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Making a Difference:  
Capturing the Learning from  
The Atlantic Philanthropies  
Human Rights Programme in Ireland

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## Introduction

This *Capture the Learning* report is focussed on what were originally (2004) called the Reconciliation and Human Rights grants of The Atlantic Philanthropies in Ireland. As part of this programme, Atlantic invested in building the core capacity and infrastructure of human rights, which is a focus of this report. Atlantic also selected populations with which it believed it could make a difference and leave a lasting legacy after it was gone. Based on that criteria, Atlantic focused resources on protecting and expanding the rights of immigrants; people with disabilities; and lesbian, gay, bisexual and transgender people. The purpose of the report is to extract lessons from the core cluster of grants that could be useful to activists and funders, specifically, to:

- Provide an accurate picture of the human rights field in Ireland at the start of the programme in 2004, its agenda, the nongovernmental organization (NGO) field at the time, its capacity and infrastructure
- Map the key intervention models and theory of change followed by the cluster
- Describe the individual and collective impact made by these human rights organizations, especially the growth and durability of the cluster and the infrastructure that it built; the main ways in which rights were affirmed by them; the principal changes in policy, services, opinion and law; the external influencing factors; the increase in justice and its durability
- Identify the most important strategies, tactics and practical learning points
- Mark the key issues, opportunities and challenges for the organizations concerned
- Summarize the experience into a concise set of generalizable lessons and messages

This study was carried out by a combination of desk research; interviews with, and a roundtable of, funded organizations; and interviews with external observers.

## 1 Starting Point: Human Rights, 2004

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In 2004, Ireland was both a challenging and promising country for a funder to develop a human rights programme. It was challenging because the Irish Constitution had limited commitments to social rights and there was strong resistance at the governmental and judicial level to set down such rights in legislation. Without such protection, standards of human rights were below international standards with some groups, such as refugees and asylum-seekers, at exceptional risk.

There was an uneven, slow and weak application of international human rights instruments (e.g., United Nations and Council of Europe conventions), with Ireland lagging behind other countries in the European Union (EU). Moreover, Ireland had minimal oversight systems to monitor human rights violations, lack of police or judicial oversight and high levels of political corruption. There were high rates of imprisonment and notoriously poor prison conditions.

However, there were also promising signs. A new Irish Human Rights Commission was established by the government as an outcome of the Good Friday Agreement of 1998. Other bodies were created to protect human rights in areas of equality and disability rights. The death penalty was finally abolished in 2001. NGOs were growing in influence and becoming more active. The most visible organizations were those that covered broad areas of human rights — the Irish Council for Civil Liberties and Amnesty International. Two other organizations had specialized fields — the Irish Penal Reform Trust and the Free Legal Advice Centres.

A 2000 white paper, *Supporting Voluntary Activity*, meanwhile, committed the government to recognizing the independent, critical role of NGOs. In short, there was a sense of optimism that, with an active and empowered nongovernmental sector, human rights could be advanced over time.

## 2 Model of Intervention

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The Atlantic Philanthropies ran a funding programme for a cluster of human rights organizations in Ireland between 2004 and 2014.<sup>1</sup> The over-riding aims were to improve laws, policy and practice; accountability; and access to the legal system. Specifically, the programme sought to achieve:

- A culture in which everyone's rights were more likely to be respected and protected
- Advancement of policies, laws and practices to protect human rights
- Mobilized constituencies working on behalf of human rights and reconciliation
- Enduring capacity to create lasting change and promote human rights and reconciliation

The programme comprised 42 grants valued at €30m for 14 organizations, of which nine are examined here. Atlantic provided both core funding and project support to these organizations. Unlike many funders that support individual projects, the vast majority of Atlantic's funding was for core support. (See Table 1.)

Five organizations were given funding for their core operations. These were, in order of their establishment:

### Free Legal Advice Centres /Public Interest Law Alliance

The Free Legal Advice Centres (FLAC) were set up in 1969 by law students providing free clinics to those unable to afford legal advice and to campaign for the introduction of legal aid. As the principal provider of free legal service, FLAC has 25 direct and 60 supported clinics, 450 qualified volunteers and a helpline. It is a campaigning organization, combining research, test cases, and engagement with government and Oireachtas (Parliament). It receives a regular government grant from the Department of Justice and Equality. In 2009, FLAC established the Public Interest Law Alliance (PILA) to promote strategic litigation, *pro bono* work and legal education.

### Irish Council for Civil Liberties

The Irish Council for Civil Liberties (ICCL) was formed by human rights activists in 1976, notably Mary Robinson, later President of Ireland, and Kadar Asmal, later a government minister in South Africa. For the first 20 years it was small and did not attract funding for staffing until the 1990s. ICCL advocates positive changes in human rights; monitors government policy and practice; follows international human rights instruments; and carries out research, education and training.

### Irish Penal Reform Trust

The Irish Penal Reform Trust (IPRT) is an independent charity founded in 1994 by citizens concerned about the abuses of human rights in Irish prisons. IPRT is committed to progressive reform of the penal system and works to effect changes in policy, practice and law, and through influencing public opinion. It has approximately 210 members comprising prisoners, academics, activists and other concerned individuals.

### Think-tank for Action on Social Change

The origins of the Think-tank for Action on Social Change (TASC) lay in discussion by politicians, progressive economists and social policy experts in the late 1990s about the need for a policy and research organization to promote balanced economic and social policies.<sup>2</sup> TASC, established in 2001, conducts research, seminars and publications to promote discussion and debate on the country's economic and social future, focussed on economic equality, democratic accountability and sustainable progressive economics.

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1 This review originally covered the operation of the programme from 2004 to 2014 but was updated in light of important human rights developments in 2015.

2 Progressive economists are distinguished from the two other main schools of economists, namely classical economists and neo-liberal economists (although there are others, e.g., Marxist). They generally favour redistribution for greater equality, control over market excesses and social protection.

## Equality and Rights Alliance

The Equality and Rights Alliance (ERA), the newest organization in the group, was formed rapidly in 2008 by initially 80 and eventually 171 organizations and activists concerned with the downgrading of the Irish Human Rights Commission, the Equality Authority and other equality institutions. This broad-based coalition sought to defend the gains made for equality and human rights over the previous decades through research, campaigning and political engagement, and then work for their subsequent improvement.

Four organizations were given funding for specific tasks. They are:

### Amnesty International Ireland

Amnesty International Ireland (Amnesty), the oldest of the group (established in 1962), is part of the worldwide network of Amnesty International. Originally, its work focussed on the release of prisoners of conscience; abolition of the death penalty; and addressing torture, cruel, inhuman or degrading treatment abroad. From 2002, Amnesty broadened its range to cover what were called the full spectrum of human rights and to do so in the country in which national organizations operated. Amnesty in Ireland has 100 local groups and more than 15,000 individual members. Amnesty was funded for its Human Rights in Ireland programme and for research into the lessons learned from the Ryan report on child abuse.<sup>3</sup>

### Rape Crisis Network Ireland

The Rape Crisis Network Ireland (RCNI) is the national umbrella body representing and leading 14 local rape crisis centres dating to the 1970s that seek to promote an effective national response to all aspects of sexual violence. Located in Galway, it is the only organization in the group based outside Dublin. Through a project subcontracted through the National University of Ireland Galway, it was funded to carry out a substantial research project on the experience and treatment of rape victims in the criminal justice system, especially their dropping out from the process ('attrition'), published as *Rape and Justice in Ireland* (2009) and take follow-up actions.

### Irish Traveller Movement Legal Unit

The Irish Traveller Movement was formed in 1990 as the national organization bringing together Traveller groups, now 90, as a partnership between Travellers and settled people. It has an advocacy focus, seeking to develop the potential of Traveller groups while engaging with national policymakers in government and the Oireachtas. Funding was provided for the Irish Traveller Movement Legal Unit (ITMLU), established in 2002 to represent Travellers to defend or extend their rights, including test cases, as well as to promote legal reform and build the knowledge of legal issues in the Traveller community and those working with it.

### Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHRC) is an unusual member of this group, for it is the only state agency. It was established in 2001 but in practice a lack of resources meant that it became operational slowly. In 2008, a process began of merging it with the Equality Authority; the Irish Human Rights and the Equality Authority Act became law in 2014. Atlantic provided funding for human rights training in the civil and public service. Some 1,000 individuals have been trained and several guides have been published with print runs up to 10,000.

**Table 1: Funding of human rights organizations, 2004-14**

Core funding		Other funding	
FLAC/PILA	€7.3m*	Amnesty	€3.81m
ICCL	€8.428m	RCNI	€0.32m
IPRT	€1.75m	ITMLU	€0.08m
TASC	€4.04m	IHRC	€1.375m
ERA	€0.435m		
Total	€21.953m	Total	€5.585m
Overall total	€27.538m		

\*€300,000 PILA funding was allocated to Irish Traveller Movement Legal Unit.

<sup>3</sup> Report of the Commission to Inquire into Child Abuse (2009), generally known as the Ryan report, was the comprehensive, definitive investigation of the wrongdoings inflicted on children in institutions from 1936 to 2000.

## Theory of Change and Logic Model

Organizations funded under this programme were expected to present to Atlantic Philanthropies their theory of social and political change; and to complete a logic model outlining in more detail how they would put this into effect. This is important, because it provided a framework and discipline in which all these organizations subsequently operated. (See Table 2.)

**Table 2: Illustrative logic model template**

Inputs	Activities	Outputs	Short-term outcomes	Medium-term outcomes	Long-term outcomes
E.g., staff, expertise	Typically four strategic areas	Casework, policy proposals	This year	Two years	Four years

The different approaches of the organizations had a number of features in common:

- **Research and the presentation of evidence-based policy proposals.** There was a strong belief in the importance, value and power of evidence-based persuasion.
- **The engagement of public opinion to create a climate for change through education and communications work.** Organizations believed that political influence was broadly proportionate to media influence.
- **Working extensively in coalition with other NGOs.** Groups came together to collaborate on pressing issues, such as the Equality and Rights Alliance, a coalition specifically formed to protect human rights and equality institutions.
- **Formal direct engagement with the political-administrative system.** Organizations engaged either one on one or in a coalition with statutory or semi-state bodies. All were careful to work with Oireachtas parties on a bipartisan basis. A particular strategy was to seek a presence on policymaking bodies.

Some organizations also:

- **Built a strong legal dimension to their work, using the law in the public interest and in some cases pursuing strategic litigation.** Between them, the Free Legal Advice Centres, Public Interest Law Alliance and Irish Traveller Movement Legal Unit took more than 100 cases to court.
- **Engaged in the cycle of human rights instruments, such as United Nations monitoring of Ireland's human right obligations under human rights conventions.** Many of these NGOs wrote shadow reports on Irish compliance with international human rights instruments and participated in hearings in Geneva and New York. They also briefed human rights watchdogs visiting Ireland.
- **Provided training in the human rights-based approach.** Several organizations engaged in educational work with their target groups. For example, the Irish Penal Reform Trust conducted seminars with the judiciary, while the Irish Human Rights Commission ran human rights training courses for state agencies, such as the prison service.

See Table 3 for a summary of funded organizations and their activities.

**Table 3: Funded organizations and their activities**

Organization	Principal objectives, campaigns, activities
Free Legal Advice Centres/Public Interest Law Alliance	Promoting access to justice through analysis, advocacy (including strategic litigation) and developing a public interest law alliance, with a current focus on legal aid, social welfare, consumer debt and consumer credit protection
Irish Council for Civil Liberties	Promoting human rights culture, justice and equality through advocacy, monitoring policy and practice, original research, educational campaigns and collaboration with stakeholders
Irish Penal Reform Trust	Human rights in prison; use of prison as last resort with development of non-custodial responses, prevention through more enlightened social policy and improvement in quality of youth justice
Think-tank for Action on Social Change	Argumentation for a just and equal society, evidence of negative consequences of inequality, need for investment in high-quality public services and high standards of governance and accountability
Equality and Rights Alliance	Preventing further downgrading of human rights and equality infrastructure and campaigning for improved infrastructure
Amnesty International Ireland	Human Rights in Ireland programme, application of international instruments, economics and human rights, constitutional convention and human rights-based approach
Rape Crisis Network Ireland	Research into treatment of rape within the judicial system and connections between sexual violence and alcohol and follow-up work on recommendations
Irish Traveller Movement Legal Unit	Legal queries (150/year), legal education, strategic cases (10/year) and policy issues arising with a legal dimension
Irish Human Rights and Equality Commission	Human rights education and training for civil and public service

## Products and Documentation

Campaigns work through research, policy documents, newsletters (e.g., *FLAC News*, *Prison Law Bulletin*) and other presentations. Increasingly, NGOs have started to use the new media as means of communication: website, Facebook, Twitter, electronic-only media outlets (e.g., *thejournal.ie*) and video. The output of the funded organizations was substantial, leaving behind a significant documentary legacy. (See Appendix 1 for a list of products.) External observers regarded highly the products of the programme, especially their volume and quality, saying that they would be used for many years and describing them as terrific reports, a great legacy, a huge help, and a resource for teachers and students.

## Training

Several organizations engaged in educational work with their target groups. For example, the Irish Penal Reform Trust conducted seminars with the judiciary, and Amnesty training on the human rights-based approach.\* The most structured training was that carried out by the Irish Human Rights Commission, which ran courses for almost 1,000 people in 22 state agencies, accompanied by resource materials such as the *Human Rights Guide for the Civil and Public Service* and *European Convention on Human Rights Guide for the Civil and Public Service* video, e-learning tools and a micro website.

Training was carried out with government departments, the prison service, Garda Síochána (police), defence forces, local authorities and some specialized agencies (e.g., Ombudsman and the Refugee Appeals Tribunal) through a combination of introductory sessions; longer events up to five days; and train-the-trainer sessions. This training was the first of its kind ever undertaken and addressed those arms of government most involved in security (e.g. police, prison) and others further afield. Built on the theory of Paolo Freire, it used participative, interactive methods.

An independent evaluation of the Irish Human Rights Commission programme showed among participants an improved knowledge of human rights principles and law, self-awareness of their own prejudices (e.g., race and gender) and an expectation of improved future policy, practice, governance, monitoring and evaluation from a low level (reduction in derogatory behaviour) to high level (policy). The programme provided reinforcement for those in the civil and public service committed to the highest human rights standards and challenged those previously unsympathetic. Several NGOs pointed to practical outcomes of training: there were many fewer examples of routine or low-level abuse in prisons or garda stations compared to 2004.

The degree to which the Irish civil or public service was responsive to human rights training was addressed by the programme. Some civil and public servants were reported to be strongly reactive to the human rights agenda, feeling that they were being required to adhere to the fashions of political correctness coming from Dublin intellectuals, colourfully identified as ‘*Guardian*-reading, latte-sipping, *Borgen*-watching liberals’. Others did not have a principled objection but experienced practical difficulty in connecting their job and work tasks to human rights issues. The Irish Human Rights and Equality Commission programme was considered good in addressing this through the quality of course materials.

\* The human rights-based approach is particularly associated with Amnesty. Its origins lie in the United Nations Development Programme, which developed it as an approach whereby human rights principles and standards are a central reference point in policy and planning and expressly applied; stakeholders are empowered, included and participate; accountability is clear and the most marginalized or excluded are prioritized, with the promotion of equality and nondiscrimination. The term progressive realization came to be incorporated into the approach: where rights cannot be realized immediately, there should be a commitment to realize them over a defined period of time.

## 3 Strategic Impact and Progress

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### Context

In 2004, human rights organizations optimistically anticipated an upward-and-onward progress toward ‘the good society’, one in which human rights would be strengthened. Little did they, or most others, anticipate the economic and social crisis of 2008 and its political consequences. The decade 2004-14 divided into three periods: progress, 2004-08; sharp decline, 2009-11; and modest recovery, 2012-14.

The turning point was 8th July 2008, when the government decided to merge or eliminate 35 state agencies. Although not intended for abolition, the Equality Authority and the Human Rights Commission, the state’s two prime equality and human rights agencies, suffered budget cuts of 43% and 24% respectively, with a view to being merged. These cuts were regarded by the field as a punitive reining in of the human rights and equality agenda. At a practical level, they had the effect of sharply diminishing the capacity of both agencies. The quickly formed Equality and Rights Alliance led the campaign to hold the line against the further diminution of their authority, powers and budgets.<sup>4</sup> The process that began in 2008 did not conclude until 2014 when new legislation created the merged Irish Human Rights and Equality Commission.

Detailed examination of this period suggests that although the fracture of 2008 was the most visible and the low point, Irish governments had begun to restructure the contours of their relationships with the nongovernmental community, and social and political activism long before 2008. From the election of 29th Dail (June 2002), the newly formed Department of Community, Rural and Gaeltacht Affairs began a process of effective repudiation of *Supporting Voluntary Activity*, first restricting the advocacy role of community development projects.<sup>5</sup>

One of the first decisions of the Fianna Fail/Green government elected by the 30th Dail (2007) was to extinguish the Combat Poverty Agency (which worked to eliminate or reduce poverty), an incalculable medium- and long-term loss to Irish social policy. The Charities Bill that year specifically removed human rights as a charitable field of work. This meant that donors to human rights organizations could no longer take advantage of tax relief and made such organizations ineligible for funding programmes that required beneficiaries to be charitable bodies.

From 2008 to 2014, state funding for NGOs was reduced between 35% and 45%, its workforce set to fall by 31%. In 2014, the Community Development Programme was put out to commercial tender in 31 lots, which brought to an end grant-based funding for community development that could be traced back as far as 1891.<sup>6</sup> Some groups suffered grievously. Travellers were particularly affected. Their education and housing funding was cut by more than 80%.<sup>7</sup> Severe as the crisis was in human rights, it was small compared to the social crisis and what happened to the state’s social infrastructure and voluntary and community organizations as a whole.

### Achievements of the Human Rights Cluster

What progress was made on human rights between 2004 and 2014? What were the contributions of the funded organizations? It is difficult to establish the precise causal link between an individual campaign and an outcome, especially in the world of ideas. NGOs may claim victory, overstating their credit for a decision toward which government was moving in any case. Sometimes a win can even turn out to be illusory, for progress putting it into effect may be so slow as to make it of little value. Here, external contributors were important in helping to disentangle claims from reality. Evaluations showed that many of these NGOs were the dominant, ‘go-to’ organizations in their field, so their contribution to some of these changes is more than likely.

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4 Crowley, Niall. *Empty Promises — Bringing the Equality Authority to Heel*. Dublin: A&A Farmer, 2010.

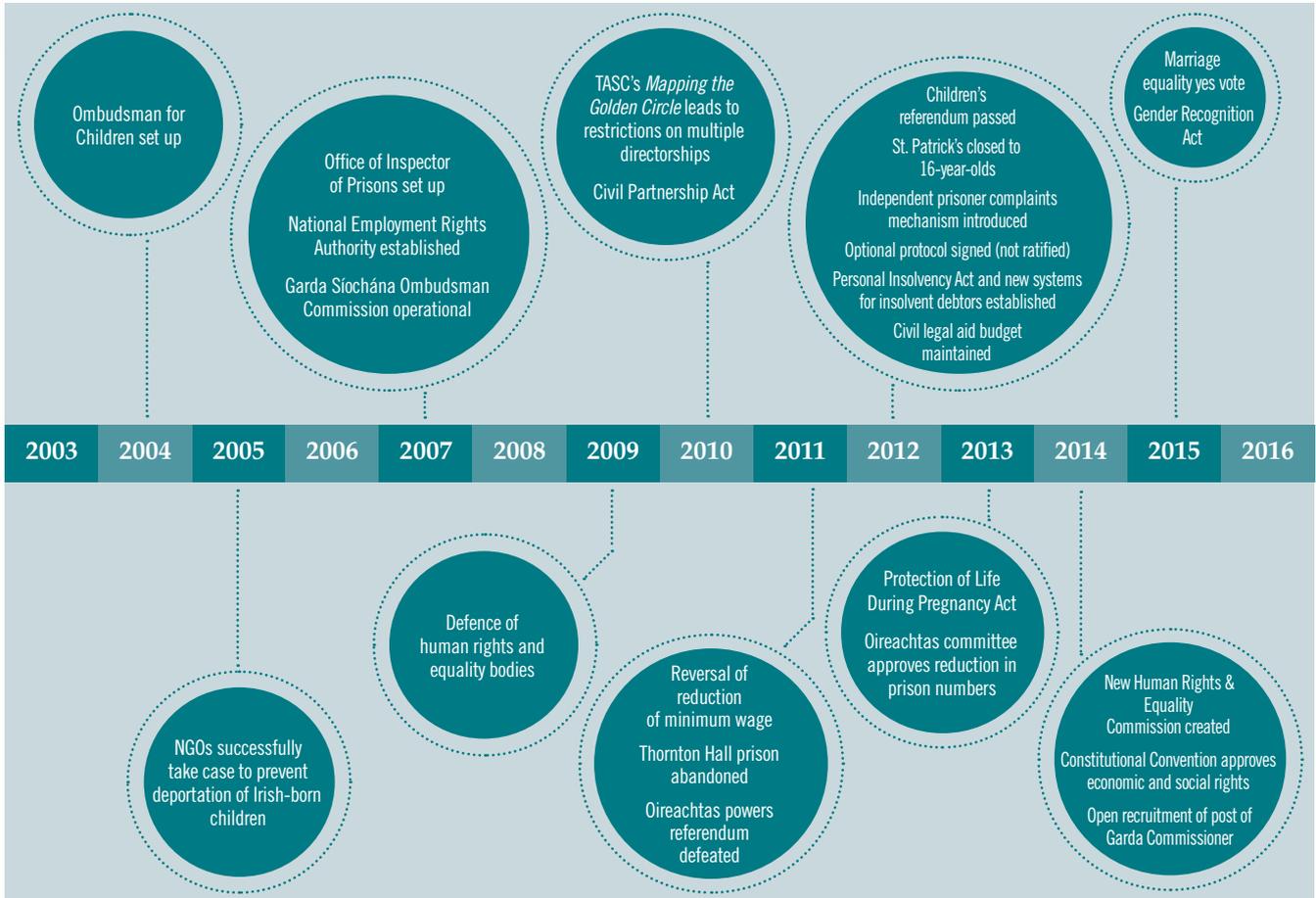
5 Harvey, Brian. *Funding Dissent; Are We Paying for That?* Dublin: Advocacy Initiative, 2013, 2014.

6 The Community Development Programme provided small grants and technical assistance to disadvantaged communities to help them define and develop their own need and improve their economic and social capacity. In 2014, it was turned into a prescriptive, commercially delivered programme.

7 Harvey, Brian. *Travelling with Austerity*. Dublin: Pavee Point, 2013.

The period 2004-14 saw the strengthening of the human rights field in a number of important respects but also some areas of mixed progress and others where human rights were defended. Table 4 focusses on the most tangible developments, legislative and institutional, but changes in ideas, attitudes, knowledge of rights (e.g., ICCL's *Know Your Rights* booklets designed to inform people of their rights in everyday language) are also important. The years given are indicative, for some lack a precise point in time and may take place over a number of years.

**Table 4: Timeline of human rights progress, 2004-15**



In some of these issues, the NGOs in this cluster were the principal actor, even the only one; in some they acted in concert with other NGO coalitions; and in others they were part of a process of change that embraced reformers in government, the political parties, the Oireachtas, and the civil and public service.

### Overall achievements

Most organizations claim that human rights are now treated more seriously and are a more prominent feature of the public discourse than previously. What was termed the human rights-based approach was seen as the route to unlocking what was perceived to be the relatively under-developed state of and approach to human rights in Ireland. NGOs, often for the first time, specifically articulated rights to health, housing and shelter.

Organizations are now more comfortable in calling themselves human rights organizations and making human rights arguments to support their case, while violated groups are now more prepared to use the terminology as well. For example, after lodging complaints against poor housing conditions, residents of 20 local authority estates presented their case as a class action for a breach of human rights. The case was declared admissible by the European Committee of Social Rights in 2015, bringing Irish housing conditions under international investigation for the first time.

NGOs struggled with the most appropriate language to communicate about human rights, attempting to find the concepts, frameworks, terms and lexicon that would prove persuasive and make them a useful, relevant means of engaging the state. The challenge was to use language that resonates with public administrators who tend to think of human rights within a narrower ‘political rights’ framework. New terms such as duty bearer, progressive realization and non-regression, familiar in the human rights discourse in Britain, began to work their way into human rights circles in Ireland. (The new legislation for the Irish Human Rights and Equality Commission introduced the term positive duty.) At the same time, some organizations were consciously cautious in their use of human rights language or avoided it altogether. The Irish Penal Reform Trust introduced the term penal moderation to make policymakers more comfortable with its approach of decarceration, but also relied more heavily on the financial argument that investing in prisons was unwise during an economic crisis.

Amnesty International probably did most to push back the boundaries of language and attitudes to human rights, notably through two campaigns: the right to health in general and mental health in particular. In doing so, it met reactions of ‘Amnesty is supposed only to deal with torture’ and ‘now went off in directions that lost the audience’. There was resistance at government level, for example in getting meetings, and Amnesty had difficulty establishing itself as a commentator on these issues in the media.

External judgements are kinder, applauding the campaigns as a legitimate, effective way to establish and progress a much neglected issue little heard before, modernizing an area where advocacy had been weak and excessively medically based, introducing notions of the right to health care. Funded organizations and most but not all external observers believe that the understanding, framework, concept and language of human rights in the civil and public service improved in the past 10 years. Over time, political opposition to the human rights-based approach diminished especially following the retirement of the Progressive Democrat Minister for Justice, an articulate opponent of social rights and equality;<sup>8</sup> by contrast, the current President, Michael D Higgins, has spoken frequently on social rights.

Organizations made a significant contribution to information and advice as they published a substantial body of documentation, research and other products, which were highly regarded by informants and helped to make human rights more accessible. Evidence of NGO influence may be seen through their media coverage, citations in the Oireachtas and in government reports. For example, Free Legal Advice Centres (FLAC) were widely considered to have been influential in shaping the Personal Insolvency Act which set down procedures for the handling and resolution of debt between lenders and borrowers, although in FLAC’s view it preserved much of the imbalance of power between the two. (See Appendix 1 for Principal Products.)

## *Human rights gains*

There were human rights gains between 2004 and 2014, often achieved by working in partnership with other NGOs. Those gains were:

- **New rights for the LGBT community.** Progress here was remarkable. The Irish Council for Civil Liberties, working with organizations in Atlantic’s LGBT cluster and others further afield, helped pave the way for the Civil Partnership Act 2011 and the successful holding of a referendum on marriage equality, passed in 2015.<sup>9</sup> The Gender Recognition Bill was finally enacted and the first gender recognition certificates were issued in 2015.
- **More police accountability.** An independent watchdog, the Garda Síochána Ombudsman Commission, which was created to investigate complaints of police misconduct, opened in 2007. Legislation for an independent policing authority was eventually passed and will mean that the police will be open to some form of objective oversight. Whereas formerly the appointment of the Garda Commissioner was restricted to government and the force itself, the first open such recruitment took place in 2014, thereby broadening the range of candidates and approaches that could be considered.

<sup>8</sup> Reilly, Jerome. ‘McDowell in Fresh Attack on “Excessive Equality Laws.”’ *Irish Independent*, 30 May 2004.

<sup>9</sup> *Catalysing LGBT Equality and Visibility in Ireland: A Review of LGBT Cluster Grants 2004-2013*. Atlantic Philanthropies, available at <http://www.atlanticphilanthropies.org/sites/default/files/uploads/Atlantic-LGBTCluster-ROI.pdf>.

- **New rights for children.** Work supported by Atlantic's Children and Youth Programme and legal analysis of the Irish Council for Civil Liberties provided assistance in the passage of a referendum on the rights of children in 2012. This amended Ireland's constitution to give children rights and comply with the UN Convention on the Rights of the Child. An Ombudsman for Children was established in 2004.
- **Better conditions for prisoners.** The advocacy of the Irish Penal Reform Trust (IPRT) led to several changes for prisoners and in prison policy. Reformers campaigned from the 1970s for a more enlightened approach, but had little effect, with prison numbers rising to 4,587 in 2011. But with IPRT's consistent advocacy, the Oireachtas, the prison service and the Department of Justice came to form the view that prison conditions should be improved, numbers should fall and prisoners should have complaint mechanisms. Plans for a large new prison (Thornton Hall) were abandoned. An Office for the Inspector of Prisons was established in 2007 and in 2012 an independent prisoner complaints mechanism was introduced. St. Patrick's Institution was at last closed to 16-year-olds in 2012. 'Slopping out', in which prisoners must carry out their own waste buckets, is now gone from Mountjoy Prison and greatly reduced elsewhere, replaced by in-cell sanitation. The Oireachtas Committee on Justice (2013), meanwhile set an initial target of 3,000 prisoners and the number of prisoners fell below the psychologically important 4,000 mark (3,957 in July 2014). Reformers hope that a long-term process of decarceration has now set in. Some further gains during this period were small in the overall scheme of things, but important in their own way. After IPRT raised with the prison authorities the importance of the visiting experience for prisoners, there was a review of visiting conditions and prison staff were trained in how to work with children during visiting. A strategic review published by the government in autumn 2014 included many of the ideas for which IPRT had long argued.
- **Commitment by Constitutional Convention to economic and social rights.** In 2014, the Convention on the Constitution voted by 85% in favour of strengthening economic, social and cultural rights in the Irish Constitution, following a campaign led by Amnesty International and the Irish Council for Civil Liberties. The government's response is still awaited.
- **Rights of workers.** The National Employment Rights Authority was set up in 2007 with the purpose of ensuring compliance with labour law (e.g., prompt payment of wages) and, if fully resourced and supported by effective legislation, could make a significant impact on workplace exploitation.

## A special issue in the programme: sexual violence

The Rape Crisis Network Ireland (RCNI) received funding for a large-scale research project *Rape and Justice in Ireland* (2009), with follow-up research *Young People, Alcohol and Sex: What's Consent Got to Do With It?* (2014). This involved, in cooperation with the Director of Public Prosecutions, the Courts Service and the gardaí, unprecedented access to 360 files, court records and interviews with 100 victims, a four-year project with National University of Ireland Galway.

A substantial report (478 pages) was published, with many copies printed with a summary and a dissemination strategy. It is likely to be the definitive text on the subject for many years and may be the largest single individual product of the programme. RCNI was one of the few to promote outcomes in the specialized, trade or professional press, for example reaching the legal profession and judiciary through articles placed in *Irish Criminal Law Journal*, as well as in *Emergency Services Ireland*, *Garda Review*, *Health Matters*, *Irish Medical Times* and the *Journal of Adult Protection*.

It is estimated that more than 80% of the recommendations were accepted, finding their way into garda and national strategies against sexual violence. A specific outcome was the introduction of pre-trial hearings, the purpose of which was to clear technical obstacles before the main trial hearing. Occurrences of drink being considered as a legitimate mitigating factor for the sentencing of perpetrators have almost disappeared. The further research into the contribution of binge drinking to sexual violence (between 66% and 88% of cases) led to the inclusion of issues of sexual violence in strategies and educational work against alcohol abuse. Issues of sexual violence, alcohol and consent have yet to be brought into the education system.

## Mixed or slow progress

Human rights is hard work, takes time, is uneven and involves failure as well as success. In some areas, grantees had a mixture of success and setbacks. The Protection of Life During Pregnancy Act 2013 provided reproductive rights but in an extremely limited manner.<sup>10</sup> The Optional Protocol, which could make a big difference in confronting human rights abuses and violations, was signed by the government in 2012 but not subsequently ratified.<sup>11</sup> Strategic litigation was a key approach for some NGOs, bringing cases to court to prompt significant changes in rights, policy or practice. The goal is to secure a finding that will help not only the individual victims of human rights abuses but the wider group affected. This also had mixed results, winning some cases, not others, with some partial wins.

## Use of Strategic Litigation

Two organizations, the Free Legal Advice Centres (FLAC) and Irish Traveller Movement Legal Unit (ITMLU), used strategic litigation to improve human rights, an approach to develop social rights that has met with mixed success. ITMLU provided legal advice for 500 Travellers and took 52 cases; FLAC took 49 cases over 2009-11 alone. Both also used channels of administrative redress (e.g., social welfare appeals, ombudsman), for example, on the application of the Habitual Residence Condition (HRC) to deny social assistance to legitimate migrants.<sup>12</sup> These cases were all the more important given the few cases taken by the under-resourced Human Rights Commission.

## Free Legal Advice Centres

The most outstanding success of the Free Legal Advice Centres (FLAC) was the case of Lydia Foy. In 2006 FLAC issued proceedings, on behalf of client Lydia Foy, to have the refusal of the Irish state to recognize transgendered persons declared contrary to the European Convention on Human Rights, being vindicated in 2010.

This led ultimately to the passage of the Gender Recognition Act, but FLAC's presence was critical in generating the political will to see the judgement through. Other achievements from FLAC litigation were overturning the requirement that 50% of a hire purchase agreement be re-paid before handing back defaulted goods; and the removal of the age limit for jury service. Elsewhere, FLAC contested state decisions. FLAC challenged the Legal Aid Board on the application of the means test for legal aid and for not approving the use of legal aid to halt the eviction of Travellers. FLAC won the right of deaf people to sit on juries, only to have it overturned by government. Another case, taken under the revised European Social Charter, for older Irish people living abroad to avail of free travel on buses and trains in Ireland on the same basis as indigenous older Irish people, was unsuccessful.

FLAC's work in strategic litigation was broadened by the Public Interest Law Alliance (PILA), originally hosted by FLAC, which brought public interest law to 81 NGOs with the help of 175 individual lawyers in 16 law firms on a *pro bono* basis. PILA took cases for the right of blind people to a secret ballot; the right to vote for people with an intellectual disability; the rights of migrants to be considered eligible for social housing; and the right of transgendered people to be addressed by hospitals in their preferred gender.

## Irish Traveller Movement Legal Unit

The Irish Traveller Movement Legal Unit (ITMLU) broke fresh ground when it took a collective complaint, the first ever made to the Council of Europe, leading to a detailed rebuttal by the Irish government (outcome awaited).<sup>13</sup> ITMLU's flagship case, though, failed (*Stokes*). This concerned a Traveller child refused admission to a Tipperary secondary school because none of his parents had attended (at that time, almost no Travellers attended secondary school). ITMLU brought the case through the Equality Authority, the Circuit Court, the High Court and then the Supreme Court, which eventually ruled such discrimination to be lawful, a severe blow to human rights.

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10 A termination is possible under the circumstances of risk of loss of life from physical illness or suicide but requires the approval, depending on the circumstances, of between one and three physicians. There were 26 such terminations in the first year under the Act.

11 The Optional Protocol is the provision within the International Convention on Economic, Social and Cultural Rights (ICESCR) for groups or individuals to make communications to the United Nations, for an inter-state procedure concerning non-compliance and an inquiries process into violations of rights. Not to be confused with the Optional Protocol to the Convention Against Torture (OPCAT) (2006), vide footnote 31.

12 According to the Department of Social Protection, the term habitually resident is not defined in Irish law, but in practice it means that a person must have a proven close link to Ireland that conveys permanence — that a person has been here for some time and intends to stay here for the foreseeable future. Critics, though, contend that it is used to deny social assistance to legitimate migrant workers.

13 A collective complaint is a form of class action taken by people, rather than an individual, on the basis that they have, as a group, been all or mostly affected in a similar way. A collective complaint is normally taken on their behalf by an organization (which may be an NGO).

In Killarney, ITMLU supported a case taken by two women Travellers refused admission to a voluntary organization fund-raiser. The case was thrown out in questionable circumstances by the district court judge, following which ITMLU made legal submissions demanding a re-trial when it won a recusal and subsequent compensation. Other ITMLU interventions challenged the provision of closed-circuit TV cameras surveilling a halting site; the prohibition of under-18 married couples from applying for housing (many Travellers marry young); unwarranted or unlawful evictions and utility disconnections; the refusal of service in hotels and pubs (e.g., cancelled wedding booking); racist abuse, failure to investigate assault and the failure to provide Traveller-specific accommodation.

The strategic role of this litigation was to challenge the routine discrimination against the Traveller community and thus deter future discrimination. It was supplemented by 'soft' actions taken through institutions of administrative redress. For example, ITMLU was one of the few organizations in the group to use the Freedom of Information Act, mainly to help individuals to get information on decisions on them in housing. ITMLU took a case to the Broadcasting Complaints Tribunal but lost (treatment of Traveller issues there being notoriously hard to win). ITMLU took a number of cases of media attacks on the Traveller community to the Press Ombudsman, which were upheld and may have had some effect in deterring anti-Traveller comments in other media.

### Use of Think Tanks

The contribution of the Think-tank for Action on Social Change (TASC), because it works in ideas, attitudes and policy, is more difficult to measure. TASC argued consistently for a more just, equal and fair society, but the post-2008 austerity régime sent Ireland in precisely the opposite trajectory. At the same time, TASC stimulated interest in the Nordic model, observers commenting that equality was at least kept on the agenda.<sup>14</sup> Voices other than the banks, property and economists were heard: 'alternative, progressive economics are now winning broader audiences.' In one area, TASC had a distinct effect: financial regulation. Following publication of the *Mapping the Golden Circle*, the financial regulator agreed to TASC's recommendation to prohibit any one director from holding more than three company directorships, contrary to all other advice.

### Rights defended

At times, human rights organizations focused on defending existing rights. One of the biggest wins concerned a government decision in 2008 to downgrade and merge the Human Rights Commission and Equality Agency. The hurriedly convened Equality and Rights Alliance established by Atlantic's key grantees organized a campaign to save these agencies from further cuts. The alliance set down a roadmap for the re-establishment of a merged agency so that it would conform to international best practice. Eventually, a new and arguably stronger Human Rights and Equality Commission was re-established through fresh legislation in 2014.

Organizations also worked together to protect Irish-born children of migrant parents. Fuelled by the Celtic Tiger, Ireland saw massive demographic change in the early 2000s with migrants coming for the large number of jobs available. This new population overwhelmed a system that was unprepared for them. An Atlantic-formed coalition, the Coalition Against the Deportation of Irish Children (CADIC) in 2005 persuaded the courts that the deportation of 17,000 Irish-born children should not proceed unless it was in the best interests of the child, halting the plan.

Human rights groups such as the Irish Council for Civil Liberties, meanwhile, were prominent in convincing people to vote no in a constitutional referendum on proposals to endow the Oireachtas with additional powers of investigation that could have intruded on individual reputational rights.<sup>15</sup> In addition, TASC and others successfully persuaded the new government elected in 2011 to reverse the reduction of the minimum wage. Another achievement, attributable to FLAC, was maintenance throughout the period of the legal aid budget at a time of broad cuts to government spending, although pressures on legal aid rose considerably and charges were increased.

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<sup>14</sup> The Nordic model refers to the Scandinavian countries, which invest highly in social protection, public health, education and childcare, accessible through substantial investment in public services, combined with economic efficiency. The Nordic countries have the world's best outcomes in income and gender equality with the lowest poverty. The model is financed through high rates of taxation.

<sup>15</sup> Under the Irish Constitution (article 40) and law, people have a right to their good name ('reputation'), unless condemned or found guilty in court. Concerns were expressed that as a result of parliamentary enquiries, people would find themselves interrogated, named or damaged in such a way that their reputation would be tarnished, either at the time or in a subsequent report and with insufficient protection to defend themselves.

## *Slow progress or setbacks*

NGOs had some setbacks as well in campaigning for the rights of people who are marginalized in society. There were significant areas where progress was minimal, despite considerable time, effort and energy being applied by the human rights NGO community.

- **A particularly troubling area was the treatment of asylum-seekers.** The system of direct provision for those asylum-seekers, long considered incompatible with human rights, continued. Direct provision refers to Ireland's system, which is intended to provide for the welfare of asylum-seekers and their families as they await decisions on their asylum application. Under direct provision, asylum-seekers and their children have spent years living in institutional settings that were designed to be a short-term solution only. The standards of accommodation and living conditions vary widely and can be poor. Advocates have campaigned for a replacement of direct provision with one in accordance with international human rights standards. A court win for children in direct provision to receive child benefits was speedily overturned in legislation. A comprehensive Immigration, Protection and Residence Bill, due before the start of the decade under study here, was replaced by a limited Protection Bill.
- **The government continued to resist the recognition of the Traveller community as an ethnic minority.** Such recognition would provide them with greater legal protection.
- **The government also failed to ratify conventions to protect women and people with disabilities.** The Irish government has signed but not ratified the Istanbul convention on violence against women. In addition, Ireland has signed but not yet ratified the United Nations Convention on the Rights of People with Disabilities while awaiting legal capacity legislation, which it must to be in compliance with the convention. Such conventions provide important safeguards for human rights protections.
- **The Home Defence Bill**, one designed to provide additional protection for home-owners defending themselves or their property, including using potentially lethal force, opposed by the Irish Council for Civil Liberties (ICCL), was enacted but without a code of guidance to ensure its reasoned application.
- **A limited Spent Convictions Bill become law in 2016.** Spent conviction legislation would address hardships that some former prisoners face in starting a new life. Hitherto, former prisoners with felony convictions had difficulty in obtaining employment. The spent conviction legislation allowed for a criminal conviction to be expunged after a period of time, therefore making it possible for some former prisoners to secure employment and take other steps to integrate back into society. The new Act, however, fell far short of the hopes of campaigners by excluding sentences over 12 months and multiple convictions as well as applying a blanket seven-year rehabilitative period regardless of the proportion of the offence.

There were four distinct reverses for civil rights:

- **The imposition of new charges for civil legal aid.** Civil legal aid is available only under limited circumstances, with often quite lengthy waiting periods, but clients are obliged to pay (it is not a free scheme) for both legal aid and advice. These charges, called minimum contributions are substantial for people on low incomes, with a severe means test. Charges were increased from €10 to €30 for legal advice and €50 to €130 for legal aid.
- **A High Court decision that social welfare appeal decisions need not be published.** In the case of the social welfare appeals decisions, FLAC took appeals on behalf of clients to establish the circumstances under which people might obtain benefits, building up over the years precedents analogous to case law. The High Court ruled that these decisions need not be published, making it difficult if not impossible for future appellants to argue on the basis of precedent if those precedents could not be known (it was comparable to preventing publication of the decisions of the courts or law reports).
- **The removal of human rights work from the scope of charities legislation as a legitimate field of charitable activity.** This meant that donors could not avail themselves of tax exemption from giving to what had been human rights charities. What was potentially more important was that both government funding schemes and private foundations had rules whereby they could only support charities, which automatically ruled out such funding for those concerned with human rights.
- **An all-Ireland charter of human rights, approved by the Good Friday Agreement, did not progress.** The all-Ireland charter was designed both to extend human rights and to ensure a consistent approach to human rights across the whole island, so neither hoped-for gain, which the people had approved by referendum, took place.

## 4 Strategies and Tactics

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Strategies and tactics by NGOs to influence policy have changed little since the 18th century.<sup>16</sup> This chapter examines the particular strategies and tactics followed by this group in Ireland over 2004-14, those that worked, why they worked and those that did not. Most NGOs are quite small and have limited resources compared to the institutions with which they engage, which requires them to be proportionately extraordinarily effective, a process recently and appropriately termed asymmetric engagement.<sup>17</sup> Atlantic funding made possible a transformative growth in the capacity, scale and professionalism of this group.

### Conventional and Unconventional

Most NGOs engaged with the political system by addressing the political and administrative system, such as the Oireachtas, government departments and agencies, both in-person and through written communication. They supplemented this approach by media work (press conferences, press releases, publications, websites and new social media), conferences, seminars, symposia, roundtables, Chatham House rule events,<sup>18</sup> training, courses and masterclasses while some engaged in petitions and demonstrations. As an example, the Irish Council for Civil Liberties (ICCL) famously kitted out a team of actors as kangaroos to highlight the ‘kangaroo court’ dangers of the proposal on Oireachtas powers.

In addition to such tried-and-tested conventional action, several organizations developed or followed new or less frequently used means of engagement:

- **Oireachtas committees, which offered fresh scope for NGOs.** Committees now have the power of pre-legislative scrutiny (i.e., discussion about potential laws before they are drafted), which they have begun to use and which will offer an additional opening for providing input. The Irish Traveller Movement Legal Unit (ITMLU) was one of the first organizations to make a presentation to the Seanad Public Consultation Committee, while Free Legal Advice Centres participated in four committees (justice, finance, oversight and petitions, social protection).
- **Oireachtas all-party interest groups.** The Irish Penal Reform Trust promoted an all-party group on prison reform, Amnesty on health reform, while ITMLU prompted a parliamentary group to look at the Incitement to Hatred Act. Such all-party groups were normally chaired by a deputy or senator with a particular interest in the subject. Some all-party groups held seminars and even if attendance varied, they enabled NGOs to get additional traction for their cases.
- **International human rights instruments, such as the Universal Periodic Review of human rights records of UN member states.** ICCL organized live streaming of international hearings on Irish human rights under the Universal Periodic Review in Geneva and New York.
- **Legal complaint and petition to the European Union on Irish compliance with equality requirements.** This was a formal legal complaint, accompanied by a petition by members of the European Parliament, that Ireland was in breach of European equality directives by not sufficiently resourcing the Equality Authority to carry out the tasks expected of it under European law. Such a complaint must be investigated by the European Commission and may then proceed to the European Court of Justice. Such a procedure, even if unsuccessful, attracted considerable media attention, put Ireland under negative international publicity and required the government to respond formally. The Equality and Rights Alliance’s complaint prompted questions in the European Parliament on minimum standards for human rights institutions in Ireland.

<sup>16</sup> Hochschild, Adam. *Bury These Chains — The British Struggle to Abolish Slavery*. New York: MacMillan, 2005.

<sup>17</sup> Larragy, Joe. *Asymmetric Engagement — The Community and Voluntary Pillar in Irish Social Partnership*. Manchester: Manchester University Press, 2014.

<sup>18</sup> The Chatham House rule is a principle borrowed from international diplomacy, where ‘what is said in the room stays in the room’ and cannot be quoted outside or to others.

- **Visits of international human rights watchdogs, committees or experts.** For example, IPRT used the visit of the Committee for the Prevention of Torture to publicize conditions and brief the opposition.<sup>19</sup>
- **Used the arts to support their message.** For example, IPRT staged a play, *The Old Triangle*, which was a celebration of arts in prisons and a call for prison reform and the now well-known annual human rights film awards sponsored by ICCL.
- **Site visits.** ITMLU brought three members of the Oireachtas to a halting site.<sup>20</sup> Others brought over experts, generally from Britain and Europe, to speak on human rights.

Most organizations combined a mixture of focussing on those departments that had most responsibility for their field of work and relation-building there ('narrow-front' or *Schwerpunkt* strategies)<sup>21</sup> with broad-front strategies of reaching out right to the periphery of the policy field, for breakthroughs may happen in unexpected places. Some were very thorough in making sure they covered all the potential *personalia* involved (e.g., ministerial advisers).

Between them, they ensured that no pressure points were missed. A broad-front approach was that of IPRT to end imprisonment of 16-year-olds in St. Patrick's Institution. It involved working directly with the Department of Justice and the prison service and reinforced that by working with the Ombudsman for Children, the United Nations and Council of Europe (which made damning comments), other NGOs (e.g., Children's Rights Alliance) and the academic community.

### Using International Pressure

Although the use of international human rights pressure and instruments predated 2004, they are still a relatively recent feature of the NGO-government human-rights landscape. Amnesty International was one of the original users of international pressure to attempt to persuade government to follow human rights standards. Over 2004-14, Amnesty's international secretariat sent letters to the Irish government three times (gender recognition, constitutional convention and abortion), but it is an approach used sparingly so as to make it more effective.

ICCL introduced sophisticated techniques of lobbying through its shadow reports to the United Nations (e.g., shadow report to International Covenant on Civic and Political Rights, 2008). Although the shadow reports, generally compiled in coalition with other NGOs, were of themselves important, the principal added value may have been through the subsequent follow-up activities. Human rights NGOs met with and made presentations to UN and governmental officials in Geneva and New York to prompt their more informed questioning of Irish government officials, reinforced by ongoing commentaries and media events.

On the Universal Periodic Review, 90% of the 127 recommendations were accepted by the Irish government, many having been originally suggested by Atlantic grantees. Campaigning NGOs built up such a substantial pressure behind their recommendations as to make it difficult for the Irish government to say no and go against such a strong force of governmental opinion at the United Nations. Doing so would isolate Ireland, give it a reputation for being uncooperative with UN institutions and governments represented there, and make it difficult for Ireland to call in favours when, in turn, it might need help or support. At the time, Ireland was hoping for membership of the UN Human Rights Council so it could ill afford to be vulnerable on human rights issues.

19 'The opposition' means members of Parliament of the lower house (Dail) or upper house (Seanad, or Senate) who are not members of the party supporting the government. By briefing the opposition, NGOs hope that opposition parliamentarians will raise their issues in Parliament and later, should they enter government themselves, carry out the reforms they propose. The leader of the largest party not in government is informally called the leader of the opposition. Leaders of opposition parties may be granted additional financial allowances for their oppositional role.

20 A halting site is where Travellers, traditionally nomadic, halt beside the road. Modern halting sites, where groups of Travellers live in their caravans, are supposed to have communal facilities (e.g., water, electricity) which local authorities are funded to provide. In practice, many are sub-standard, leaving Travellers to live in quite squalid conditions.

21 A phrase with military origins: the place where one applies the heaviest concentration of force during a campaign, the 'narrow front', attributed to Guderain, Heinz. *Achtung! Panzer*. London: Wellington, 1937.

International hearings could be quite uncomfortable for Irish governments and their ministers. Up to 30 Irish NGOs might attend Geneva hearings. The international cycle was both a formal and informal opportunity to engage with government. NGOs were able to doorstep the Irish minister and civil servants. One participant in such a campaign commented that ‘it’s insane, Irish NGOs travelling to Geneva to meet an Irish minister, but it works’. Governments now take the international process more seriously. Another interviewee said, ‘this year the minister gave a 20-minute speech and left time for questions, not the filibuster we had before’. The general view was that international engagements can be especially useful in getting issues on the agenda and beginning the process of change.

Observers believe that Irish NGOs do this well, but not everyone agrees with the international approach and some find it obscure, remote and difficult to connect to the lived experiences of people. There is a danger they become repetitive, paper-focussed exercises when governments move too slowly and where it is difficult to see practical results on the ground. Most, though, believe that international instruments are central to getting ahead in the game. Resentment about NGOs ‘going behind the government’s backs to Geneva’ of itself meant that it was effective.

At another level, NGOs cited international law in domestic campaigns. For example, for the recognition of Travellers as an ethnic minority ITMLU contrasted the legal situation in Newry, Northern Ireland, where as a result of a British court ruling, Travellers are recognized (*O’Leary vs Allied Domecq*, 2000), with Dundalk, 10km to the south in Ireland, where they are not.

## Insider, Outsider

Insider groups prefer to work within and through the political system to achieve change.<sup>22</sup> They see themselves as providing evidence-based proposals, presenting constructive ideas and solutions, but being prepared and willing to criticize when progress is slow or insufficient. A particular form of insider strategy is to seek a presence on policymaking bodies. (See Table 5 for some examples.)

**Table 5: Examples of presence within political-administrative system**

Organization	Representation
Amnesty International Ireland	Garda Strategic Human Rights Advisory Committee (SHRAC); Department of Foreign Affairs/NGO Standing Committee on Human Rights
Free Legal Advice Centres/ Public Interest Law Alliance	Expert Group on Mortgage Arrears (Cooney); Legal Aid Board external consultative panel; Financial Services Ombudsman Council; Department of Foreign Affairs Standing Committee; Insolvency Service Advisory Group on Personal Insolvency Arrangements; Citizen Information Board
Irish Council for Civil Liberties	SHRAC; Department of Foreign Affairs NGO Standing Committee; Gender Recognition Advisory Group
Irish Penal Reform Trust	Strategic Review Group (prison policy)
Rape Crisis Network Ireland	National Steering Committee on Violence Against Women

<sup>22</sup> For a definition of insider groups, see Grant, Wyn. *Pressure Groups and British Politics*. Basingstoke: MacMillan, 2000.

In addition, some belong to NGO forums that contribute to departmental policy (e.g., Department of Justice Roundtable Group on Combatting Trafficking in Human Beings), but these are one step removed. These examples illustrate the use of insider approaches:

- **FLAC was welcomed onto the expert group on mortgage arrears and personal debt** which was the first attempt to set parameters for restructuring mortgages in arrears. FLAC was in a strong position to influence the report. It brought with it a breadth of knowledge and frontline practical expertise and was, and continues to be, a sharp critic of the shortcomings of government policy in this area.
- **The Garda Strategic Human Rights Advisory Committee meets on a regular basis to review the manner in which the gardaí (police) uphold human rights**, but it is also the place where, should an incident arise, issues of human rights will be raised and pursued in a structured way. Such committees are important in creating a culture of compliance and accountability.
- **When Frances Fitzgerald was appointed Minister for Justice, she held a justice summit in the Farmleigh government conference centre, to which ICCL was invited.** Traditionally, ministerial summits are limited to key players on the government side, so this was an unusual recognition of the status and importance of an NGO. It also gave ICCL an opportunity to network with senior officials.

At the same time, there were limits on insider approaches. Although it had offered commentaries and texts, the Equality and Rights Alliance was not appointed to the working group designing the new equality infrastructure nor was it invited to an Irish presidency conference on human rights institutions. It was seen as an outsider organization, with government, either consciously or not, keeping its skills out rather than bringing them in. The ways in which government keeps expertise *out* is one of the least acknowledged or studied aspects of Irish politics and public administration.<sup>23</sup>

There are also examples of organizations eschewing insider opportunities: Amnesty turned down a place on the Department of Health expert group on the Mental Health Act, fearing that it might be expected to endorse a compromisingly weak report. IPRT turned down an offer to chair the Penal Policy Strategy Review, in order to preserve its independence, but accepted an ordinary place therein. While FLAC would have desired a place on the Legal Aid Board in the past, it now prefers to shadow it. Much of this representation was opportunistic, taking up participation when it arose. A general observation of the NGO community is that few seem to have a strategy of getting representation on advisory bodies at the heart of policymaking — or prompting the formation of bodies on which they might then have representation. Elsewhere in Europe, NGOs have more sophisticated strategies for getting places on such bodies, based, as one Slovenian NGO put it, on the knowledge that ‘once you change *who* decides the policy, you change the policy itself’.

These were opportunities in *place*, but others sought opportunities in *time*, that is ‘policy windows’. The most obvious policy windows are the period coming up to a general election when there is an opportunity to influence the new Programme for Government (PfG), the roadmap for action of a new government. Ahead of the 2011 general election, human rights organizations engaged intensively with the likely winning parties, Fine Gael and Labour and their justice spokespersons. As one put it, ‘a key skill is identifying a critical potential moment of change so as to take advantage of it when it happens’.

IPRT’s efforts were rewarded with an entire section on penal reform in the subsequent PfG (e.g., commitments to end the imprisonment of 17-year-olds in 2014, end slopping out by 2015, end imprisonment for fines and the move from custodial services to non-custodial). The Equality and Rights Alliance won commitments to an improved human rights infrastructure.

All organizations were able to point to an increasing media footprint and visibility over time. These were more on national rather than local news, more on television than radio; greater prominence as news stories and earlier in the bulletin; participation in opinion-forming ‘chat shows’ and ever more references in policy reports; citations in the Oireachtas. These are all indications of influence.

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23 For an exposition in another context, see Chamberlain, Lesley. *The Philosophy Steamer*. Atlantic, 2006.

## Accessing Government, Public Administration

The Irish political system is renowned for its permeability.<sup>24</sup> Reports from the funded organizations and evaluations confirmed the high level of engagement with deputies, senators and departmental officials. NGOs were able to reach ministers and their political advisers.

At the same time, there were blockages. Several NGOs reported difficulty getting access to government and of departments refusing meetings or contact (Amnesty with departments of Justice; Health; Attorney General). Although there is a well-established convention that a minister will never refuse meeting a delegation led by a deputy or senator, this approach does not seem to have been used. There was a reluctance by NGOs to challenge any lack of access publicly or make it politically expensive to government. Indeed, organizations made a point of emphasizing the importance of their being on good terms and having constructive working relationships with officials. There was a widespread concern to be seen as responsible and not to alienate. They described themselves as critical friends.

They liked to avoid confrontational positions and were wary of it as a strategy for forcing change. When push came to shove, most organizations in most circumstances preferred deference to confrontation. Some developed work-arounds. The Equality and Rights Alliance was unable to get a meeting with the Minister for Justice, but instead worked, successfully, with his political adviser, who happened to be a past chairperson of the Irish Council for Civil Liberties.

Several individuals told their stories about how they worked their access with the political system, first by identifying those whom they must influence. As one put it, Ireland is ‘a small country, politically speaking. There is only a few hundred influential people you need to reach: ministers, advisers, Oireachtas, civil servants in departments, public servants in agencies, academia, media.’ As another said, ‘a key task is the identification of the “good-minded people” who might help us, be they public representatives, officials or the judiciary.’ One organization used what it termed profiling — learning as much as possible in advance about the political personalities, views and records of those it proposed to approach, ‘trying to find areas where one can agree’, an approach learned from successful LGBT campaigns.

Another activist takes up the story: ‘we worked hard to identify the most senior civil servants — three or four — and to create informal opportunities to meet with them. We would invite them out to dinner. We got academics to talk to them who knew the language of civil servants.’ Several were skilful at chatting up and disarming individual civil servants. Others referred to informal but regular meetings over coffee with senior gardaí. These approaches made dialogue possible. As one said, ‘they had been frosty with us, but informal discussions broke that down.’ This became evident in media management, where it became accepted that there could be a cordial private sphere co-existing with a more robust public one. An NGO staff member said, ‘the officials learned news management: whenever we put out a critical story, they always had a “good news story” in the can and ready to roll to counter it.’

NGOs invested considerable energy in developing, maintaining and managing their relationships with officials. The Irish political-administrative landscape is extraordinarily personality-dependent, with policy decisions very much the outcome of the interests, likes and dislikes of individuals. This puts a premium on the ability of NGOs to work with a variety of personality types – and to spot opportunities for a fresh start when new appointments are made. For example, one impetus for prison reform was the new head of the prison service, whose background in probation made him more likely to understand the need for change than his predecessors.

NGOs not only worked with government but with opposition spokespersons and up-and-coming civil and public servants. Those relationships often paid off when these officials were appointed to more powerful posts. An NGO staff member said that ‘when one deputy became minister, he phoned us to ask us for the top priorities of what should be done now. We also routinely mailed one public servant who suddenly became head of the service we are dealing with. He then called us, asking to meet us, saying “I’ve read your stuff and that is where we are going”’.

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<sup>24</sup> Permeability is the degree to which it is possible for NGOs (and others) to penetrate the political and administrative system, personally meet with civil and public servants, administrators and elected representatives, and engage with them. Examples are given in *Working for Change: A Guide to Influencing Policy in Ireland*. Dublin: Combat Poverty Agency, 1999, 2005, 2009.

## Presenting Evidence, Solutions

Intimacy is no substitute for objective, evidence-based policymaking and accountability. This group of NGOs invested substantially in what is now termed in the public service evidence-based policymaking, especially in presenting solutions. The Think-tank for Action on Social Change (TASC), for example, completed 44 research projects in less than three years. FLAC made 25 submissions in 2009-11 alone, while IPRT used a format of ‘working documents’ that evolved over time.

As one said: ‘evidence is critical. People may disagree with it, but you must get the evidence that stands up because that is the starting point’. Organizations put effort into presenting in clear, accessible language. With evidence came perspective and solutions. One NGO staff member noted, ‘it’s important not to point the finger without offering a solution’. It was always vital to understand the other side. An activist said, ‘we shouldn’t lecture the guards about human rights without knowing what it’s like to be on a police line that’s attacked in a riot’.

NGOs noted that policymakers like practical solutions. As an example of solutions, TASC made proposals to avoid poverty traps for those on low wages and fairer ways of making water charges so as not to disproportionately affect those on lower incomes while IPRT supplied text for legislation.<sup>25</sup> Such detail, one said, ‘gives you credibility on bigger issues’. As one activist put it, ‘evidence-based research is known to be effective in settling arguments once and for all’. One contemporary test for solutions is how to progress the economic, social and cultural rights approved by the constitutional convention, but yet to be progressed by government. Here Amnesty outlined a series of logical, incremental steps in a deliberative process whereby government could strengthen such rights up to 2020, making it more difficult for it to abandon the process.

At the same time, NGOs were aware of the poor policy infrastructure in the political system. Parliamentarians have little or no research capacity. They rely on a civil service whose policy capacity was declining as its numbers began to shrink in 2008. It was a vacuum that NGOs were happy to fill. Several groups were especially effective, sending in two-page briefing notes and texts of amendments to legislation. As one policymaker said, ‘you get 10 reports a day, but with the best will in the world, you can’t deal with them all, so you end up dealing with organizations that are concise and give you options’. One NGO even read the speeches of Oireachtas members to identify the five or so supporters likely to run with its issue, but this was unusual.

### Evidence and solutions: penal reform

Penal reform is a clear example of the value of evidence-led, solution-focussed strategies by NGOs. The flagship of government prison policy in the 2000s was Thornton Hall, a planned 2,200-bed mega-prison. IPRT campaigned against such an expansion in prison capacity and persuaded the opposition that the plan should be reviewed should it find itself in government. The opposition made that a commitment in the 2011 Programme for Government. When the review group was set up, IPRT got a meeting to discuss a range of alternatives. The review group subsequently reduced the size of the prison to 300, following which the planned prison was quietly abandoned. Moving on to broader prison policy, the debate had already shifted from ‘imprisonment is a good thing’ to ‘we can’t do anything about judges sending people to prison’ and ‘we may not think imprisonment a good thing, but most people do’. The task for reformers was to persuade the authorities that it was really within their power to reduce prison numbers. One practical way was community return or early release but on community service. IPRT brought policymakers over from Britain, especially Scotland, to show how this could be done. Prison policy is now on a more rational basis, with in-house research, a strategic plan, a joint plan between the prison service and the probation service. Now NGO researchers get cooperation from government.

<sup>25</sup> Poverty traps can arise for people in low-wage poverty, who, should they become unemployed, receive not only unemployment payments but some ancillary benefits (e.g., medical services) that can provide a rate of in-kind benefit cumulatively higher than what they would receive in work.

## Opportunistic Incrementalism

The strategies pursued by NGOs could be summarized as opportunistic incrementalism — spotting opportunities to introduce issues into the political-administrative system, finding allies, working away at doubters, engaging with media, carrying out personal lobbying and providing solutions. NGOs have become sophisticated at doing this.

An example of opportunistic incrementalism is the Irish Traveller Movement (ITM) campaign for Travellers to be granted recognition as an ethnic minority. ITM saw recognition of Travellers as the key to unlock a set of other issues, provide an additional layer of legal protection, encourage positive discrimination and add to Travellers' own sense of self-worth. Whereas in 2004, the state denied that such recognition was an issue, steady parliamentary pressure by ITM kept the issue on the table. In 2014, the Seanad Public Consultation Committee issued a report recommending recognition, the first official-level endorsement of the campaign. Then, at the Labour party conference, the ITM Legal Unit facilitated a discussion on the issue and an activist who was also a party member spoke on a resolution on recognition. Surprisingly this was not opposed nor referred back with the opposition presumably waning. In 2015, President Michael Higgins, who was invited to the 30th anniversary of the founding of the Pavee Point Traveller and Roma Centre, spoke to support the campaign. Campaigners noted that government opposition has relied on fewer and fewer arguments. One veteran commented that a feature of campaigns like this was that 'sometimes you pass a tipping point without realizing it'.

## The Limits: Capture? Stockholm Syndrome?

The period 2004-14 concluded with a sobering, critical interrogation of the work of the NGO community by external observers interviewed for this report — but questioning that may point the way to the future. The retreat on economic and social rights raised serious questions about whether what was criticized as the 'soft advocacy' approach of NGOs was tough enough. In the view of one critic, they 'focussed on services, institutional-level lobbying, public awareness raising, getting donations or adopting a strategy of supporting a particular party to get into government and then hoping to influence things that way' – but this had left vulnerable communities devastated with no one to defend them but themselves.

Another criticized Irish human rights NGOs who lobbied the élite without giving equal weight to grassroots actions, an on-the-ground presence and the systemic critique that challenged national and European austerity policies as had social movements in Portugal, Spain and Greece.<sup>26</sup> One activist said that educated middle-class activists who staff human rights organizations need reminding of the real situation of working-class communities, where rights are most missing. One critic warned of the dangers of deferential human rights NGOs being captured by the system, of Stockholm syndrome.<sup>27</sup> That critic said, 'effective human rights NGOs must always be reasoned, but there are times for them to be belligerent and awkward. If they do their job properly, they won't be popular, but too often they want to be loved and that's the quickest road into incorporation,' which is the ultimate fate of the insider strategy.

<sup>26</sup> Hearne, Rory. *Debating Directions for a New Republic*. National University of Ireland Maynooth, monograph, 2014.

<sup>27</sup> Stockholm syndrome dates to the Norrmalstrog bank raid in Stockholm, Sweden, from 23-28 August 1973, in which, over their ordeal, captured bank employees came to sympathize, identify and bond with their captors, even defending them, mistaking lack of injury as a form of kindness. The term was so coined by criminologist and psychiatrist Nils Bejerot. Up to 8% of captured victims are subsequently estimated to exhibit Stockholm syndrome symptoms.

## 5 Current Issues and Future Prospects

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Finally, *Capture the Learning* examined some of the key issues arising from the experience of the programme and, now that it is concluded, the prospects of human rights work and those organizations most prominently involved.

### Human Rights and Equality Commission

A key issue with the Irish Human Rights and Equality Commission is will it be ‘a really effective institution, or a paper tiger’? According to one activist, its effectiveness will partly determine the workload, focus and energy of the NGO community. If it is weak, then NGOs would have to make good its defects. Conversely, an effective commission would enable NGOs to concentrate on other things. There is a consensus now that the human rights and equality institutions have now been repaired, but doing so absorbed the energy of human rights activists for many years and drew them from other pressing matters.

The experience of the earlier iteration of the human rights commission was a reminder of the importance of starting on a firm footing. An over-controlling department and restrictive budget meant that it did not become fully operational for several years, progressed at a glacial pace and in the view of many never made its mark. Despite its good work with NGOs, the previous commission fell short of their expectations. So far, there are positive signs for the new commission. These signs include its ‘positive duty’ to promote human rights and equality in legislation, an independent appointments process and new commissioners with strong records drawn from the human rights field.

At the same time, the budget of the commission is still less than its two precursor bodies six years ago (€6.3m versus €7.8m). Staffing has been set at 47, compared to more than 70 for its two predecessor bodies in 2008.

We know from other countries what makes human rights commissions effective: leadership, preparedness to undertake inquiries and strategic litigation, recruitment pools (government, private sector, legal, activists, academics) and independence of its department.<sup>28</sup> Key tests are:

- Its commitment to addressing the human rights culture in the civil and public service and developing the training programmes reported here
- Outreach to, relationship and interface with, civic society and the nongovernmental community
- Will government listen to its recommendations?
- Educational outreach on equality and human rights issues to schools, a field well beyond the resources of the NGO community

It is important not to overstate the importance of the Irish Human Rights and Equality Commission, as other institutions are also important (e.g., Ombudsman, Inspector of Prisons; specialized ombudsman for children, Garda and financial services) as are those forthcoming (notably the Garda Authority). As one expert noted: ‘the new commission cannot be expected to solve all the human rights problems single-handed’.

### Economic and Social Rights?

Despite the past 10 years’ progress in LGBT, children’s and prisoner’s rights, socioeconomic rights progressed least, were often reversed and socioeconomic injustice intensified. Gains made over 2004-08, such as reduced levels of poverty, were quickly rolled back. The social policy infrastructure was taken down, never rebuilt and NGOs in the field were de-funded. Socioeconomic rights are of course human rights too, but for convenience are treated here as a distinct set within the human rights field. Those organizations in this cluster providing services and those further afield speak of a wave of social distress undermining human rights values. One observer stated: ‘for the poor, the picture is fear, doubt, uncertainty’. There has been little progress for people with disabilities, with ever more

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<sup>28</sup> Spencer, Sarah and Harvey, Colin. ‘Context, Institution or Accountability? Exploring the Factors that Shape the Performance of National Human Rights and Equality Bodies.’ *Policy & Politics*, 2014, 42(1): 89-107; and *Equality and Human Rights Commissions in the UK and Ireland – Challenges and Opportunities Compared*. Belfast: Queen’s University; and Oxford: COMPAS, 2011.

reports of the lack of community facilities for them (e.g., autism). The same is true for Travellers and those who are homeless. Human rights issues concerning discrimination, economic justice, right to shelter and housing are more acute than ever, while persistent inequalities have become more entrenched.

The brightest note of the period was the adoption, with an 85% vote in favour, by the constitutional convention, of an affirmation of economic and social rights in housing, social security, health care with additional rights in areas of disability, language and culture, requiring the amendment of the state's constitution. Such rights could make a huge difference to the most marginalized, with their access to services and social goods (e.g., health, housing) as a right. This was the achievement of Amnesty, whose director was a prominent debating protagonist and one of five panel contributors, but ICCL's *Hear Our Voices!* campaign played a vital role in opening up a civic society space for this discussion. As one observer commented: 'NGOs did at least win round 1. They made a powerful contribution, broke down the issues and saw off the scaremongers.'

How to progress economic and social rights in general and the outcome of the constitutional convention in particular are substantial challenges for human rights organizations and their allies. Together they could break down the problem into more manageable elements, such rights to shelter, housing and accommodation, granted their immediate relevance to the homeless and the Traveller community, where measurable, practical solutions can be applied. Another approach could also challenge the judiciary's retrogressive judgements (e.g., *Stokes*).

Several observers warned that such rights would go beyond the outer limit of what the Irish state and its main political parties would tolerate, for they were rightly perceived to raise fundamental distributional issues. As one commentator put it: 'there you run up against the fundamentals. NGOs are given leeway as long as they don't stray into or challenge economic and social rights. They will always be constricted that way.' It will be challenging for NGOs to outline how to operationalize economic and social rights, especially their resource implications, although the Think-tank for Action on Social Change made a start. Will the new human rights and equality commission ask for an extension of its mandate to include socioeconomic status?

In the meantime, the immediate economic and social situation remained daunting. From 2013, the government began to talk up a narrative of recovery. Despite that, examination of the projections of the estimates showed that although government spending will recover from 2015 onward, social departments were not included, so it was to be an economic recovery only. Social NGOs were given a message of reduced funding for many years and that the benefits of financial improvement will take the form of tax cuts. There will be no increases in public spending for them, no sign of the social recovery in which welfare rates will improve, poverty be reduced, housing rebuilt, acute social problems addressed, the damage to disadvantaged communities undone and the social policy institutions brought down after 2008 reconstructed. Instead, media dialogue focussed on the imperative of reducing taxes, implying a return to the development model of the Celtic Tiger, rather than addressing crisis social problems such as homelessness. There was universal pessimism that austerity will be followed by 'post-austerity austerity'.

## Human Rights Agenda to 2020

The human rights agenda to 2020 is potentially limitless. Human rights experts and NGOs singled out the following issues:

- The lack of accountability of state and private bodies to human rights standards, coupled with impunity in banks and corporations and police, all of which work their way through the system and are evident in such small ways as housing lists that give applicants no indication as to their priority on the list or abrupt and unannounced transfers from one direct provision centre to another or one prison to another, with no one responsible. Where there are institutions for the redress of grievances, there must be an even playing field between complainant and agency.
- Another issue is labour, employment rights and working with the 'precariat' of low-income workers or those who are underemployed or unemployed people in prolonged personal debt, those in insecure housing.<sup>29</sup> They face a lifetime of insecurity, intermittent work, low-paid employment, little labour protection and a lack of career opportunities and hardship. There is no equivalent of the type of work pioneered in Britain by the Low Pay Unit. Only a few NGOs have become involved in this area.<sup>30</sup>

29 The term precariat comes from the French *précarité* and refers to the new social class characterized by unemployment, under-employment, low wages, insecure employment and the falling value and conditionality of welfare payments, its situation attributed to the extreme liberalization of labour markets under neo-liberalism, taking the place of the much larger proletariat in Marxist studies. Principal theorist is Standing, Guy. *The Precariat – The New Dangerous Class*. London: Bloomsbury, 2011.

30 The Low Pay Unit was an influential research and campaigning organization in Britain from the 1970s to the 1990s to defend and promote the welfare and rights of low paid workers.

Specific items that must be addressed were identified by NGOs as:

- Long overdue recognition of the Traveller community as an ethnic minority
- The ending of the direct provision system, which is a sustained abuse of human rights
- Introduction of a single protection procedure in the area of asylum and the passage of an enlightened Immigration, Residence and Protection Bill
- Extension of reproductive rights far beyond the limited scope of the 2013 legislation
- Ratification of the International Covenant on Economic, Social and Cultural Rights optional protocol which is important for individual complaints and inquiries into human rights abuses
- Rolling out human rights training across the civil and public service and developing training and other accredited, quality-assured courses to the level of a professional diploma

In the area of prisons, there is a specific need to:

- Strengthen accountability by ratifying the Optional Protocol to the Convention Against Torture, enacting an Inspection of Places of Detention Bill, and extending powers of the Inspector of Prisons and the categories of prisoners who may make independent complaints<sup>31</sup>
- Resolve human rights violations (e.g., slopping out, overcrowding and restricted régimes)
- Policy recognition of rights, needs of minorities and vulnerable groups in prison system
- Remove children from the prison system and reduce use of remand for vulnerable children
- Enact sentencing reform including detention as last resort in legislation and reducing excessive use of short prison sentences

In the area of sexual violence, specific changes are required:

- Reduce overall level of sexual violence which is best achieved by improved gender equality
- Front-load resources devoted to combatting sexual violence into prevention
- Put into place zero tolerance of sexually harmful practices in schools (verbal, physical and cyber)
- Create a criminal justice system that gives priority and resources to sexual violence (e.g., specialist investigators, prosecutors)
- Provide in-school education programmes that address issues of consent, sexual violence and alcohol

No one has yet calculated the cost to Ireland of claims arising from *not* complying with human rights instruments, yet the state has spent millions of taxpayer resources to defend government from consequences of its failure to observe human rights standards.

A vital question is *where* human rights are pursued in law. Advances in human rights, large and small, have been made as a result of the case strategy of Free Legal Advice Centres and the Irish Traveller Movement Legal Unit (ITMLU) and, further afield by NGOs outside this cluster. Despite this, the role of the voluntary or community-based law centre is far from acknowledged. In 1977, the government's Pringle committee on legal aid proposed the model of community-based law centres, funded by the state to promote human rights. The government instead adopted a narrow scheme of solicitor-staffed legal aid centres.

Community-based and specialized law centres (e.g., ITMLU) gained only a foothold within the state's legal system.<sup>32</sup> Although they should be a 'principle of the ages' in state support for human rights, they have a precarious existence.

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31 §1 of the Optional Protocol to the Convention Against Torture (2006) sets down the principle of regular visits to places where people are deprived of their liberty while §17 provides that each state establish at least one National Preventative Mechanism to prevent torture, cruel, inhuman or degrading treatment at domestic level. Some states use a purpose-made body; or multiple bodies covering several sub-fields but coordinated by one (in Ireland, this could be the Irish Human Rights and Equality Commission).

32 The original independent law centres were FLAC; Coolock, then Northside Community Law Centre; and Ballymun Law Centre; followed in more recent times by the Mercy Law Centre and Limerick Community Law and Mediation Centre. Several organizations have created law centres or services: Immigrant Council of Ireland, Irish Refugee Council, Nasc, Doras Luimní (and ITMLU reviewed here). Northside and Limerick have now merged as Community Law and Mediation. ITMLU has no funding in 2015 and faces closure. There is at least legal recognition of the concept of the independent law centre (SI 103/2006).

There should be room for proper support for both state services, and community-based *and* specialized law centres. An Irish government serious about human rights would supply meaningful funding for local, community-based and voluntary organizations to promote human rights and they would be an important complement to the Irish Human Rights and Equality Commission.

## Sustainability of Human Rights NGOs

NGOs working in human rights considerably developed their capacity over the period 2004-14. Atlantic funding helped protect them from the worst of government cutbacks that affected most other voluntary and community organizations. Within them, there is now a confident, skilled, professional cohort of human rights activists and practitioners with a deep and broad understanding of how to engage with the political-administrative system.

The ending of Atlantic Philanthropies funding after 2014 raises worrying questions about a future when they must swim on their own. Overall, philanthropic funding in Ireland is expected to fall from about €60m a year in the early 2010s to €13m by mid-decade. The outcome of this funding cliff will be uneven. Some NGOs are at higher risk than others. Alternative sources are limited. The reluctance of government and its agencies to fund NGOs concerned with Travellers and domestic or sexual violence against women is well known. Some organizations have well-established funding bases but for others, they are narrower.

The 'liberal' constituency prepared to fund their work has always been small and a culture of philanthropy that might support such NGOs did not develop during the Celtic Tiger period, nor subsequently. Many now feel that it never will. In the most extreme circumstances, several face a scaling back to the point that they may revert to the one-person operations that they were in the 1990s with a limited core business. Personnel now in human rights organizations will disperse into other parts of the voluntary sector. Some groups might even struggle to survive. They will have to find new ways to attack old problems but with less. On the other hand, one veteran commented that 'some of these organizations were, as one-person operations, quite spectacular'.

Although they have worked hard to diversify, substantial questions remain as to who should fund them in a post-Atlantic situation. Should government fund human rights advocacy NGOs? There is a natural reluctance by government to fund its critics, while on the other hand NGOs are cautious to look for or accept funding that will dampen their critical edge because of conditionalities involved.

At the same time, there is a long-established and now unquestioned funding of the political opposition. In a mature democracy, government *does* fund its critics: the outcomes are better and more informed decisions. In recent years, government established a narrative whereby funding 'frontline' or 'coalface' services was considered a public good, but funding advocacy was considered a wasteful indulgence, expressed recently by one government official as 'how can I turn down someone for a Special Needs Assistant when giving an advocacy organization money for professionals'? NGOs find the distinction between services and advocacy pernicious: both are necessary for the well-being of society.

NGOs have not confronted government about its lack of core funding for human rights or related civil society organizations. They gave up on trying to get the National Lottery allocated directly to voluntary and community organizations — as is done in Britain and Northern Ireland — and it remains at the heart of a system of political patronage and transactional corruption.<sup>33</sup> Nor have they pressed the human rights commission to ensure the funding of human rights NGOs. There are precedents for the effective, professional funding of critical NGOs. Among the examples are the Combat Poverty Agency and Foras na Gaeilge, and in Northern Ireland, the Community Relations Council. One proposal, which did not come from the funded groups, was that there should be a defined pot of government funding for human rights NGOs managed at arm's length from government, run by an independent panel responsible for allocations, accountability and transparency.

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33 Concepts of transactional corruption were developed by Underkuffler, Laura, *Captured by Evil — The Idea of Corruption in Law*. New Haven: Yale University Press, 2013; and mediated corruption in the Irish political system was explored by Byrne, Elaine, *A Crooked Harp? Political Corruption in Ireland*. Manchester: Manchester University Press, 2012.

## A Rights-Friendly Political, Administrative, Judicial System

In the course of this programme, human rights organizations had the opportunity to reflect on the future prospects for human rights. Several suggested that there were fundamental blocks in the Irish political culture that make progress in human rights especially challenging. It was important to identify them to determine ways in which the political system might be more rights-friendly. The first one is its pace. Although the Irish political system can be adaptable and even fast, the pace of legislative change is slow. The constitutional amendment on children's rights was promised in 2006, but not put to referendum until 2013. Similarly, there was a gap of eight years between the *Foy* judgement and publication of the Gender Recognition Bill. A long-promised Immigration, Residence and Protection Bill to deal with asylum issues halted in 2010 and by autumn 2014 no further text had been published.

In the case of international instruments, Ireland has a record of signing them, but taking many years to bring in ratifying legislation. Examples include the Optional Protocol to the Convention Against Torture, the Istanbul convention against violence against women and the Convention on the Rights of Persons with Disabilities (2006). There appears to be a substantial logjam for approval, drafting and publication of legislation within the Irish political system. Very few NGOs, though, appear to have drafted or presented their own legislation, which is one method to free up the problem, or joined with others to tackle the root of this legislative block.

It is not just legislation, but any systemic change can be slow. One activist commented that 'the mental health system was so inert that reforming it is likely to take 20 years rather than five'. Many speculated on the structural reasons for the slowness of change, such as a lack of sympathy for human rights in the civil and public service, the lack of human rights education within our educational system and the nature of the political system, such as transactional corruption, clientilism and the dominance of the short-term electoral cycle.<sup>34</sup>

Several of those interviewed suggested fixes such as amending the voting system; appointing ministers from outside the Oireachtas; and devolution of powers to local authorities to take national politicians out of local decision-making (e.g., elected local executives). The organization Claiming Our Future has explored some of these issues.

Although all political systems are dependent on the personalities of ministers and civil servants, Ireland may be exceptionally so reliant. The political position and personality of the Minister for Justice is especially critical, as it is in other countries (e.g., Britain and France) with ministers adjudged as progressive or reactionary. This experience emphasizes the importance of Ireland building institutions and mechanisms more important than the personalities involved, that is, 'personality-proofing'.

Public consultation systems in Irish government remain mono-dimensional with a 'send us your submission' approach. Contributors to consultation have no idea whether or how their views may be considered. There are some good examples of consultation. These include the constitutional convention; the new Open Government Partnership and the governmental consultation process around the Universal Periodic Review.<sup>35</sup>

In general, though, government makes little use of approaches to consultation in widespread use in other democracies, such as public meetings, focus groups, thematic seminars and papers, online commentaries, specialized fora and so on (one which did, the Forum on Europe, was abolished). Another gap in the consultative process is the lack of a parliamentary-academic NGO interface to match that of the Northern Ireland Assembly (the Knowledge Exchange Seminar Series). NGOs could do much to outline to government what more inclusive, imaginative consultation systems might look like, even undertaking some together.

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34 The Irish political system is considered to be extremely clientilist. The theory of clientilism is that politicians trade services and goods for political support, people voting for candidates on the basis of their ability to deliver entitlements or grants, rather than to represent their views. Transactional corruption is when decisions on the allocation of goods and services are based not on the merits of the case but on their allocation to secure political or electoral advantage (e.g., location of new health centres, lottery grants).

35 The Open Government Partnership is an international initiative, now involving 64 states, launched 2011 to encourage government to share more information about their activities, fight corruption and increase civic participation in decision-making.

Delays in the court system are rarely given media attention but were highlighted by NGOs. They especially affect those most vulnerable, like women and migrants.<sup>36</sup> One activist said, ‘delays in the court system are so long as to constitute a real denial of justice. Why do the courts and legal profession just close for months at a time? Our hospitals don’t all close down for August. Why can’t we have a modern efficient system of justice? Legal cases go on far too long and justice is denied. A small country should be able to deal with this’. An extensive agenda for judicial reform has been outlined by the Irish Council for Civil Liberties.<sup>37</sup>

Although Ireland has a cluster of human rights NGOs, there is an absent cluster of NGOs concerned with democratic reform that are a feature of Britain and continental European countries and for rights and equality in education. In summary, there is a formidable agenda of reform to establish a more rights-friendly political, administrative and judicial system and a vacuum for the civil society field to fill.

## 6 Learning Points, Lessons and Messages

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### Learning Points

There are three main learning points: funding human rights works, NGOs can work successfully for political change and the international approach works.

#### *Funding human rights works*

It is possible for a funding programme in human rights to make progress, achieve distinct gains and contribute to the ‘good society’ where human rights are valued. This programme left a permanent legacy in its contribution to the new human rights infrastructure and other instruments of accountability, from which there should be no going back. There were substantial ‘wins’ in individual fields, ranging from decarceration to the constitutional convention, the children’s referendum to marriage equality to important areas of detail (e.g., addressing the issue of individuals holding multiple directorships and changes to the mortgage code). Case law brought important breakthroughs (e.g., *Foy*). Where there were wins, they were not just legal or institutional, but in capacity, knowledge, experience, the growth of evidence, the research base, the *pro bono* work and *Know Your Rights* publications and guides. They have the potential to leave a further legacy as work already started comes to fruition (e.g., Optional Protocol to the Convention Against Torture). Without NGOs, the human rights situation, said one commentator, would be dire.

#### *Human rights NGOs can work successfully for political change*

Second, the programme showed how NGOs can work successfully for political change. They do so by collecting and presenting evidence, building close, often informal relations with policymakers, taking their case to the media, and reaching out to people through social media. Some used additional levers, such as strategic litigation. Even if NGOs may over claim their wins, politicians considered NGOs to be helpful, informative and influential. NGOs developed a moral voice which is always important in politics and in the belief system of government ‘doing the right thing’. They organized professionally, paying proper attention to their governance, accounts and legal responsibilities. They worked well in organic, cooperative coalitions.

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<sup>36</sup> The waiting time for hearing an asylum case is typically three to four years: McDonagh, Sunniva; Kelly, Imelda; Costello, Sinead. *On the Functioning of the Asylum and Immigration Judicial Review List*. Unpublished draft monograph in preparation, November 2013. Examination of sitting and vacation periods listed at [www.courts.ie](http://www.courts.ie) provides detail on their limited sessions, days and hours of operation.

<sup>37</sup> Ward, Tanya. *Justice Matters — Independence, Accountability and the Irish Judiciary*. Dublin: Irish Council for Civil Liberties, 2009.

## The international approach works

The overlapping reporting cycles of United Nations and Council of Europe instruments offered numerous opportunities for NGOs to interrogate governments on different aspects of their human rights performance and will continue to do so in the future (e.g., the International Covenant on Economic, Social and Cultural Rights, 2015). NGOs are conscious of how distasteful governments can find these hearings which attract substantial media attention, or as one campaigner noted, ‘they don’t like being hit over the head there, they don’t like unannounced inspections here’. These hearings prompt commitments from government at several stages of the cycle: in advance of hearings (to avoid negative publicity), at hearings (to defuse criticism) and subsequently (on foot of findings).

Another advocate noted that ‘internationalization is critical to the development of human rights in Ireland’. Although European Union law is still seen as valuable in driving up Irish human rights standards, this contrasts with economic and social policy, where the European social model had yielded to the imperatives of the markets. The European Union is now seen as part of the austerity problem and the diminution of economic and social rights and ‘no help to us any more.’<sup>38</sup>

## Lessons

### Need for an annual human rights assessment

There is no annual human rights assessment in Ireland. This is not to say that assessments are not carried out from time to time, for example in the course of shadow reports to international human rights monitoring instruments or other occasional publications.<sup>39</sup> Amnesty International publishes a global human rights report, which includes a short summary on Ireland. Ireland therefore has the elements but still lacks a formal, distinct annual report which sets it in comparative international perspective. Although there is a perspective that some rights standards are poorly developed in Ireland, it is still important that they be measured objectively against international norms. An early task might be to monitor and measure the progress and impact of the new human rights commission (*Quis custodiet ipsos custodiet?*).<sup>40</sup> Short but impactful annual assessments of Ireland’s record in the area of children are made by the Children’s Rights Alliance (report card) and there is scope for a substantial such exercise here by the human rights family of NGOs. Even more useful, considering the Good Friday Agreement, would be for such an exercise to be undertaken in cooperation with Northern Ireland.

### Need for a theory of change

Although human rights NGOs had a strong and successful record of engagement with the political system, few seemed to elaborate an explicit theory of change (i.e., how to influence, politics, law and society). This does not mean that they do not have an inductive, intuitive theory of change. Nevertheless, they contrast with the community sector which typically has well-developed theories.<sup>41</sup> Such a literature is much less evident in the human rights area.<sup>42</sup> This does matter, for theories of change are important in inspiring and mobilizing people, informing campaigns, prompting reflection, sharpening clarity of approach and sustaining long-term action.

### Need to document case law

Using law to advance human rights is an important but still relatively new field in Ireland. Several human rights NGOs sought to better use the law in the public interest and engaged in strategic litigation, both ‘hard’ law (the courts) and ‘soft’ law (ombudsman-type institutions). Although individual cases have been reported through such outlets as the widely circulated *FLAC News* and *PILA Bulletin*, there is a good case for case law advances to be summarized as stand-alone documents disseminated for the benefit of future advocates. Similarly, there is a compelling argument for there to be a compiling and assessment of the law as it affects the Traveller community. An exemplar from this programme lies in the Irish Council for Civil Liberties’ analysis of equality law, *Equality Acts* (2012).

38 Gillespie, Paul. “Has Europe’s Social Model Disappeared?” *Irish Times*, 30th August 2014. Begg, David. “The Trade Union Experience of European Integration. *Administration*, 2014, 62(2): 131-139.

39 Ward, Tanya. “Situation on Civil and Political Rights in Ireland,” a presentation to members of the human rights committee. Dublin, Irish Council for Civil Liberties, 2008.

40 Literally, who guards the guards? Who should have oversight of the overseers? The dilemma was first posed by Juvenal, written around 115 CE, in *Satire VI*, lines 347-8.

41 E.g., Kirby, Peadar and Murphy, Mary. *Toward a Second Republic — Irish Politics After the Celtic Tiger*. London: Pluto Press, 2011.

42 Crowley, Niall. *Empty Promises — Bringing the Equality Authority to Heel*. Dublin: A&A Farmer, 2010.

### *Need for human rights training, knowledge and skills in civil, public service*

Although there were wins in the programme and areas of mixed success, there was also a dispiriting list of ‘no progress yet’, ranging from direct provision to the denial of recognition to the Traveller community. The failure of NGOs to win through here, despite the application of techniques and approaches successful elsewhere, inevitably prompted reflection. One of the big questions arising was: Is the Irish civil and public service hostile to human rights? With the expression of human rights in the constitution and Ireland’s (albeit incomplete) adherence to international human rights conventions, one would expect civil and public servants be conscious of their duty to promote human rights at all levels.

So far, analyses of ‘values’ of the Irish civil and public service, while positive in identifying commitments to impartiality and respect for law, have not drilled sufficiently deep to ascertain the level of embeddedness of human rights values.<sup>43</sup> The Irish Human Rights and Equality Commission training course evaluations identified problems in the public service of racism, sexism and even misogyny and that these affected the ways in which people were treated and services delivered.

NGOs have met both positive attitudes to human rights and others that range from unsympathetic to hostile. Human rights are not matters to which civil and public servants should opt into or out of, according to their personal inclination. Human rights standards which the government has signed are binding both in detail and spirit and the training experience here emphasizes the importance of consistent standards across the civil and public service.

A related issue is the presence — or absence — of human rights knowledge and skill within the civil and public service. Ireland is almost entirely reliant on a generic, generalist civil servants, with a system abhorrence of specialists. There is a strong case for the civil and public service to be equipped with some specialist knowledge of human rights issues in key departments. European civil services are much better at combining generic and specialized knowledge and personnel: it has long been suggested that in our self-isolation from Europe our civil and public service model has lagged far behind.<sup>44</sup>

## **Connect Human Rights to the People**

Human rights must be connected to the lived experiences of the people. The adoption of economic and social rights by the constitutional convention by impressive majorities (85%) is an example of how human rights NGOs reached out to the people and listened to their experiences.

The challenge of unaddressed human rights, especially the mountain of economic and social rights, requires human rights NGOs to reinvent themselves to engage ordinary people, especially where they are denied basic rights, such as living in poor housing or homelessness. Such engagement is crucial as a basis for a serious, assertive human rights voice for the future.

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43 MacCarthaigh, Muiris. *Public Service Values*. Committee for Public Management Research Discussion Paper No. 39. Dublin: Institute of Public Administration, 2008.

44 The hypothesis of Ireland’s ‘backwardness’ in social policy and its under-developed intellectual infrastructure is explored in Lee, Joe. *Ireland 1912-85*. Cambridge: University Press, 1986.

## Appendix 1: Principal Products

	Highlights of principal products
Free Legal Advice Centres	<i>Access to justice – a right or a privilege (2005), Public interest law and litigation (2007); Shadow report to the UNHRC (with ICCL, IPRT) (2007); Civil legal aid in Ireland – 40 years on (2009); To no one's credit – debtors' experience of instalment and committal orders (2009); One size doesn't fit all – legal analysis of the direct provision and dispersal system (2009); Nine key principles to overcome personal debt (2011); Not fair enough – making the case for the reform of the social welfare appeals system (2012); Redressing the balance – a study of legal protections available for consumers of credit and other financial services (2014)</i>
Irish Council for Civil Liberties	<i>Equality for all families (2006); Shadow report under International Covenant on Civil and Political Rights (2007); Know your rights pack; Equal status Acts 2000-2111 – discrimination in the provision of good and services (Judy Walsh, 2012); International review of legal provisions and supports for people with disabilities as victims of crime (2013); Civil society report to the fourth periodic examination of Ireland under the ICCPR (2014)</i>
Irish Penal Reform Trust	<i>Detention of children – internal standards and best practice (2009); Know your rights (for prisoners; 2011, 2012); Picking up the pieces – the rights and needs of families affected by imprisonment (2012)</i>
Think-tank for Action on Social Change	18 books and numerous in-house research reports were published on topics including economics, pension reform, taxation and budget options, health inequalities, women's position in Ireland, privatization, corporate governance ( <i>Mapping the Golden Circle</i> ) and the health of Ireland's democracy ( <i>Power to the People?</i> )
Equality and Rights Alliance	<i>Downgrading equality and human rights – assessing the impact (2009); A roadmap to a strengthened equality and human rights infrastructure (2011)</i>
Amnesty International Ireland	<i>Healthcare guaranteed? The right to health in Ireland (2010); In plain sight - responding to the Ferns report (2011); Bringing ESC rights home – the case for legal protection of economic, social and cultural rights and Ireland and the optional protocol to the International Covenant on Economic, Social and Cultural Rights (2014); Toolkit on the human rights-based approach</i>
Rape Crisis Network Ireland	<i>Rape and justice in Ireland (2009)</i>
Irish Traveller Movement Legal Unit	<i>ITM Legal Pack</i>
Irish Human Rights and Equality Commission	<i>Human rights guide for the civil and public service (2011); European Convention on Human Rights: Guide for the civil and public service (2012)</i>

## Appendix 2: List of Contributors

I thank all those who kindly assisted through interview, participation in the round table and the provision of information:

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