselves to bat in front of the Secretary-General of the central government funding departments. It had to be credible for the government cabinets who ultimately signed off on the provisions. Quality of arguments and solidity of evidence was critical.

### **How does dialogue work at the national level? Is there an institutional framework? And was it respected during the crisis?**

There are several components of the framework; it changed over the last 15 years. In particular, it changed from the financial crisis onwards. Civil society has a number of mechanisms to engage with the central government. One of them is the community and voluntary pillar, of which the Wheel is one member. There are 17 civil society organisations in that coalition, and each of those organisations receives some funding from the central government to enable them to conduct research and engage in policy discussions with different departments of State. Amongst those organisations, you have organisations working on specific policy areas: children's rights organisations, organisations advocating for the needs of older people, organisations representing

people who are experiencing poverty, organisations representing people with disabilities and special needs... It is usually two organisations for each of those areas in the community and voluntary sector. There are also organisations like the Wheel that have pan-sectoral responsibilities that deal with the entire sector. Those organisations meet in Parliament about four times a year. Each of them engages with all government departments in bilateral meetings two to three times a year. There is good quality engagement between civil society and policy-making departments in Ireland.

In addition to that, every year, there is a wider dialogue that takes place between civil society and the government. In recent years, this has been called the "National economic dialogue". It is a two days event in which all of the members of the Community and volunteering pillar plus a dozen other civil society organisations are invited. That is an opportunity for civil society to engage with senior ministers of the government and talk about policy priorities for the year ahead, in particular in the context of formulation of the national budget. Ten years ago, that partnership was called "Social partnership" instead of "National economic dialogue". The shift in orientation occurred as a result of perception at that time, twelve years ago, that policy-making in Ireland had become too diversified from the national assembly and had become too corporatist. There

was a perception that civil society had too much of an influence. So the dialogue took a step back to be just connected to matters of economics. With the new government in Ireland – which was nominated only one month ago – the orientation is anticipated to shift back toward a social partnership on account of the challenges that the country now faces in the period ahead. Civil society stands in a good place because of the very clear perception by the government that civil society organisations nationally played a major role sustaining people during the crisis in a way that the government could not do on its own.

I think that during the crisis, the experience of the Wheel and other organisations that we cooperate with, the civil dialogue was like the coming together that can sometimes happen in the event of warfare or of major environmental calamity. Civil society was very well placed to provide evidence and information to the government and act as a communication channel and action partners for the government. Our experience was that there was a great willingness on the side of the government to listen within limits. Indeed, the government was faced with a challenge that required them and all of their civil servants to work 12 to 15 hours a day in the same way I just described in civil society. There was a real sense of everybody pulling together both within the government and in civil society to reduce the impact and reorient services.

The much more difficult period is what is coming ahead. The immediate crisis has been dealt with, but there are now going to be plenty of challenges and difficulties with lots of contending claims being made to the government, and the government simply will not be in the position to respond to all of those claims. The period ahead will test the extent to which the trusted relationship will continue between civil society and the State. Some of our members believe

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CIVIL SOCIETY  
AND THE STATE**



that despite the government saying they do not intend to return to austerity, it is still very likely that, because of the political reality, there might be some tough decisions that the government will have to make and some that might result in reductions to the funding of the sector.

Looking at the positive side, we also think that there is scope for the civil society to respond creatively. One example is the collaborative work that members have been engaging with. There may be some organisations to look at more collaborative work and, perhaps, for some organisations, it might be worth to look into the potential for mergers.

**Do you think that the European Union can be an ally for the civic sector? In what way?**

Yes – absolutely. The European Union and the civic sector are natural partners in that they can facilitate mutually inclusive values and goals. The EU values of inclusion, tolerance, justice, solidarity and non-discrimination are aligned to the work of the community, voluntary and charitable organisations that put social-progress and the common-good on par with economic growth as indicators of a healthy society.

Public participation, active citizenship and strengthened democracy are key movers to empowering people and communities. With the support of the EU, the civic sector can be a means through which people engage with their European citizenship and participate more fully in democracy.

The EU can be a great ally to the civic sector by supporting and fostering partnerships with the people and organisations who work hard to ensure that equality, fairness, opportunity and participation are at the forefront of our European way of life.

**What lessons can be learned from the outstanding**

**THE EU CAN BE A GREAT ALLY TO THE CIVIC SECTOR BY SUPPORTING AND FOSTERING PARTNERSHIPS WITH THE PEOPLE AND ORGANISATIONS WHO WORK HARD TO ENSURE THAT EQUALITY, FAIRNESS, OPPORTUNITY AND PARTICIPATION ARE AT THE FOREFRONT OF OUR EUROPEAN WAY OF LIFE**

**community and charity mobilisation that can potentially inform a post-COVID-19 institutional and societal response?**

The COVID-19 brought about a host of unprecedented challenges. In response, the country put people's health and well-being first, and the needs of the economy were de-prioritised to bring the virus under control. The network of community and charity organisations played a key role in this response and were well placed, and well connected, in communities, to provide flexible and immediate support and services. The essentialness of these services was starkly evidenced in this crisis, and the vital role charities played throughout the period has been widely acknowledged by the government and the public.

However, this recognition of the role of the civic sector must be brought forward into statutory and wider societal consciousness in order to rebuild a better society based on this recent experience

of solidarity and putting the public good first.

Although the crisis has highlighted the reach and capabilities of the sector, there are pervasive obstacles that inhibit the work of community and voluntary organisations such as inadequate or uncertain funding, heavy compliance requirements without administrative supports, lack of communication and consultation with statutory funders.

These should be met with solutions such as multi-annual funding – sustained and strategic resourcing of the community, voluntary and charitable sector. Government departments should increase or change the nature of the funding that they provide to civic organisations. There should also be a shift towards a more partnership approach to working between State and the civic sector, and civil society should be engaged in social dialogue and consultation. ■

The interview was carried out on 20 July 2020. In September a research by The Wheel showed that the drop in funding for the sector reached €445 million. Read: <https://www.wheel.ie/sites/default/files/media/file-uploads/2020-10/MemberSurvey2020Report.pdf>. In October, the budget for the Covid-19 Stability Fund for Community and Voluntary Organisations was raised to €45 million. See: <https://www.charities-instituteireland.ie/our-blog/2020/10/15/cii-welcomes-additional-10m-for-covid-19-stability-fund>. The situation remains precarious here and The Wheel continues to lobby for further supports to sustain the sector through the crisis.

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