

Protecting
Civil Liberties

Promoting
Human Rights

30 years of the Irish Council
for Civil Liberties (ICCL)

About the Author

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Preface

This publication charts the contribution of the Irish Council for Civil Liberties (ICCL) to the protection and promotion of human rights in Ireland over the last three decades.

Carl O'Brien tells this tale with his customary *brio*, setting the organisation's rights-based work against a shifting backcloth of civil and social unrest, bombings and ceasefires, the peace process and the eventual emergence of a nascent human rights culture.

Many well-known names appear in these pages, such as those of the ICCL founders Mary Robinson, President of Ireland and United Nations High Commissioner for Human Rights, and Kader Asmal, anti-apartheid campaigner and Minister for Education in a democratic South Africa. These high-profile contributions to the organisation's success are recognised and rightly celebrated. However, it is evident that the ICCL could not have endured for thirty years as an independent civil society force for change without the commitment and support of many more members, supporters and staff than it has been possible to name. Sincere thanks are due to all of those who, often through sheer persistence and force of will, have helped to craft the organisation that we know today.

Since 1976, the ICCL has adopted a human rights-based approach to its work, and evidence of this strategy runs through this text as a clear bright line. From its early campaigns for Garda reform, through its courageous advocacy of equal rights, to its ongoing efforts to ensure the full implementation in Ireland of international human rights standards, the ICCL has tirelessly lobbied the State to respect the inherent dignity of the individual. Carl O'Brien paints a compelling picture of an organisation that never has been – and never need be – afraid to speak truth to power.

Ireland has come a long way since the days of the Garda “heavy gang” and, in the years following the signing of the Belfast / Good Friday Agreement, a range of new human rights accountability mechanisms have been introduced, and are slowly becoming operational. However, we are also confronted by a global counter-current, to which Ireland is not immune, that seeks to roll back fundamental human rights guarantees in the name of combating organised crime or fighting terrorism. In these circumstances, the need for a strong and genuinely independent civil society voice, such as that of the ICCL, is greater than ever.

Protecting Civil Liberties, Promoting Human Rights is both a celebration of the ICCL's first 30 years, and a salutary reminder that we can never afford to be complacent about the state of our rights.

Mark Kelly
Director, Irish Council for Civil Liberties
May 2006



Looking back on the early days of the Irish Council for Civil Liberties I recall the passion with which we addressed twin challenges:

The need to create political and personal space in Ireland through reform of the Constitution and laws, and the need to affirm standards of civil liberties in the context of the increasing violence in Northern Ireland. It was an enjoyable and memorable experience from which I learned a great deal.

Mary Robinson

01

Early Days: The Foundations of the ICCL

This Council is being formed to promote human rights, protect civil liberties, recover them where they have been removed, and enlarge them where they have been diminished.

Kader Asmal, July 1976

Kader Asmal, then a Law Lecturer at Trinity College Dublin, stood up to address the packed meeting inside the Graduates' Memorial Hall. It was just after 8 p.m. on the evening of 30 June 1976. The conflict in Northern Ireland was at its height and the Government of Ireland was about to declare a state of emergency. Ever-expanding security measures, such as seven-day detention for the purposes of interrogation were being introduced. The Special Criminal Court had been reactivated and Section 31 of the Broadcasting Act had been introduced. The so-called "heavy gang" within the Garda was operating with impunity. It was into this turbulent climate - dominated by security and measures to combat terrorism

– that the Irish Council for Civil Liberties was born. "This Council is being formed to promote human rights, protect civil liberties, recover them where they have been removed, and enlarge them where they have been diminished," Asmal told the gathering of academics, lawyers, students and public figures, concerned at the apparent erosion of basic rights and freedoms.

The gathering adopted a Constitution which deemed that the group would be a non-party and non-denominational organisation, concerned with civil liberty issues within the State.

The Executive Committee included Senator Mary Robinson, future President of Ireland, and Asmal himself, anti-apartheid campaigner and a future minister in a democratic South African Government, who modeled the organisation on the UK's National Council for Civil Liberties (now "Liberty") and the American Civil Liberties Union.

At this first official meeting, the Executive Committee identified a number of issues of "immediate concern", many of which went on to become defining themes of the ICCL. They included the need for independent Garda complaints procedures; a proper system of legal aid in civil and criminal cases; equality for women; a campaign for children's rights; protecting the rights of psychiatric patients and ending capital punishment.

The formation of the group provoked a mixed response, as captured by an Irish Times Editorial in July 1976: "The new body has already been attacked in some quarters as 'conservative' and 'middle class'; it is likely to incur equal criticism from those who consider its bias too radical. Between those two poles, it may well strike the correct balance."

Executive Committee
elected on 30 June 1976:

Kader Asmal
Peter Cassells
Una Claffey
Mark de Blacam
Mairin de Burca
David Kavanagh
Terence McCaughey
Kevin McCorry
Mary Mathews
John Mitchell
John Mulcahy
Senator Michael Mullen
Eimer Philbin-Bowman
Sean Redmond
Senator Mary Robinson

Within days of its inception, the ICCL involved itself in the middle of a number of fiercely contested debates over issues such as emergency legislation and capital punishment. A detailed critique of the Emergency Powers and Criminal Law Bills became the basis of several proposed amendments to the legislation. Following the conviction of Noel and Marie Murray, who were convicted of the capital murder of Garda Michael Reynolds, it helped to organise public meetings to oppose capital punishment. It became a strident voice for reform of the Garda's complaints procedures after the activities of the "heavy gang" were publicised in the media. A report on Children's Rights under the Constitution, which urged a number of

changes to the Constitution, sold out rapidly. In the space of a year, the ICCL, with more than 460 members, had become a strident voice on issues of democracy, justice and equality. Despite the frenetic pace and wide range of activity, the group's Annual General Meeting (AGM) in 1977 recorded a frustrated ambition to do more.

"The Council will not fade away. It is too well established for that..." the AGM report said. "But the Executive Committee, despite the invaluable work done to date, does not consider the organisation as yet fulfills the fine ambition of the founding meeting. It is vital we extend the membership, affiliations and improve our financial situation."

*Constitution of
the ICCL*

The aim of the ICCL shall be to assist in the promotion and protection of human rights and civil liberties, including freedom of speech, association and assembly and the rights of individuals and groups to equal treatment under just laws. The Council shall also seek to recover and enlarge such rights and liberties and shall take such steps as the Council deems necessary to that end.



Kadar Asmal, ICCL Founder and former Law Lecturer in Trinity College, Dublin. Kadar became a Minister in the first post-apartheid government in South Africa. Source: Irish Times Library

02

Emergency Measures: Tackling Repressive State Powers and Campaigning for Garda Reform

Policemen should not be judges in their own cause and this statement will remain true as long as there is no law representation in any complaints machinery.

ICCL Annual General Meeting, 1977

While the early years of the Cosgrave coalition were marked by authoritarian measures to combat terrorism, it was the IRA's killing of British Ambassador Christopher Ewart Biggs on 23 July 1976 that proved the catalyst for even tougher measures.

The Dáil (Irish Parliament) was recalled for an emergency sitting and the Government voted in favour of a substantial increase in the powers of the State in its "anti-subversive" struggle.

It was the first of the major debates the ICCL became involved in, providing a detailed critique of the Emergency Powers

Act which provided for seven-day detention, and calling for an Oireachtas committee to determine more acceptable criteria for declaring emergency situations. The campaign may have been a contributory factor to the Government's decision not to renew the seven-day detention provision a year later, although the maintenance of the state of emergency drew sharp criticism from the ICCL. At this time the ICCL was receiving significant numbers of complaints about police brutality. Following publicity about the activities of the Garda's "heavy gang", the ICCL was one of the first pressure groups to call for an independent complaints body.

“Policemen should not be judges in their own cause and this statement will remain true as long as there is no law representation in any complaints machinery,” the ICCL said in a position paper.

Government attempts to curtail the rights of criminal suspects were to resurface repeatedly over the next 30 years. The 1983 Criminal Justice Bill, which proposed one of the most significant overhauls of the criminal justice system in the history of the State, was fiercely opposed by the ICCL.

The Bill sought to curtail the right to silence, and to introduce consecutive sentences for offences committed on bail and detention for the purpose of interrogation. As Kader Asmal put it at the time: “This tips the balance of justice in favour of the prosecution. Civil liberties are now gravely at stake.”

An ICCL booklet, *Innocent Until Proven Guilty*, played a significant role in the lobbying campaign against the Bill and led, in part, to new custody and complaints procedures being placed in the 1984 Act.

“It was only after there were some significant miscarriages of justice that the Government began to take what we were saying seriously,” recalls Tom Cooney, then

an ICCL Executive member. “There was a fear within Government that it would end up before the European Court of Human Rights.”

The demand for a proper complaints procedures and campaigns to protect basic civil rights also became recurring themes. Growing demand for knowledge about citizens rights in relation to the Gardaí and the law resulted in the ICCL’s *Know Your Rights* handbook in 1992, which was reprinted and revised on several occasions over the next decade. A year later, *Police Interrogation Endangers the Innocent*, restated the dangers of detention for the purposes of interrogation.

Legislative steps by the Government in the mid-1990s were once again redolent of some of the more draconian legislation of 20 years earlier. The death of journalist Veronica Guerin and a number of gangland killings led the Government to re-introduce seven-day detention in 1995, while emergency legislation was once again rushed through the Dáil following the Omagh bombing. The right to bail, meanwhile, was restricted following a Constitutional amendment.

As well as opposing these steps, the ICCL also offered meaningful alternatives and contributed to significant progress in the Government’s eventual agreement to

reform Garda complaints procedures. The *2003 ICCL Policy Paper on Police Reform* helped to crystallise the organisation’s thinking on these issues.

The decision in principle to establish an independent ombudsman for the Garda in 2004 was a significant victory for the ICCL after almost 30 years of campaigning on the issue. The Garda Síochána Ombudsman Commission will become operational in 2006. This new body has powers which, if fully implemented in practice, will enable it to hold members of An Garda Síochána to account for their actions in a manner that is consistent with Ireland’s obligations under international human rights law. The ICCL intends to closely monitor the work of the Ombudsman Commission.



Kader Asmal and Mary Robinson at an ICCL press conference in 1976.
Source: The Irish Times

Spurred on by the lurid and near hysterical publicity about crime, the Minister has repeated her plans to restrict the right to bail. Once again we have strongly opposed a measure which would inevitably lead to depriving innocent persons of their liberty.

Michael Farrell on plans to re-introduce seven-day detention, 1996

03

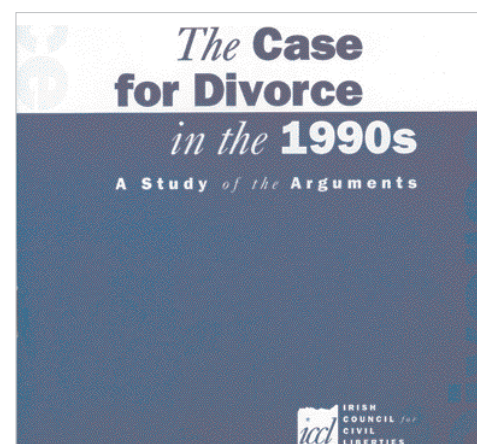
Freedom of Choice: The ICCL's Role in the Divorce and Abortion Referenda of the 1980's and 90's

The proposal, in its substance and motivation, demeans women by assuming they cannot be trusted, criminalises women for decisions they may need to take for their own physical and mental well-being...

ICCL Women's Committee, as part of the anti-amendment campaign 2002



Some 50.2% voted in the 1995 divorce referendum



This report by the ICCL was influential in the divorce campaign

One of the catalysts behind the debate that led to the first divorce referendum in 1986 came six years previously in the form of a 120-page book by the ICCL's William Duncan. *The Case for Divorce in the Irish Republic*, published on 12 November 1979, attracted significant interest, selling 1,500 copies within months, sparked controversy in newspaper letters pages, TV and radio programmes, and was the subject of debates in the Oireachtas.

The book included detailed research on the incidence of marriage breakdown and advocated the introduction of "not just any divorce law...but a divorce law which would reflect concern for the family and the institution of marriage".

By April 1980, the Divorce Action Group was established, with heavy input from the ICCL, and launched a vigorous campaign for a referendum which was eventually put to the people in 1986.

Judged against the referendum result, the ICCL's campaign, along with the Divorce Action Group, was ultimately unsuccessful; however, the debate helped lay the foundations for the Judicial Separation Act three years later and, ultimately, the narrowly successful divorce referendum of 1995.

The ICCL's *Case for Divorce in the 1990s* was one of the more influential documents in a campaign where the involvement of

non-governmental groups (NGOs) proved crucial in bringing out the 50.2% Yes vote, given the muted and lacklustre campaign by the Government which had proposed the amendment.

Success in establishing a woman's right to choose was less obvious in the abortion referenda of the 1980s and 90s. A number of right-wing and religious groups had been lobbying for a pro-life amendment to the Constitution in the early 1980s, resulting in the 1983 referendum.

The ICCL was one of the first organisations to publicly declare its opposition to the amendment.

While it did not take a position on the actual question of abortion, it described the referendum as an "expensive and unnecessary" procedure which would make little difference to the present legal position.

"A constitutional amendment will not affect any of the pressures which at present are driving many Irish women to seek abortions abroad," the ICCL said in its '83 campaign.

The amendment was carried, although some noted the campaign was a "watershed" moment, with the emergence of an urban-rural divide as five Dublin constituencies recorded a majority vote for the anti-amendment campaign. The ICCL's observation that the 1983 amendment would not clear up aspects of the law proved prescient almost a decade later during the 'X' case, when the High Court forbade a 14 year old girl who was pregnant as a result of rape from travelling to England for an abortion.

While the Supreme Court later overturned this, the ICCL expressed "extreme concern" at the willingness of judges to limit the right of women to free movement for obtaining an abortion abroad.

The 1992 referendum on the right to travel, the right to information and making abortion illegal except if the life of the mother was in danger whipped up major controversy once again.

The ICCL, in one of the most cogently-argued pro-choice position papers, called for a 'Yes' vote on the right to travel and information, but opposed the Government's wording on the substantive issue. Instead, it called for a wording that would allow women to choose up to the time of the independent viability of the foetus.

A decade later, the organisation was again expressing its opposition to the fifth referendum on the issue in 20 years, which Taoiseach Bertie Ahern insisted was an attempt to 'clarify' abortion law.

This time the proposed amendment – which sought to allow abortion in cases where a pregnant woman's life was at risk, but would not permit the threat of suicide

as justification for the procedure – attracted opposition from both pro-life and pro-choice groups. The ICCL said the proposed amendment "demeaned women by assuming they could not be trusted" and urged its rejection. The amendment campaign was defeated as expected.

Twenty years after the first referendum, the question remains raw and unresolved. There were some positives, however: lobbying by pro-choice groups such as the ICCL had helped prevent stronger anti-abortion laws being introduced, while the campaigns had helped put what were previously sensitive social issues on the political agenda.



Senator David Norris, a long-standing member of the ICCL.
Source: The Irish Times

04

Equality Now: Promoting Equality for Lesbians and Gay Men, Travellers and Other Minority Groups

The involvement of the ICCL gave our work a lot of status. The very fact that I was elected onto the Executive indicated that people accepted that gay rights were all part of the same principle of human liberty and human rights.

Senator David Norris

On paper, at least, Ireland during the 1980s easily had the worst legal regime for lesbians and gay men in Western Europe.

“There was no recognition or protection of any sort and gay men faced a total ban on any type of sexual activity,” says Chris Robson, a long-serving Executive member of the ICCL.

A number of groups began campaigns to seek change in the mid-1970s and the ICCL took up the issue in the early 80s, through the election of Senator David Norris to its Executive and later establishing a working party on lesbian and gay rights in 1988.

“The involvement of the ICCL gave our work a lot of status,” recalls Norris. “The very fact that I was elected onto the Executive indicated that people accepted that gay rights were all part of the same principle of human liberty and human rights.”

A landmark moment in the rights struggle came with the 1988 judgment of the European Court of Human Rights Ruling the case of *Norris v. Ireland*. The ruling, which held that sexual privacy and intimate association were fundamental human rights, signaled the beginning of rapid change resulting in the decriminalisation of homosexual acts within five years.

An open mind will see that no public interest justifies our own sexual apartheid. However, it must be said that there are irrational forces that affect the outcome of any debate on public policy and that they are sometimes stronger than rational discussion or science. How often and how painstakingly the pernicious misconceptions concerning lesbians and gay men have to be tackled with corrective power of rational argument is difficult to say. But it is vitally important to do just this.

Equality Now for Lesbian and Gay Men (1990)

The ICCL's 70-page policy book, *Equality Now*, came at a crucial time in 1990 as the Government considered how to respond to the European Court's ruling. The publication – the work of a five-person committee including Ursula Barry, Tom Cooney, Aileen McCabe, Chris Robson and Kieran Rose – called for full decriminalisation of gay sex and complete equality for lesbians and gay men.

In association with groups such as the Gay and Lesbian Equality Network (GLEN), an intensive lobbying campaign helped result in the enactment of the Criminal Law (Sexual Offences) Act, which decriminalised gay sex and fixed the age of consent at the same level for heterosexuals.

"It was an exhilarating moment," says Robson, "I remember the Chair at the time, Dan Sullivan, saying that as a group we tend to prevent worse things happening, or else secure minor advances. Yet here was a clear victory which transformed thousands of lives. It was as if there were 200,000 new citizens that day."

The equality campaign did not end there. Following a concerted lobbying campaign, future governments agreed to the enactment of the Employment Equality Act (1998) and the Equal Status Act (2000) which outlawed discrimination in employment and the provision of services on nine grounds, including sexual orientation, race, disability, and

membership of the Travelling Community. The campaign for Travellers' rights had been a major issue for the Council in the 80s and 90s, with the publication of a landmark booklet in 1992 which contained a draft Anti-Discrimination Bill, based on recognition of Travellers as a separate ethnic group.

Similarly, campaigning for the rights of people with disabilities was a major theme, marked by a number of successes. This included the scrapping of the Government's Disability Bill in 2002, which sought to narrow access to the courts for disabled people seeking redress over access to services.

However, defending the equality legislation enacted between 1998 and 2000 from attack proved to be a regular battlefield. As part of this campaign, the ICCL joined an alliance of groups and organisations concerned with equality issues.



Dublin Gay Pride march, including Kieran Rose (centre), founder of the Gay and Lesbian Equality Network (GLEN) and former Executive member of the ICCL.
Source: The Irish Times

Lesbians and gay men in this country are actively struggling for their basic human rights, both to equal respect as persons and to the opportunity to live and work as freely and openly as any other citizen, without encountering prejudicial discrimination.

Equality Now for Lesbian and Gay Men (1990)



Michael Farrell joined the ICCL Executive in 1990 and was Co-Chair from 1995 to 2001. Michael is now a Human Rights Commissioner.
Source Irish Times Library

05

International Influences: Campaigning for Respect for International Standards and Treaties

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.

Universal Declaration of Human Rights (Preamble), 1948

When, in 1993, the Irish Government presented its first progress report on the implementation of the International Covenant on Civil and Political Rights to the United Nations (UN), its progressive language appeared in sharp contrast to much of the reality on the ground.

“The Government’s report painted a flattering picture of human rights in Ireland which most of us didn’t recognise,” recalls Michael Farrell, an Executive member of the ICCL at the time. The Council sought to redress the balance in its shadow report and sent Executive member Siobhan Ní Chulacháin to Geneva for the UN hearings. The level of involvement appeared to pay off.

The UN group took a critical view on issues which the Council had been campaigning on since its very foundation, including emergency legislation, the ban on divorce, treatment of Travellers and prisoners, the broadcasting ban and the treatment of psychiatric patients. “This gave us invaluable ammunition for arguing that the Government was in breach of its international obligations on all these issues,” recalls Farrell. “It also made us aware of the value of these international mechanisms in the struggle to secure changes at home.”

The experience served to underscore the importance of campaigning for the respect of international standards on human rights.

The ICCL has regularly submitted or participated in the production of shadow reports on treaties the Government has signed and ratified to provide a fuller picture of the human rights situation.

The organisation has sent delegations to Geneva and New York for Ireland's examinations under several UN conventions including those on discrimination against women, racism, economic, social and cultural rights, and the rights of the child. It also provided briefings to the Council of Europe's detention monitoring treaty body – the European Committee for the Prevention of Torture (CPT) – during each of the CPT's visits to Ireland.

“The international dimension to human rights really began to make its presence felt around this time,” recalls Ray Byrne, a former ICCL Chair. “At the highest political levels, people began to take an interest in equality, divorce, lesbian and gay rights. I think the ICCL played some part in putting it on the agenda.”

As well as monitoring compliance with existing international human rights instruments, the ICCL played a central role in lobbying for the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the

incorporation of the European Convention on Human Rights (ECHR) into Irish law.

While initially opposed by the Government and the legal establishment, a major conference organised by the ICCL in 1995, at the premises of the Law Society of Ireland, did much to make the case for its incorporation. More prevarication ensured. Ultimately, arising out of the Good Friday Agreement three years later, the Government pledged to examine the incorporation of the ECHR into Irish law.

By this stage, Ireland was the only European country not to have incorporated the Convention, although the way in which it ultimately sought to incorporate it became the focus of another lobbying campaign and conference held in June 1998 at Blackhall Place.

The ECHR Act (2003) finally gave effect to the Convention in Irish law. The ICCL along with the Irish Human Rights Commission (IHRC) had argued strongly for a more robust incorporation model.

The Act means that people in Ireland can raise possible breaches of the Convention directly in the domestic courts instead of having to go all the way through the Irish courts system, take a case to the European Court of Human Rights, and wait for a further five or six years for a decision from Strasbourg. As the former ICCL Director

Aisling Reidy put it in her report to the Council's Annual General Meeting in 2004, much of its success will depend on spreading awareness of its implications for human rights.

“It is not by any means a strong form of incorporation and has serious deficiencies: but at least we have something to work with,” she said. “We look forward to active use of the Act to improve the quality of rights protection. However, to realise this we and everyone else in the ‘human rights community’ will need to raise awareness about the ECHR, its scope and potential impact.”

Anti-war protesters at Shannon Airport in June 2004 during a visit by President Bush, the US President. The ICCL sent legal observers to monitor the Garda's handling of the event. Source: ICCL





A right to remarry campaign in November 1995, ahead of the divorce referendum.
Source: The Irish Times

06

Women and Children's Rights: Setting the Agenda for Legislative Change

It is clear that plain speaking is not enough - we must shout loudly if we are to be heard at all, and take action whenever and in whatever ways we can.

Ailbhe Smyth, *Women's Rights In Ireland* (1983)

The 1970s were to be a period of rapid change for women: the first women's liberation groups were established, debates over access to contraception began to rage and the Government set up a commission to investigate the status of women.

A number of progressive legislative changes – such as the first Employment Equality Act in 1977; and provision for women to take out barring orders against violent husbands – showed that governments were beginning to address the issue of treating women as equal citizens. But for all the progress of the 1970s, glaring gaps remained.

“I was recruited into the ICCL precisely because there was so much change happening at the time,” recalls Ailbhe Smyth, now director of Women's Education, Research and Resource Centre (WERRC) at University College Dublin. “Many women simply didn't know what their rights were, and didn't think of having rights for themselves in areas like marital relationships, social welfare, personal finance.”

A major contribution to advancing the cause of equality for women came in 1983 in the form of *Women's Rights in Ireland*, a 220-page ICCL publication edited by Smyth, which helped set much of the legislative agenda on women's rights.

This practical guide highlighted that the law did not recognise rape within marriage; the lack of legislation prohibiting gender-based discrimination in education; how the social welfare system discriminated against married women; and the obstacles facing single mothers in a system geared towards dealing with traditional family units.

A campaign to change the Criminal Law (Rape) Act of 1981 became a particular focus of the ICCL throughout the 1980s, while the wider debate on women's rights was strengthened by the Government's ratification of the UN's Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1985.

The Government's compliance with the Convention has been examined on three occasions, while the ICCL, together with its Women's Committee, has drafted shadow reports on all three occasions.

The growing international dimension to the women's rights movement resulted in a major ICCL conference in 1997, *Women's Rights as Human Rights*, which attracted 400 delegates from around the world. Campaigning on the area was not confined to Irish women. An increase in the number of asylum seekers arriving here in the 1990s led to the ICCL's Women's Committee producing a set of gender guidelines for use by government agencies working with women in the asylum process.

Ground-breaking work was also being done in the area of children's rights, including research into the extent of child sexual abuse.

As early as January 1977, a children's rights sub-committee brought out a report on Children's Rights under the Constitution, which urged a number of constitutional reforms which only now – 30 years later –

are being seriously considered by the Government. They included striking a balance between parental and children's rights and espousing the principle that the best interests of the child should prevail.

A working party on child sex abuse, initiated by Clodagh Corcoran in 1985, also conducted valuable research on the extent of the problem which up to then had been largely unacknowledged. A parallel group chaired by Senator Mary Robinson worked on legislative changes needed to address the problem. Its eventual publication in 1989 helped to create greater awareness of the issue.

It was only in much later years, after publicity surrounding a number of abuse cases especially involving the clergy, that the political establishment began to act on many of the findings and concerns in the area of child protection that were raised during this time.



The aftermath of the Omagh bombing in August 1999, which killed 28 people.
Source: The Irish Times

07

Northern Ireland: Peace and Reconciliation

Human Rights violations have been part of the problem for the last 25 years. Vastly improved human rights protections must be part of the solution as well.

ICCL Statement, October 1994

Troops off the streets? No more special courts? The end of emergency legislation? A new era for human rights?

They were some of the questions being asked by the ICCL as talks over an agreement for Northern Ireland began to take shape following the ceasefires of the mid-1990s. The ICCL, along with its Belfast-based sister organisation, the Committee on the Administration of Justice (CAJ), had been working closely since the early 1990s to help lay the groundwork for close cooperation between NGOs on the question of human rights in Northern Ireland.

The States We Are In, a conference organised by the two groups in 1993, reviewed

restrictions on civil liberties and human rights and added momentum to calls for an end to emergency legislation throughout the island.

The IRA and loyalist ceasefires of the mid 90s provided an opportunity to draw up a comprehensive package of human rights protections in both jurisdictions and resulted in another joint conference on *Human Rights and the Peace Process*.

A presentation by the ICCL and the CAJ to the Forum for Peace and Reconciliation a year later included calls to end the regime of “repressive laws and human rights abuses” and urged the establishment of a common platform of rights which would be equally enforceable in any part of the island.



While the meeting itself was a stormy one – with accusations flying between participants over the ‘silence’ of civil liberties groups about atrocities in Northern Ireland – the Forum did commission significant studies on human rights protection.

Negotiations over the Good Friday (Belfast) Agreement near Hillsborough Castle in 1998.
Source: The Irish Times



Aileen Donnelly, Senior Counsel (SC) was ICCL Co-Chair from 1999-2002.
Source: ICCL

The influence of some of this work was evident in the language and provisions of the Belfast Agreement – or Good Friday Agreement – in 1998, which provided for the establishment of human rights commission on both sides of the border. In parallel referendums held on 22 May 1998, voters from both jurisdictions voted by an overwhelming majority of 71.1% to endorse the Belfast / Good Friday Agreement.

From a human rights point of view, the Agreement’s provisions were impressive, including commitments on both sides to dismantle emergency legislation; to establish human rights commissions; and to either incorporate or examine the incorporation of the ECHR into domestic law.

The plan to establish a human rights commission was a significant success for the ICCL, which had been calling for the establishment of such a body since 1990. The ICCL first called for the establishment of a Human Rights Commission in 1990 and assumed a central role in ensuring that the Commission would be equipped with adequate powers in the late 1990s.

The Omagh bombing in 1998, however, cast a shadow over much of this progress. Similarly, the murder of Rosemary Nelson – a Lurgan-based solicitor and Executive member of the CAJ – less than a year later shocked members of the human rights community. As a mark of respect to Ms

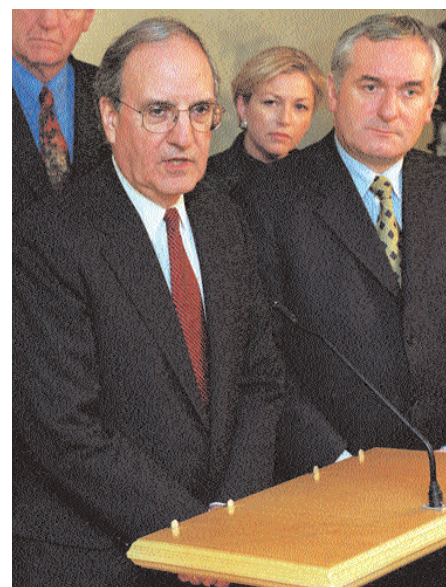


Siobhán Ní Chúlacháin, BL, is a long-standing member of the ICCL and was Co-Chair from 1997-1999.
Source: ICCL

Nelson, a memorial was held for her at Blackhall Place in July 1999, addressed by the Minister for Justice, friends and colleagues of the solicitor.

Despite the commitment to dismantle emergency legislation, the Irish government introduced “draconian” new emergency provisions, which are still in place eight years later.

Nevertheless, the ICCL continued to campaign for the full implementation of the Agreement’s provisions, often in the face of apparent government apathy. The establishment of the Irish Human Rights Commission was a case in point. Government delays in setting up the body led to the ICCL inviting leading members of other human rights commissions to speak at the Council’s AGM in 1999, including the former head of the Australian Human Rights Commission and UN advisor, Brian Burdekin.



Former US Senator George Mitchell with An Taoiseach Bertie Ahern, speaking in the months following the signing of the Good Friday Agreement in 1998.
Source: The Irish Times

Oireachtas submissions and campaigns organised in conjunction with other organisations ultimately helped ensure the Government appointed a representative team of commissioners.

The ICCL’s warning on the fifth anniversary of the signing of the Agreement in 2003 was a reminder to political parties to act fully on their commitments.

“There still seems to be a sense among the Irish political classes that aspiring to the full protection of human rights is more of an issue for the North than for the South,” it said in a statement. “If human rights are good enough for the citizens of Northern Ireland, then surely they must be good enough for those living in the South. Citizens of this State deserve nothing less.”

08

Letting in the Light: Fighting Censorship and Promoting Openness in Government

Power devolves from the people to the organs of Government who exercise that power on behalf of the people. Yet people are denied access to relevant, pertinent, important information relating to how that power is being exercised.

Senator Mary Robinson, 1988

A few years previously, the Minister for Posts and Telegraphs, Conor Cruise O'Brien had promised to lift the legal ban on broadcasting interviews with spokespeople of certain listed organisations at the soonest available opportunity. But on 25 April 1974, as the conflict in Northern Ireland escalated, he suddenly reversed this policy.

"I am determined to ensure as far as I can that while armed conspiracies continue to exist in this country, their agents shall not be allowed to use the State broadcasting system for a systematic propaganda effort," he said.

From its first meeting in Trinity College, and over the next two decades, the dismantling of Section 31 of the Broadcasting Act became a key aim of the ICCL. At the height of the conflict in the North, its opposition to the ban drew allegations that its sympathies lay with the armed struggle. These claims were vehemently denied, as happened during a press conference on the issue in 1983. "We carry absolutely no brief for those who support or engage in political violence. The gravamen of our complaint is that Section 31 strikes at the heart of a democratic system of free expression," the ICCL said in a statement.



Donncha O'Connell, BL, joined the ICCL as the organisation's first full-time Director in 1999. In 2002, Donncha returned to the Faculty of Law in the National University of Ireland, Galway, where he is currently Dean. Donncha helped establish a new Freedom of Expression working group.
Source: The Evening Herald

It also attacked the censorship of publications and film laws, which resulted in the banning of a range of titles ranging from *Gay News* to *The Joy of Sex* during the 1980s, and was among the first groups to call for the establishment of a Freedom of Information Act.

In a joint campaign with the Association of Civil Liberty, it prepared some of the earliest submissions on freedom of information legislation that would provide citizens with the rights to access records relating to themselves and certain state affairs.

As the ICCL put it in a submission to an Oireachtas Committee in 1983: “Ireland is characterised by secrecy, and there is now an absolute need for a Freedom of Information Act so that citizens of this country may obtain from government departments copies of [documents] that may affect them”.

A debate over censorship and pornography, however, led to damaging internal wrangles within the ICCL which resulted in tension, resignations and a fall-off in membership of the Council.

Opinion was split broadly into two groups: those who believed freedom of expression should be permitted, even where a person found it obnoxious, as long as it did not cause physical harm to others; and those accepted the principle of freedom of expression, but regarded pornography as harmful and a form of discrimination or exploitation.

While there had been a significant level of involvement in the organisation up to the mid-80s, active involvement by women declined for some years afterwards. The campaign to end Section 31 gathered momentum, with the ICCL adding its support to the National Union of Journalists Right to Know campaign and, later, Let in the Light campaign, a

broad-based lobby group of journalists, academics, lawyers and trade unionists.

In the following brief statement on 1 February 1994, Minister for Arts, Culture and the Gaeltacht, Michael D Higgins, finally lifted the broadcasting ban which organisations such as the ICCL has been opposing for two decades.

“I find it difficult to be convinced that the experience of the orders and directions over the last 20 years has contributed in any meaningful way to the securing of peace in Northern Ireland”. The Chair of the ICCL at the time, with more than a hint of satisfaction, David McConnell, declared the decision as “probably the biggest victory for free speech in Ireland for years”.

IRISH COUNCIL FOR CIVIL LIBERTIES

Public Meeting

**NO
TO
7-DAY
DETENTION!**

The speakers will discuss the civil liberties implications of seven-day detention and the proposal to introduce restrictions in the Bill later.

Speakers:

Caroline Fennell (Law Dept., UCC)
Patricia McKenna M.P.
Mick Raftery (Dunelm Community Activities)

Room 3074 TCD Arts Building 8.00 p.m.
Thurs. 30th November 1995

The ICCL mounted campaigns to challenge any threat to civil liberties.

The CADIC Vigil
photo

09

Future Challenges: The Way Ahead for the ICCL

There will always be a need for a questioning voice in society. At a time when governments are increasingly looking for quick-fix solutions, that eternal vigilance is necessary now more than ever.

Senator Maurice Hayes

The ICCL had been established for just 12 months when, shortly before the Council's first AGM one member commented: "The first achievement has been survival". It was a sentiment that would be echoed by other ICCL members on many occasions over the coming decades. For much of its existence the Council operated on a shoe-string budget, out of temporary offices, decrepit buildings and even members' homes.

Funding was always a problem. Bulletins and circulars of the ICCL during the 1980s in particular carried increasingly shrill appeals for members to pay their subscription dues.

By 1989, beset by internal problems, funding shortages and a fall-off in membership, the ICCL's Chair Tom Cooney warned that the Council "was in danger of going to the wall". This seems to have been the lowest point. A re-organisation committee was established, headed by future Chairperson, David McConnell, which resulted in a substantial increase in members.

A number of other significant developments, such as funding from the Joseph Rowntree Charitable Trust from 1994 - and later from the Atlantic Philanthropies - meant that the Council was able to appoint its first employee, John

Young campaigners attend a vigil to protest the deportation of Irish children.
Source: Paul Ryan, ICCL

McDermott who acted as Executive Secretary until 1997. Two years later Donncha O'Connell, a Lecturer in Law at the National University of Ireland, Galway, became the organisation's first Director. He was joined by Research and Parliamentary Officer, Liam Herrick who remained with the ICCL until his appointment in 2003 as the Irish Human Rights Commission's Senior Legislation and Policy Review Officer. Donncha's three-year tenure was followed by that of Human Rights Lawyer, Aisling Reidy, who joined Human Rights Watch in 2006.

Today the organisation has moved away from its origins as a voluntary part-time group wholly dependent on people's goodwill to become a professional human rights organisation with a growing full-time staff. The current team includes: Moya Campbell, Assistant Director (Operations); Amy Pearson, Campaigns and Communications Officer; Dawn Quinn, Administrator; Ken Reid, Information Officer and Tanya Ward, Senior Research and Policy Officer. The past few years have seen staff, Executive members and volunteers working on a host of issues. As Ireland's leading civil liberties watchdog, the ICCL has been at the centre of debates on criminal justice and policing, issuing position papers and lobbying on key legislation including the

Garda Siochána Bill 2004 and the Criminal Justice Bill 2004. Maintaining its focus on international human rights standards, the ICCL has produced shadow reports and sent delegations to the committees examining Ireland's record under all of the major UN Conventions. The Council continues to promote those standards at a local level by working closely with other NGOs on a number of joint initiatives including the Participation and the Practice of Rights Project and the Disability Legal Resource.

A consistent feature of the ICCL's mandate has been the monitoring of policy on asylum and immigration. The ICCL worked closely with the Migrant Rights Centre, the Irish Refugee Council and the Immigrant Council of Ireland to produce a paper on the Immigration Act 2004. During that year the organisation also took to the streets and the airwaves to campaign for a NO vote in the referendum on citizenship. The Council argued that the proposed constitutional change would undermine the principle of equality, creating a category of children who because of their parentage would not be citizens of Ireland.

Because the Government started effectively deporting Irish children with their migrant parents, the ICCL contributed a great deal



Children calling for a NO vote in the 2004 Referendum on Citizenship.

to the establishment of the Coalition Against the Deportation of Irish Citizen Children (CADIC). This campaign was successful in finally securing residency rights for migrant parents in December 2004.

Acting as the Secretariat for the Equality Coalition – an alliance of organisations concerned with equality issues – the ICCL drafted a major submission on the Equality Bill 2004 and together with coalition members launched an associated campaign for improved anti-discrimination law. While many arguments were ultimately rejected, the Coalition succeeded in keeping asylum seekers within the remit of the Equal Status Act.

Again, working through the Equality Coalition, the ICCL prepared a position paper in response to the Social Welfare (Miscellaneous) Bill 2004 which directly discriminated against lesbian and gay people in relation to welfare payments.

The challenges for a group like the ICCL also look set to change. Co-Chairs Malachy Murphy and Judy Walsh say enhanced resources give the Council a chance to become more strategic in its approach, rather than operating reactively as has often been the case in the past. They envisage the ICCL playing a key role in working with other groups to develop rights-based approaches to issues within their remit. The ICCL begins its fourth decade with a

new Director - the International Human Rights lawyer Mark Kelly - who says that its lack of reliance on state funding makes the Council one of the few genuinely independent civil society voices committed to protecting civil liberties and promoting human rights in Ireland. He describes the organisation's priorities for the years ahead as including three main pillars: fostering a human rights culture (such as strengthening the implementation of international human rights obligations in Irish law); promoting justice (for example, lobbying for fully effective accountability structures for the Gardaí) and securing equality (such as recognition for all of equal rights in personal and family relationships).

Over the last 30 years, the ICCL's efforts may not always have met with tangible success, but there is little doubt that, save for its presence, things could have been much worse.

The words of former Chair Michael Kelly, when the ICCL was celebrating its tenth birthday, seem as relevant now as they did then.

"The ICCL's role is to be engaged where the struggle is hardest and vigilant where it appears quietest. There are no medals for our work, but there is the assurance of making a valuable contribution to justice and social progress."



Aisling Reidy, BL, was Director of the ICCL from 2002 to 2005. Aisling is now a Senior Legal Advisor with Human Right Watch in New York.
Source: The Sunday Tribune