

Making use of legal and community-based approaches to advocacy

Showcasing Approaches –
Case Study No. 1



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This case study has been produced as part of an independent evaluation of The Atlantic Philanthropies Migration Programme. It highlights promising practices and lessons for grantees identified during the evaluation. Over 35 years, Atlantic has made grants totaling \$8 billion to advance opportunity, equity and human dignity. Further information about Atlantic and the evaluation is provided at the end of this document.

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Key messages

- **Grassroots knowledge generated by service provision to migrants can be a building block for campaigns for social and policy change that use legal advocacy and strategic litigation.** The Immigrant Council of Ireland, for example, has a close link to migrant communities through service provision, which helps to ensure that selected strategic cases address the most pressing issues for a wide range of migrant groups.
- **Community-based advocacy strategies – in which migrants help shape and deliver campaigns – have proven effective when individuals and groups are given support to effect change.** For example, the Migrant Rights Centre Ireland facilitates groups of migrants experiencing common challenges to meet and agree to work collectively to advocate for change. Migrant Rights Centre Ireland also provides support through training in campaigning and leadership.

Background

Throughout the 1990s immigration to Ireland increased rapidly and migration inflow reached a peak in 2006/2007.¹ Many researchers, practitioners and nongovernmental organisations (NGOs) working in the migration field in Ireland felt the national asylum and immigration system was slow to adapt to these changes and the evolving needs of the population.² All grants made by The Atlantic Philanthropies Migration Programme had a component focussed on advocacy aimed at effecting policy and systemic change to Irish immigration law and practice. This case study describes two approaches to advocacy undertaken by organisations supported by the Migration Programme: legal advocacy (including strategic litigation) and community-based advocacy.

What Atlantic Funded

Legal advocacy can, but does not always, include strategic litigation. **Strategic litigation** is the selective pursuit of legal action to challenge the legality of a particular policy or practice. Strategic, high-profile cases can set legal precedents in the higher courts, triggering policy reforms or publicly exposing injustice. It can therefore affect a much wider group of people beyond those involved in the case. Policy impact can be enhanced when strategic litigation is linked with service provision and campaigns as part of a wider legal advocacy strategy. The **Immigrant Council of Ireland**, an organisation supported by The Atlantic Philanthropies, achieved legal and policy change at a national level using such a combined legal advocacy approach.

Community-based approaches to advocacy involve outreach and mobilisation of migrants to work collectively to advocate for change. This is particularly relevant in migration advocacy as the approach can involve and empower marginalised groups. The work of the **Migrant Rights Centre Ireland**, another Atlantic Philanthropies grantee, provides an example of applying such an approach to achieve policy impact that changes the lives of migrant workers.

Lessons Learned

Higher policy impact can be achieved as part of a legal advocacy approach that links strategic litigation, service provision and campaigns

The **Immigrant Council of Ireland** is a nonprofit independent law centre that focusses on securing improved rights and protections that benefit Irish citizens, migrants and their families.

The Immigrant Council of Ireland uses interlinked approaches to achieve policy change that improves migrants' access to rights and entitlements within immigration and citizenship processes. These approaches include:

- Pursuing casework and taking on strategic litigation
- Making the case to policymakers and legislators through investing in research
- Developing an evidence base on migrant issues building on service provision
- Collaborating with other actors in the migration field nationally and internationally
- Applying strategic communications techniques in the media and making use of 'champions'
- Developing specific policy goals or 'asks' and political engagement

The experience the Immigrant Council of Ireland gained from providing front-line services supplied it with crucial information for its legal advocacy activities; between 2003 and 2011 the organisation recorded more than 56,000 information requests to its helpline and its information and referral service dealt with an average of 5,000 enquiries a year.³ This volume of cases yielded detailed information about particular migrant groups and their issues in relation to the immigration system. The Immigrant Council of Ireland then used this information as an evidence base to underpin and focus its wider advocacy work, such as strategic case selection.

As a result of dealing with a large number of cases and inquiries through its service provision, the Immigrant Council of Ireland was in a strong position to identify cases suitable for strategic litigation. Its lawyers had face-to-face meetings with more than 250 clients annually whose cases were identified as potentially having strategic value; these were generally individuals who had contacted the council's helpline. The Immigrant Council of Ireland selected cases to be taken forward according to a strategic litigation policy.⁴ Its staff also used other routes to identify strategic cases (for example through Citizens Information Centres and Free Legal Advice Centres).⁵

The Immigrant Council of Ireland achieved policy impact using its legal advocacy approach that combines information from its frontline services and strategic litigation

The case of *Britton v Minister for Justice, Equality and Law Reform* taken on by the Immigrant Council of Ireland contributed to a review of the Irish Government's policy of refusing residence permits to international students whose children were attending public schools.

In 2008, Immigrant Council of Ireland was contacted by a large number of international (defined as non-European Economic Area in origin) students with children in Ireland who were refused a renewal of their immigration status unless they could provide evidence that their child was not attending a public school. This policy was targeted at international students to discourage them from having their children with them in Ireland, especially those of school age. The Immigrant Council of Ireland argued that the policy was introduced quickly and without proper communication, that it resulted in students with children becoming undocumented if their status was not renewed, and that it infringed on the children's rights to education. The council's view was that 'rights of a child to access education are of utmost importance in their development and wellbeing, and that considerations of this nature should be centrally assessed in any administrative immigration procedure'.⁶

In the *Britton* case, Immigrant Council lawyers challenged the imposition of the policy in the High Court. The decision in the case not only resolved the situation of the claimants involved but the High Court required the government to delay the implementation of changes to the rights of international students having dependent children with them in Ireland. This made the administrative process around the issue more predictable and reliable. Students who had become undocumented as a result of this policy were re-registered and had their immigration status renewed, allowing them to complete their studies and return to part-time work.⁷

Challenges in a Legal Advocacy Strategy that Involves Strategic Litigation ... and What it Holds for the Future

Strategic litigation can be core to a legal advocacy strategy – but there are specific challenges in pursuing it.



Identifying a suitable case

Among the considerations in addition to the legal issues, experts need to assess the financial situation of the client involved, whether the case includes a narrative that might be compelling and whether the client is prepared to wait for an outcome.



Coping with long delays

Strategic litigation can involve long legal proceedings spanning months or even years. This means that they can also be resource-intensive. These challenges can be addressed by managing client expectations and seeking financial support for clients while a case is proceeding through the courts.



Making a trade-off between strategic litigation cases and individual support

There is a risk that the case becomes all about a solution for a specific situation, rather than a wider policy problem. One way around this can be to focus organisational resources on cases that can yield a wide impact for a bigger group rather than provide a wide range of services for many individuals. However, in order to fill a potential gap in service provision, other statutory and voluntary service providers can be encouraged to meet more basic information needs of migrants.



Ensuring that the individuals whose cases are of strategic importance are supported

There is a need to protect individuals and not expose them to further risks through a prolonged court case. In some situations getting an individual outcome can trump getting a wider outcome affecting change.



Working with complex legal systems

There can be some difficulty in bringing High Court cases. Settlements might mean that precedents are not set and therefore do not influence policy and legislative change (in Ireland settlements are confidential). In some instances, further cases have to be brought in order to press constantly for similar outcomes to affect change. However, there is a widely shared experience from Atlantic grantees that even confidential settlements can have an impact on systems (for example if an administration adjusts future behaviour to avoid new cases dealing with the same procedural issue).

Community-based Advocacy Strategies have Proven Effective when Individuals and Groups are Given Support to Effect Change

Community-based approaches to advocacy combine high-level policy with outreach and mobilisation of migrants to work collectively to advocate for change. The Migrant Rights Centre Ireland is a campaign and advocacy organisation that bases its social justice and advocacy efforts in community work.

Migrant Rights Centre Ireland develops and supports issue-based campaign groups — which include migrants at risk of poverty, social exclusion, exploitation and discrimination — that advocate for key policy reforms. Their model is based on three elements⁹:

- Participation of migrants in collective action to shape and influence policies that affect their lives
- Empowerment through support to develop knowledge, skills and leadership abilities
- Collective action targeted at wider social and policy change via action and campaign groups

Migrant Rights Centre's wider advocacy model based on community work includes a range of work streams that are interlinked:

- Casework and information coming out of their drop-in centre feeds into the development of an evidence base on specific migrant issues. This underpins the formulation of specific policy goals or 'asks' and the mobilisation of migrants.
- Media and communication tools are used to increase awareness of an issue among the public and policymakers.
- Migrant action groups are formed and are involved in wider campaigns around specific issues that group members are affected by.

One example of how Migrant Rights Centre Ireland helped to develop the capacity for social change and the empowerment of domestic workers is through the Domestic Workers Action Group, which the centre has supported since 2003. The action group is made up of migrant women working as child-minders, au pairs, cleaners, housekeepers and carers in Ireland.

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Underpinning all of this is the idea that the change comes about with the people affected by the issues.

Interview, Migrant Rights Centre staff, 2014



Migrant Rights Centre Ireland achieved policy impact using its community-based advocacy model

Migrant Rights Centre Ireland has campaigned to improve protections for domestic workers employed in the households of foreign diplomats in Ireland. It took a community work approach to the issue – developing leadership, building skills and participation through the Domestic Workers Action Group. The group developed a campaign plan and supported individuals exploited in diplomatic households. Migrant Rights Centre Ireland’s campaign involved:

- Undertaking legal case work to support individuals and strategic cases to highlight exploitation in this sector
- Developing a policy position based on European Union best practices
- Holding protests held outside embassy buildings
- Developing cases for the media

Migrant Rights Council Ireland reports that the impacts of the campaign have been:

- Empowering domestic workers and increased capacity of Domestic Workers Action Group to campaign and take action
- Putting safeguards put in place for household staff in diplomatic households (in policy and in practice)
- Mainstreaming the solution — the Department of Foreign Affairs is taking responsibility for the issue
- Adopting state measures to protect employment rights, entitlements and enforce standards of work for household staff in diplomatic households

Challenges in Pursuing Community-based Advocacy Approaches ... and What it Holds for the Future

While the approach can be very effective in advocating for social justice goals and making migrants' voices heard in the policy arena, there can be also certain challenges which are specific to the community-based advocacy approach.



Ensuring participation

The approach used by Migrant Rights Centre Ireland allowed migrants to be involved in all aspects of advocacy and ensured they were visible and could be heard within formal decision-making processes. But there can be risks for vulnerable migrant groups. For example, for some migrants advocating publicly for change can be difficult if they are undocumented or fear retribution from employers for speaking out. Migrant Rights Centre Ireland tried to mitigate these risks by being aware of the individual situation of the migrants involved and designing advocacy action accordingly. Bringing individuals together in a collective process reduces isolation and provides collective support. More information on how to include vulnerable groups in advocacy processes can be found in Case Study 4 on '[Communicating advocacy messages about migration](#)'



Taking collective action

While this approach is potentially focussed more on outsider advocacy (such as public awareness-raising, media involvement, public action), there might be situations where insider advocacy approaches (such as building direct relationships with decision-makers, lobbying, talks in closed fora) are more appropriate and effective in achieving change. Migrant Rights Council Ireland also applied insider advocacy strategies and tactics to their work.



Putting sufficient resources into the approach

Applying a community-based advocacy approach can be time-consuming and resource-intensive. While individual advocacy activities and actions can be applied depending on a shifting policy agenda and other external factors, the Migrant Rights Centre Ireland has more of a long-term view on affecting change — sometimes working for many years on similar policy issues. Having a sufficient foundation of multi-annual core funding seemed to be an appropriate funding model for this approach.

Conclusion

This case study has described the use of legal and community-based advocacy approaches by organisations supported by Atlantic, and the impacts on policy and practice stemming from both.

Organisations that have day-to-day contact with migrants and their families – as many of Atlantic’s grantees do – have a unique understanding of the challenges and barriers these individuals face, and the changes to national law and practice that could improve their situation. This information can help target both legal and community-based advocacy.

Strategic litigation, if successful, has the potential for impact beyond the parties involved in the case by setting precedents and challenging the law. Implementation of this approach requires technical legal skills and knowledge, time and resources.

Community-based advocacy strategies encourage and support migrants to organise and campaign to address the issues affecting their lives. The objective is not only to achieve policy change, but to empower vulnerable groups and develop community action. Implementation of this approach requires steps to protect migrants from exposure to risk as a result of their participation.

The organisations employing both legal and community-based approaches did so within a broader advocacy strategy encompassing a number of tools and complementary activities.

Endnotes

1. United Nations Population Division. Trends in International Migrant Stock, 2011. <http://www.un.org/en/development/desa/population/migration/data/index.shtml>
2. Ruhs, M. and Quinn, E. Ireland: From Rapid Immigration to Recession, Migration Policy Institute, 2009. Available at <http://www.migrationinformation.org/Feature/display.cfm?!D=740>
3. Information provided by the Immigrant Council of Ireland to the evaluation team, June 2015.
4. Cases are selected according to the following criteria: strategic importance of the case; merits of the case; availability of other advice and representation services; vulnerability of the client; financial means of the client; timing of referral; capacity.
5. Interview with the Immigrant Council of Ireland, 2014.
6. Communication between the Immigrant Council of Ireland and the research team, June 2015.
7. Cambridge Policy Consultants (2012): Evaluation of Immigrant Council of Ireland activities (2007-11). Revised evaluation report, (unpublished), p. 66.
8. Migrant Rights Centre Ireland: Mobilising for Social Justice. Migrant Rights Centre Ireland's Community Work Model. Available at <http://www.mrci.ie/wp-content/uploads/2012/10/Mobilising-for-Social-Justice.pdf>
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About this case study and the evaluation of The Atlantic Philanthropies Migration Programme

Atlantic Philanthropies Migration Programme

Over 35 years, Atlantic has made grants totaling \$8 billion to advance opportunity, equity and human rights. A limited-life foundation, Atlantic completed its grantmaking in 2016, and will cease operations by 2020.

The Atlantic Philanthropies Migration Programme is a central delivery mechanism for their Reconciliation and Human Rights strategy in the Republic of Ireland. At the heart of the strategy is the fundamental objective of improving access to justice and services for migrants. Atlantic has provided 46 grants to 18 organisations (or initiatives) working domestically in the Republic of Ireland and at the European Union level since 2004.

RAND Europe's evaluation

Atlantic commissioned RAND Europe to undertake a summative evaluation of their Migration Programme. The overarching aims of the evaluation are to:

- Undertake a programme-level review of the work supported by Atlantic up to the end of 2012
- Monitor ongoing progress, developments and impacts up to the end of 2014
- Identify any emerging issues, challenges or opportunities that may be on the horizon for the programme

Full details of the methodology for the research can be found in the final evaluation report available at www.rand.org/t/rr484.

About this case study

As part of the evaluation of the Migration Programme, a series of case studies have been developed to highlight innovative practice, showcase promising practices, and identify lessons relevant to other organisations and grantmakers working in the migration field. The information presented in this case study is based on a review of documentation produced by Atlantic's grantees, and interviews with grantees and stakeholders conducted as part of the evaluation. More information underpinning the key messages included in this case study can be obtained in the final evaluation report.

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