Mr Charlie Flanagan, TD, Minister for Justice and Equality

Department of Justice and Equality

51 St Stephen’s Green

Dublin 2

16th March 2020

By email to charles.flanagan@oir.ie; minister@justice.ie

Dear Minister Flanagan, a chara,

We write to request the immediate implementation of emergency measures to protect the lives and health of people living in Direct Provision.

We call on the State to immediately offer to relocate people living in Direct Provision centres - first and foremost those who are older than 60 years old, and people with preexisting medical conditions - to places where they can effectively self-isolate, subject of course to their informed consent and agreement.

This will not only enhance their safety and protection, but could also aid the health services in confronting the rising numbers of people that contract COVID-19, and help to contain and flatten demand on the health system.

As tourist numbers are in decline due to the current situation, there will be capacity in various places in the State, including in urban centres close to hospitals, where people can be temporarily relocated. We believe that these measures can help to avoid the creation of new epicentres of COVID-19, reduce the density in the Direct Provision centres, and help to diminish or at least slow the number of people infected by COVID-19 simultaneously.

The Government’s recommended strategy to self-isolate and self-quarantine, minimising human contact and social gatherings, is a vital tool in safeguarding human health and saving lives. The conditions for people in Direct Provision, however, are such that it is often not possible in practice to self-isolate. As has been widely documented, people living in Direct Provision often live in very close quarters, sharing living spaces and other facilities with multiple families and individuals. The McMahon Report (for instance) states that in Direct Provision centres, “Children and parents often have to share accommodation and common facilities are shared with a significant number of strangers.” (McMahon Report, 2015; 1.59).

The McMahon Report further explains that “[t]he application of the statutory definition of overcrowding means that the norm within accommodation units is for unrelated single residents to share bedrooms, and for parents and their children to share bedrooms (subject to the rule relating to mixed genders)” (Ibid. 4.52). This places residents in Direct Provision who are immuno-compromised and with various health conditions in imminent danger. This has a potential knock-on effect for the containment efforts of the Government.

As you will be aware, the State has Constitutional and European and international human rights law obligations not to put the life or health of persons in danger. This is very particularly the case where the people in question are being housed by or on behalf of the State and where the State is aware of the particular risks to life and health of over-crowding during a pandemic such as the one we are currently experiencing.

The European Court of Human Rights has held that Article 2 of the European Convention on Human Rights requires the State to take practical steps to prevent loss of life in specific situations where it knows or ought to know that there is a real risk of death (see for example *Oneryildiz v Turkey* 2004-XII, 41 EHRR 325; *Osman v United Kingdom* 1998-VIII, 29 EHRR 245; *Opuz v Turkey* Hudoc (2009), 50 EHRR 695).

Meanwhile, Article 12 of the International Covenant on Economic, Social and Cultural Rights enshrines “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” It commits Ireland to take steps “to achieve the full realization of this right” by, for instance, “(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases”. According to Article 2 of the Covenant, the State is prohibited from discriminating against any person or group in its efforts to secure the right to health. You are no doubt aware of the advice issued by Dr Michael J Ryan, Executive Director of the World Health Organisation, on 13th March, that States’ efforts to tackle COVID-19 must not forget migrants or others who are particularly dependent on the State.

We are clearly in the midst of an unprecedented public health emergency. As demonstrated by the rising death toll across Europe and the world, the lives and health of huge swathes of the population are at risk in Ireland. The COVID-19 virus does not discriminate based on race, ethnicity, or national origin. Everyone in our community is at risk, but those with underlying medical conditions, people with compromised immune systems and the elderly are particularly vulnerable. We believe that taking steps to offer people the facilities to self-isolate will potentially save lives and contribute to the flattening of demand for urgent health care in the coming weeks and months.

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