



Commonwealth Forum of
National Human Rights Institutions



**Protecting disabled people's rights
during COVID-19: good practice
from across the Commonwealth**



“ This illustration represents the community cohesion and strength that is present among people with disabilities across the world, despite the systemic and personal barriers that we face. The COVID-19 pandemic has exacerbated many of the barriers people with disabilities face. At the same time, the pandemic has resulted in more awareness of issues faced by people with disabilities, and I wanted to showcase the feelings of hope and solidarity around this milestone. While we still have a long way to go in creating a society that fully supports and embraces people with disabilities, I think it creates a vision of hope for a better and more just future.

—
Solidarity makes us stronger

Cover art by Ananya Rao Middleton.

Ananya is a 28-year-old freelance illustrator and chronic illness activist who uses her work to express herself post-brain injury and as someone living with multiple sclerosis. Vivid, vibrant and explorative, Ananya’s illustrations focus on the lived experiences of women in relation to the realities of living with chronic illness, using eye-catching colours and powerful affirmations to bring her work to life. She describes herself as a feminist illustrator and an activist for people with invisible illnesses.

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Foreword

The implications of the COVID-19 pandemic stretch across the globe, bringing into focus a range of different areas where our human rights are being affected. Throughout the pandemic, disabled people have faced substantial barriers in accessing justice, healthcare and education, and hard-won rights have been weakened by emergency legislation.

Early evidence suggests that the pandemic, and responses to it, may be having a disproportionate impact on the rights of disabled people. Disabled people are experiencing poorer outcomes, not only in terms of health, but across all areas of life where services and policies have not been designed with accessibility in mind.

National human rights institutions (NHRIs) are independent bodies that stand with and for those who need protection, and hold governments to account over their human rights obligations. They help to shape laws, policies and attitudes, to create stronger, fairer societies.

The Commonwealth Forum of National Human Rights Institutions (CFNHRI) is a network of human rights institutions, ombuds organisations and public defenders working to protect and promote human rights. The Forum harnesses the combined knowledge and expertise of its members to increase understanding of human rights issues, and help NHRIs to bring about positive change on human rights at the local, national and global level.

Across the Commonwealth, NHRIs have responded to the COVID-19 pandemic using their unique powers to protect the rights of marginalised groups. This report shows how CFNHRI members have protected and upheld the rights of disabled people by:

- ▶ providing targeted guidance to support good practice
- ▶ collecting and monitoring data, and
- ▶ working under pressure to respond to a complex and rapidly changing situation.

We hope that this will lead to a better understanding of how NHRIs can protect disability rights through the COVID-19 pandemic and beyond. I am immensely grateful to our colleagues from NHRIs across the Commonwealth, for sharing their expertise and best practice examples with us.

By working with civil society organisations and governments and, importantly, by involving disabled people themselves, we can learn from the outcomes of the pandemic and look towards a more hopeful future: a future in which the rights of disabled people are protected.



Kishwer, Baroness Falkner of Margravine

Chair of the Equality and Human Rights Commission (Great Britain)
and the Commonwealth Forum of National Human Rights Institutions

Introduction

A world-changing event

Across the Commonwealth, governments have introduced measures to respond to the global public health and economic crisis caused by COVID-19. However, the outcomes resulting from these measures have not been equal for everyone.

Certain groups in society have been particularly affected. Even before COVID-19, marginalised groups, including Indigenous people and ethnic minorities, women, girls and older people, as well as disabled people, faced persistent disadvantages.

Now, there is growing evidence that the pandemic, and responses to it, are having a disproportionate impact on these groups. COVID-19 has served to expose and exacerbate existing inequalities, both in law and in access to services.

Why focus on disability rights?

There are an estimated one billion disabled people in the world (around 15% of the total population). According to the [World Health Organization's \(WHO\) 'Disability and Health' report](#), this figure is increasing due to aging populations and an increase in chronic health conditions. The [Commonwealth Disabled People's Forum](#) estimates that around 450 million disabled people live in the Commonwealth.

Across the globe, NHRIs, inter-governmental organisations (such as the UN and WHO), non-governmental organisations (NGOs), civil society organisations (CSOs), disabled people's organisations (DPOs) and public health organisations have drawn attention to the disproportionate impact that COVID-19, and the response to it, is having on disabled people.

Disabled people who rely on support in daily life have experienced isolation during lockdown measures, while those living in institutions (such as residential care homes, detention facilities and psychiatric facilities) are particularly at risk of both contracting the virus and having their human rights curtailed. The [UN's guidance on COVID-19 and the rights of disabled people](#) highlighted access to health services, benefits and income support, education and seeking protection from violence as areas of concern.

Disabled people with intersecting characteristics, such as older disabled people, disabled women and girls, disabled people who are lesbian, gay, bisexual, transgender or intersex (LGBTI) and disabled people from some ethnic minorities, face multiple disadvantages.

How we talk about disability

The CFNHRI uses identity-first language in this report, referring to 'disabled people' rather than 'persons with disabilities'. This approach to language emphasises that people with impairments are disabled by barriers in society and aligns with the Social Model of Disability. It places the onus on society to remove disabling barriers and be fully inclusive of people who have impairments.

“ The CDPF uses 'disabled people' rather than 'persons with disabilities', as we are people with long term physical, psycho-social or mental impairments who are disabled by the barriers in environment, organisation and attitude that in interaction with our impairments lead to the denial of our full human rights and our disablement.

— The Commonwealth Disabled People's Forum

Many organisations, including some Commonwealth NHRIs who have contributed to this report, use person-first language. This approach to language prioritises the individual's personhood and avoids the suggestion that a person's disability is their defining characteristic.

The discourse around disability is constantly evolving. Non-disabled people must respect the relationship that disabled people have with their own impairments and affirm disabled people's choice of language that they use about themselves.

The human rights responsibilities of Commonwealth governments

The UN Convention on the Rights of Persons with Disabilities (CRPD) commits states to protecting and promoting the human rights of disabled people. This includes:

- ▶ eliminating disability discrimination
- ▶ enabling disabled people to live independently in the community
- ▶ ensuring that education systems are inclusive, and
- ▶ ensuring that disabled people are protected from all forms of exploitation, violence and abuse.

There are specific references to disability in a number of the United Nations Sustainable Development Goals (SDGs). Many of the SDGs (including those related to education, growth and employment) include taking action to improve the lives and rights of disabled people.

The Commonwealth Charter, which all Commonwealth Member States have signed up to, also expresses a commitment to human rights and opposition to all forms of discrimination.

The role of national human rights institutions

NHRIs have a unique role, each having a mandate to protect and promote human rights in their jurisdictions. NHRIs are independent of governments, and hold them to account to ensure that each country's international human rights commitments are acted upon, enabling all citizens to enjoy their rights.

NHRIs differ in how they fulfil their mandate, but broadly their powers include:

- ▶ monitoring and investigating human rights issues
- ▶ advocating on behalf of individuals and groups in need of protection
- ▶ holding states accountable for their human rights records, through the UN
- ▶ providing education and raising awareness, to inform people of their rights
- ▶ promoting access to justice and legal assistance
- ▶ providing guidance to governments, businesses and other organisations, to help them comply with their human rights obligations

Under [Article 33\(2\) of the CRPD](#), NHRIs have a particular role in monitoring and reporting on states' compliance regarding disabled people's human rights. NHRIs also help civil society organisations to understand international conventions on disability rights, to help improve government accountability.

Under the [Paris Principles](#), which the United Nations General Assembly adopted in 1993, NHRIs are mandated to:

- ▶ protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities, and
- ▶ promote human rights, through education, outreach, the media, publications, training and capacity-building, as well as advising and assisting their national governments.

How we developed this report

The CFNHRI is a member-led network united by shared values and aspirations. At the start of the pandemic, CFNHRI members were consulted to determine what issues should be focused on. The impact of the COVID-19 pandemic on the rights of disabled people was identified as a priority, with many Commonwealth NHRIs already working in this area in their monitoring role under the CRPD, and as members of other regional or global working groups.

Members were invited to share their experience of work in this area, so that we could bring together examples of best practice from Commonwealth NHRIs.

Our aim in this report is to:

- ▶ identify the key challenges and issues faced by disabled people during the COVID-19 pandemic, and their human rights implications
- ▶ demonstrate how Commonwealth NHRIs are using their unique powers to protect, promote and raise awareness of the rights of disabled people during the pandemic
- ▶ identify common features in the responses of NHRIs, as well as areas where gaps may exist, and
- ▶ promote the work of Commonwealth NHRIs alongside that of other organisations, in documenting the experiences and challenges faced by disabled people during the COVID-19 pandemic.

We hope that this report will support NHRIs in their vital work, promoting and protecting the rights of disabled people.

Providing guidance to support good practice

One of the most important ways that NHRIs protect, promote and advance the rights of disabled people through the COVID-19 pandemic is by issuing guidance. To fulfil their obligations under the Paris Principles, Commonwealth NHRIs work closely with experts to gather intelligence about specific areas where institutional support is needed.

Drawing on the expertise of DPOs and other organisations, combined with evidence from their monitoring work, CFNHRI members have produced or contributed to guidance for specific sectors and areas of life to ensure that pandemic response measures do not risk disadvantaging, or disregarding the needs of disabled people. Practical guidance is made as specific and clear as possible to make it as straightforward as possible for governments and sector leaders to implement it.

New processes and procedures to contain COVID-19 are being rolled out at a rapid pace. Through the lens of human rights, NHRIs highlight how these measures affect disabled people, and particularly those facing multiple disadvantages because of intersecting characteristics. Guidance can also demonstrate what good practice looks like, and clearly outline to disabled people and their representatives the treatment they have a right to expect.

CFNHRI members have issued guidance for the healthcare and retail sectors, and for local and national government. The types of human rights issues that arise in these different contexts, and that affect disabled people, are wide-ranging: a doctor making unfair assumptions about a disabled person's quality of life, for example, or retailers not making reasonable adjustments for disabled people when they introduce new social distancing rules. These issues highlight the need for thorough consultation with DPOs, and particularly those that represent intersecting characteristics.

Australian Human Rights Commission: guidance in medical care

The [Australian Human Rights Commission \(AHRC\)](#) issued guidance to healthcare providers, focusing on disability rights in health and disability care settings during the pandemic. Though the guidance focuses on the specifics of the Australian healthcare system, it is grounded in the universal principles of the CRPD and covers all the relevant human rights principles that apply in health and disability care settings.

The AHRC consulted with disabled people, medical professionals, civil society and government representatives to produce the guidance. It is aimed at healthcare workers including medical practitioners, nurses and other health professionals or disability support workers. It is also a useful resource for disabled people, their families and carers, to help them know their rights in a healthcare setting.

Disabled people can be disadvantaged in accessing health services because of many factors, including:

- ▶ barriers to communication and failure to make reasonable accommodations to allow disabled people full access to healthcare
- ▶ the attitudes and assumptions that healthcare workers may have about a disabled person's quality of life or life expectancy
- ▶ misdiagnosis because of other medical issues that disabled people may have, and
- ▶ failure to consider specific issues and cultural factors affecting Indigenous people and those from ethnic minorities, as well as particular issues affecting women across these groups.

Healthcare professionals and disability support workers may not be aware of their own unconscious biases; they may not be aware if societal stigma has affected their attitude towards disabled people. Protocols in the workplace are often insufficient in preventing unintentional discrimination.

“ Even when the disadvantage is unintentional, the effect upon people with disability interacting with the health care system can be devastating.

—
Australian Human Rights Commission

The AHRC highlights the fact that disabled people with complex support needs, including those with cognitive, intellectual or communication impairments, are acutely at risk of having their human rights violated in a healthcare setting. Disabled people have the right to autonomy, meaning that they must be free to be in charge of their own lives and choices. The support they receive must respect this right and the disabled person's own preferences, and not amount to decisions being made by health and care professionals on the disabled person's behalf. This is especially concerning when there are shortages of resources or during an emergency, such as the COVID-19 pandemic.

The guidance makes it clear that in some cases it may be necessary to treat disabled people differently in order to be 'disability neutral': that is, to ensure that their human rights, including the right to health, are respected the same as those of non-disabled people.

The AHRC's guidance also underscores the need for accessible communications. Healthcare providers can address this with measures such as asking patients about their accessibility requirements at the point of admission. To this end, the AHRC also produced an Easy English version of the guidance to maximise its accessibility.

Throughout this report, CFNHRI members all echo the fact that consultation with disabled people on their specific communication requirements is critical to achieve better outcomes, across all areas of life, throughout the pandemic.

The AHRC has had early discussions regarding the incorporation of this guidance into training for medical professionals. The guidelines have been well received across the sector and by academics internationally.

Equality and Human Rights Commission: guidance for retailers

The Equality and Human Rights Commission of Great Britain produced guidance to help retailers understand their legal responsibilities to disabled customers. Like many others around the world, retailers in Britain have had to make changes to comply with measures to prevent the spread of COVID-19. The EHRC's guidance states that these new processes must be applied in a way that maintains respect for the rights of disabled people and does not inadvertently discriminate against them.

The guidance was prepared in consultation with CSOs and DPOs that represent a range of different disabilities, including Alzheimer's, blindness, hearing loss and mental health conditions.

The EHRC's guidance highlights retailers' obligation to provide 'reasonable adjustments' for disabled people. Reasonable adjustments, in this context, are measures taken to ensure that disabled people are not substantially disadvantaged or prevented from participating in society, or accessing services. They are a part of equality law in Britain and help organisations to adhere to human rights standards.

“ Following equality law helps you as a retailer to contribute to a fairer society where everyone is valued and has the same access to services. Good retailers not only understand the ethical case for providing reasonable adjustments, but they also know that it brings financial rewards by expanding their customer base.

—
Equality and Human Rights Commission

For example, many supermarkets have been asking staff and customers to wear face masks in shops. This can make it difficult for Deaf and hard of hearing customers, who rely on lip-reading to communicate, to use their services. Store assistants must be aware that they may need to remove their face mask when talking to some customers, as a reasonable adjustment.

During the UK's third national lockdown, some leading supermarkets announced that they would be denying entry to any customers not wearing a face mask. Responding to this, the EHRC wrote to leaders in the sector to remind them of the guidance and their obligations to disabled people.

The guidance for retailers has been welcomed by disability organisations and shared through the Federation of Independent Retailers, which represents more than 15,000 independent retailers.

“ The EHRC guidance is very welcome and we hope that big and small retailers will take note. This year (2020) marks 25 years since the Disability Discrimination Act and it is hugely disappointing that retailers need to be reminded of their equality obligations.

—
Fazilet Hadi, Disability Rights UK's Head of Policy

Supermarket CEOs also thanked the EHRC and set out steps to put reasonable adjustments in place for disabled customers.

New Zealand Human Rights Commission: guidance for government and the public

The [New Zealand Human Rights Commission \(NZHRC\)](#) published a report calling for human rights and Te Tiriti o Waitangi to be put at the heart of decision-making and policy-making in response to the COVID-19 pandemic. Te Tiriti o Waitangi is the founding document of New Zealand Aotearoa that outlines European settlers' obligations to Māori, the Indigenous people of New Zealand.

The NZHRC's report includes guidance that aligns with calls from other Commonwealth NHRIs, for more effective inclusion and consultation of disabled people when drafting and producing information about the pandemic. It highlights the need for accessible formats and timely availability so that disabled people are aware of changes to services. In its recommendations to government, the NZHRC calls for Māori disabled people to be linked directly to COVID-19 response teams so that they can benefit from, and contribute to, culturally effective and disability-sensitive initiatives.

“ Efforts to address health and other disparities affecting Māori are unlikely to be effective if they are not real partnerships upholding Māori self-determination. Effective measures for Māori are those by Māori and with Māori, and which affirm Te Tiriti as a whole.

—
[New Zealand Human Rights Commission](#)

The NZHRC highlights the fact that the absence of disaggregated data means that issues facing disabled people, and particularly Māori disabled people, cannot be monitored effectively or supported holistically.

To provide a dedicated space for members of the public to learn about their rights in the context of the pandemic, the [NZHRC also set up a dedicated COVID-19 microsite](#), which includes guidance specifically for disabled people. The microsite allows users to report human rights concerns directly to the Commission.

As the rate of COVID-19 infections has been very low in New Zealand, and periods of restrictions relatively brief, the NZHRC has focused recent work on planning for any future events based on the necessary improvements highlighted during 2020. The NZHRC draws learning from global responses to the COVID-19 pandemic to inform its work, including addressing issues that are specific to disabled people.

Scottish Human Rights Commission: guidance for care homes

The [Scottish Human Rights Commission \(SHRC\)](#) wrote to the [Clinical and Professional Advisory Group for Care Homes](#) in response to blanket measures banning all indoor visits. The letter sets out a range of human rights considerations that must be taken into account when developing guidance about people visiting care home residents during COVID-19.

The SHRC raised concerns that many residents had not seen family members or friends for more than five months, violating their right to private and family life. It also reiterated that residents must not be deprived of their liberties in a way that is not proportionate to the current situation. This means that visits need to be assessed on an individual rather than a blanket basis, taking into account not only the risk posed by COVID-19, but the circumstances of each care home resident and their family.

“ The Commission therefore recommends those with direct experience, including residents and their families, should be involved in the development of guidance going forward. This is particularly important in planning for future crises, including a resurgence of COVID-19.

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[Scottish Human Rights Commission](#)

Many of the recommendations outlined in the SHRC's letter are reflected in the [Scottish Government's updated guidance on care home visits](#).

Data collection and monitoring

As an essential part of their work, NHRIs across the Commonwealth are engaging with disabled people and the organisations that represent them, to build up a clear picture of the effects that the COVID-19 pandemic is having on their lives.

The monitoring work by NHRIs is an integral part of the Paris Principles, and is grounded in the CRPD. CFNHRI members are responsible for monitoring how states uphold their commitment to the CRPD in their countries. Through continuous monitoring, issues affecting disabled people can be identified early, helping to ensure that governments continue to embed disabled people's rights in all that they do.

NHRIs have different approaches to collecting data – through the complaints process, through surveys, by analysing published figures, or through forums involving disabled people, for example. Both qualitative and quantitative data is useful in building up a clear picture of how COVID-19 is affecting disabled people.

Canadian Human Rights Commission: collecting data through survey

On 21 June 2019, with the passage of the Accessible Canada Act, the Canadian Human Rights Commission (CHRC) was given a new designation to monitor the implementation of the CRPD in Canada.

The CHRC ran a survey to involve disabled people, and the organisations that advocate on their behalf, to inform the CHRC's new designation and help shape its methods of undertaking monitoring work from the outset.

The CHRC asked respondents how they want to be involved in monitoring the implementation of the CRPD, and what they think is most important. They received 2,927 responses: 64% of respondents identified as having a disability, and 48% were familiar with the CRPD.

Most respondents said that to date, Canada's performance in protecting and promoting the rights of disabled people was poor. However, 54% said that they think the CRPD will have a positive effect.

ff 86% of respondents feel Canada is doing a poor job promoting the rights of people with disabilities. And 83% feel Canada is doing a poor job protecting the rights of people with disabilities.

— Canadian Human Rights Commission

Importantly, many respondents said that they would be interested in being involved with the CHRC's monitoring work. Although direct engagement with disabled people has been somewhat limited by pandemic response measures, the CHRC is working on innovative ways of reaching a diverse range of disabled people.

The results of the survey, along with ongoing dialogue with disabled people and their representatives will form part of an upcoming report that will outline the CHRC's priorities under its new designation, including disability-related issues in the context of the COVID-19 pandemic.

New Zealand Human Rights Commission: the importance of disaggregated data

New Zealand's Independent Monitoring Mechanism (IMM) published the report [Making Disability Rights Real in a Pandemic](#). The IMM is made up of the NZHRC, in partnership with the New Zealand Disabled People's Organisations Coalition and the Ombudsman. The report examines New Zealand's performance in upholding the CRPD during the COVID-19 emergency and highlights the lack of disaggregated data about disabled people and especially those who face multiple disadvantages.

The IMM notes that collecting disability data is especially important to understand the particular barriers that disabled people face in times of humanitarian emergencies. However, collecting disability data was not a routine part of COVID-19 impact monitoring in New Zealand.

For example, of several generic COVID-19 surveys administered by the New Zealand government, only one appeared to ask about disability status. Further, there was limited data on COVID-19 testing of disabled people.

The IMM recommends that the New Zealand government includes data collection on disability in its formal reviews of COVID-19 pandemic outcomes.

Northern Ireland Human Rights Commission: collecting evidence through roundtables

The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) jointly monitor the implementation of the CRPD.

Together, acting as the Independent Mechanism in Northern Ireland (IMNI), they hosted a number of digital roundtables on COVID-19 in June 2020, which helped to shape their submission to the UK Women and Equalities Committee inquiry, 'Unequal impact? Coronavirus, disability and access to services'.

This submission highlights the lack of data disaggregation by equality category, including disability, in relation to COVID-19 statistics in Northern Ireland.

IMNI notes that digital exclusion is more likely to affect disabled people. COVID-19 has meant that many people rely more heavily on technologies and online services for day-to-day tasks like staying up to date with public health messages, making health appointments, connecting with friends and family, and arranging food deliveries.

IMNI advises the UK government to consider the prevalence and impact of digital exclusion as COVID-19 response measures are developed, and to support the development of education and training programmes so that disabled people can make full use of digital technologies.

The NIHRC and ECNI are also setting up the IMNI Disability Forum. The Forum will provide a dedicated space for disabled people and the organisations that represent them, and provide a direct channel for disabled people to participate in monitoring the implementation of the CRPD in Northern Ireland.

Kenyan National Commission on Human Rights: collecting data through complaints

The Kenya National Commission on Human Rights (KNCHR) has played an important role in gathering data on issues affecting disabled people during the pandemic. It has an efficient system for receiving and processing complaints related to human rights abuses directly through emails, SMS platforms and social media platforms, enabling easy data analysis and retrieval of real-time information.

As outlined in its monitoring report, Pain and Pandemic: Unmasking the State of Human Rights in Kenya in Containment of the COVID -19 Pandemic, the KNCHR received 222 complaints related to the COVID-19 situation between 1 March and 6 June 2020. Of these, eight concerned human rights abuses of disabled people in the context of the pandemic.

A targeted approach to receiving and acting on complaints made by disabled people is built into the KNCHR's governance structure. Its technical committee oversees its monitoring function, advising and providing timely updates on the human rights situation during the pandemic, acting as the central hub in the collection, collation, analysis and documentation of information, and identifying the resource implications for the KNCHR of making interventions.

“ The essence of monitoring human rights is to keep track of the situation in a bid to ensure that the government embraces a human rights-based approach in addressing the COVID-19 pandemic and prevents and / or de-escalates the perpetuation of violations.

—
Kenya National Commission on Human Rights

Based on data from its monitoring activities, the KNCHR issued a number of advisories to government departments and agencies, raising the concerns reflected in the complaints. In particular, they highlighted the fact that law enforcement officers are not given adequate training to understand the issues faced by disabled people, and this has resulted in incidents of police brutality against disabled people and other marginalised groups. Following this, Commissioner of Prisons engaged with the KNCHR to seek guidance on how the needs of disabled people can be factored into protocols on COVID-19 prevention and management in prison facilities.

Rwanda National Commission for Human Rights: qualitative assessment

The Rwanda National Commission for Human Rights (Rwanda NCHR) carried out an assessment of the impact of COVID-19 measures on human rights. To gather qualitative data, the Rwanda NCHR conducted more than 700 interviews with public sector informants and members of the public, including disabled people living in care and support centres.

Based on these interviews intelligence from NGO stakeholders and direct complaints, the Rwanda NCHR raised concerns about health and care information being largely inaccessible to Deaf and disabled people.

The assessment also revealed that disabled children and young people were being disadvantaged as a result of the shift to e-learning after school closures during the pandemic.

Following representations to the government, a number of positive changes were made, including:

- ▶ 90 sign language interpreters were hired to translate 720 television lessons for Deaf children
- ▶ the national television network hired a sign language interpreter and used subtitles across its programming
- ▶ 168 radio lessons for grades 2 to 6 including maths, English and Kinyarwanda were modified for Braille and distributed to families with blind children
- ▶ 24 audio and visual lessons were created for children with cognitive impairments

- ▶ tailored instructions on measures to prevent the spread of COVID-19 were distributed to care, support and treatment centres for disabled people, including children, in all districts
- ▶ important COVID-19 messages were sent by SMS to all National Council of Persons with Disabilities Committees and local authorities
- ▶ 300 solar and battery powered radios, and 300 flash disks with school lessons were distributed to the poorest families with disabled children to enable them to learn even with limited electricity connections, and
- ▶ 60 teachers were supported to facilitate learning at home for disabled children.

Through its detailed assessment, the Rwanda NCHR has honed in on specific aspects of COVID-19 measures that have caused poorer outcomes for disabled people. The assessment presents a clear picture based on qualitative data and includes targeted recommendations to relevant authorities. In response, the government rolled-out significant programs to ensure that the rights of disabled people, and particularly children, are protected through the pandemic.

Scottish Human Rights Commission: impact monitoring report

In October 2020, the SHRC published [research](#) on how the COVID-19 pandemic measures have affected people's rights in the context of care in their homes and support in the community.

The research report details how legislative, policy and practice decisions have affected the rights of service users (including disabled people), unpaid carers and some people who work in the social care sector.

The [Scottish Government defines social care](#) as 'all forms of personal and practical support for children, young people and adults who need extra support. It describes services and other types of help, including care homes and supporting unpaid carers to help them continue in their caring role.'

The Scottish Government also notes that social care support is intended to enable people to:

- ▶ live independently
- ▶ be active citizens
- ▶ participate and contribute to our society, and
- ▶ maintain their dignity and human rights.

The SHRC's research included interviews with social care providers and provider organisations, DPOs, carers' organisations, mental health professionals, specialist legal professionals and advocacy organisations. They also reviewed other sources of evidence such as Freedom of Information requests, surveys and reports from other organisations.

The research revealed that many people who use social care support in their homes experienced a reduction or complete withdrawal of support during the COVID-19 pandemic. This has caused erosion of rights covered by the CRPD and other international human rights standards.

ff Short- and longer-term change is needed to address the significant human rights concerns we have identified, and to ensure the level of decline in the realisation of people's rights that has taken place never happens again.

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Scottish Human Rights Commission

The SHRC issued recommendations based on the results of this monitoring report, which highlight the need for a rights-based social care system that addresses longstanding inadequacies. The SHRC held an online event to release the monitoring report's findings to DPOs, third sector organisations and policy-makers. Those experiencing significant difficulties accessing social care supported the SHRC's findings and recommendations.

The monitoring report was subsequently raised in the Scottish Parliament, and the First Minister advised that the government would consider the findings and recommendations in decision-making about temporary changes in the social care sector during the pandemic.

Responding to changes in policy

Throughout the pandemic, many governments, service providers and businesses have found themselves operating in an unstable and fast-moving environment. Policies and decisions have often been made quickly, and not always with due consideration of how those decisions may affect marginalised groups.

Processes to involve disabled people in the decision-making process have been reduced or omitted because of restrictions on movement and gathering, and because of the speed at which changes have been enacted.

As a result, NHRIs have also had to respond quickly, under their Paris Principles obligations, to ensure that equality and human rights principles are included in emergency legislation and policy, and intervene when they see that they aren't.

Cyprus Ombudsman: interventions in education

Responding to an announcement by the Ministry of Education, Culture, Sports and Youth to make wearing masks mandatory in schools, the Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) raised concerns about potential human rights violations affecting Deaf and disabled children.

Some children with hearing impairment, for example, were being deprived of their right to education on an equal basis with other children of their age, as masks hindered their ability to lip-read and therefore their access to learning.

The Ombudsman recommended that educators and physicians should evaluate the use of masks on a case-by-case basis. They suggested that use of transparent masks and face shields, which do not interfere with lip-reading, should be considered as potential adjustments for Deaf children, as well as their teachers and classmates, to use as necessary.

After the Ombudsman's intervention, the Ministry of Education changed its decision and made the wearing of cloth masks non-mandatory for children up to the age of 12, as well as for children older than 12 with hearing impairment or developmental conditions. Teachers with disabled students in their classes were permitted to use transparent masks or face shields to facilitate lip-reading.

Earlier, when schools reopened in Cyprus, it was announced that special conditions and procedures would apply to disabled children, which prevented them from going back to school at the same time as their peers.

Responding immediately to the Ministry of Education's announcement, the Ombudsman published a report noting that the policy was discriminatory and its implementation would be a violation of Cyprus's CRPD obligations under the principle of equal treatment and non-discrimination.

The Ombudsman's report received widespread media coverage. The Ministry subsequently amended its decision, allowing disabled students and students with additional needs who did not have additional risk of illness from COVID-19, to return to schools as soon as they reopened.

Kenyan National Commission on Human Rights: interventions on mental health and education

The KNCHR has issued memoranda to parliamentary committees on the COVID-19 response. The KNCHR's submissions focus on areas where government agencies have not adequately considered their human rights obligations to at-risk groups, including disabled people.

In a memorandum on mental health to the Senate Ad-Hoc Committee on COVID-19, working in collaboration with civil society organisations, the KNCHR highlights that there is no tailored support in place for those with pre-existing mental health conditions. Disabled people with mental health conditions may experience heightened anxiety throughout the pandemic, particularly if they are quarantined or come into contact with the authorities. The KNCHR issued a number of recommendations to address long standing stigma about mental health and psychosocial conditions, and to close the gaps in service provision that disabled people with mental health conditions face.

“ In light of COVID-19, it is critical to have a wholesome approach to mental health that is rights-based.

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Kenyan National Commission on Human Rights

Following this, the Senate Committee published a progress report noting that mental health and psychosocial support was a key area of concern. The Ministry of Health has since promoted and published its toll-free counselling hotline and scaled up other community mental health services.

The KNCHR has observed that the Kenyan government has been questioned more rigorously in parliamentary debates on how it is addressing the needs of disabled people during the pandemic following the release of its memoranda. For example, in response to the rapid shift to online learning, the KNCHR issued a memorandum focusing on the rights of learners. In a subsequent assembly of the Committee, Senators raised questions about measures in place to support the needs of blind and Deaf learners, and those with neuro-developmental impairments.

The KNCHR has issued other advisories to the government about the COVID-19 situation, which also include recommendations about support for disabled people. Government committees have acknowledged many of the concerns highlighted and positive steps have been taken to address the needs of at-risk groups, including disabled people.

Scottish Human Rights Commission: promoting a human rights-based approach

Data released by the National Records of Scotland showed that 46% of COVID-19 deaths in Scotland by July 2020 were in care homes. In response, the SHRC published a briefing on care homes and human rights during COVID-19.

The SHRC's briefing sets out the human rights framework as it applies to the issues that have arisen in care homes, such as whether residents were given equal access to hospital treatment and whether there was adequate testing and PPE provided to care home residents and staff.

The briefing details the requirements of human rights law, to ensure that effective investigations are carried out by the state. It underscores that a human rights-based approach is crucial for a care home investigation, given the seriousness, breadth and scale of the issues it would be looking into.

The SHRC's introductory leaflet on a human rights-based approach explains how organisations can put human rights at the centre of policies and practice by following the PANEL principles of Participation, Accountability, Non-discrimination, Empowerment and Legality. This includes ensuring that disabled care home residents and their families are involved in both the design and implementation of the inquiry.

“ A rights-based approach is about empowering people to know and claim their rights, and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling human rights.

—
Scottish Human Rights Commission

The SHRC's recommendations have been cited in a number of parliamentary debates and questions. In particular, the First Minister has committed to ensuring a human rights-based approach to an inquiry into the pandemic.

Conclusion

The COVID-19 pandemic has caused a global response unlike any event in recent history. While the effects of the pandemic and responses to it are far-reaching and have touched us all, disabled people are among the worst affected, with consequences in all areas of life.

The unique role of NHRIs has never been more important – the outcomes described in this report highlight the creative and practical ways that they can address unprecedented challenges.

The CFNHRI is a diverse network. Each NHRI has its own ways of working, tailoring its intelligence gathering methods and relationship management styles to be culturally sensitive and pertinent to the particular issues in their jurisdictions.

Despite the vastly different regional and national contexts in which they work, CFNHRI members share many of the same concerns about the threat that COVID-19 poses to disabled people and their rights.

Recurring themes from the submissions covered in this report call attention to the importance of:

- ▶ dedicated processes to consult with and involve disabled people in decision-making
- ▶ disaggregated data, particularly in areas of life where people may face multiple disadvantages because of their intersecting characteristics, and
- ▶ ensuring that policies and services are accessible by design, and that information is available in accessible formats.

These issues are not unique to this pandemic, nor are they only relevant in emergency responses. Entrenched gaps in processes, data and design, where institutions have failed to examine the needs of disabled people, are longstanding and evident across many different sectors.

As we continue to respond to the immediate needs of those who are disproportionately affected by COVID-19 and States' responses, we must also learn from this crisis and put human rights at the heart of recovery, and future policy and decision-making.

The confronting reality of COVID-19 demonstrates the cost to humanity when the human rights of individuals are overlooked in favour of blanket controls and policies. By drawing on the expertise of NHRIs to embed human rights in society, we can reimagine a fairer post-pandemic world: a world informed by data, lived experience and diverse perspectives that supports the full inclusion of disabled people across the Commonwealth.



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