



Towards a Programme for Government of Human Rights Reform ICCL Submission, May 2020

During the General Election campaign 2020, ICCL called on all political parties to commit to [8 key human rights commitments](#) under the banner "*Ireland's Second Century: A Country of Rights and Freedoms*". There was a broadly positive response with many parties supporting all 8 calls, and [others supporting most of the calls](#). We believe that these 8 commitments remain urgent and would require no additional expenditure or carry only a marginal administrative cost.

We also recognise that the next Government will now face new and different challenges. Covid-19 has brought great hardship to Ireland. However, during the response to the pandemic, we have also seen an inspiring level of solidarity in Irish society. We have seen barriers to essential public services being dispensed with. We have seen the rights and needs of those most at risk being prioritised and vindicated.

ICCL believes that there is an opportunity to use this moment of national unity to reflect on how we can protect the assets and resources we have as a society – the value of our solidarity and our sense of community, and the resilience of our democratic institutions. At the same time, we have an opportunity to address persistent inequalities and weaknesses and vulnerabilities in our political and administrative systems.

ICCL believes strengthening justice, equality and democratic freedoms will allow Ireland to emerge from this period of crisis better placed to meet the challenges of an unpredictable global reality. We set out 18 specific legislative measures across 4 areas of policy that can be achieved in the first phase of the next Government, incurring little or no additional government expenditure and some cases promising savings.

- Deepen our Democracy
- Strengthen our Justice System
- Build Social Cohesion
- Digital Rights

We call on all parties to the present discussions to consider these proposals for inclusion in any Programme for Government.

Deepen our Democracy

1. **Democratic Institutions – Establish an Electoral Commission**

Public trust in our democratic processes has never been more important. Successive governments have recognised the urgent need to establish an Electoral Commission to protect the integrity of our elections – particularly from growing external threats. ICCL supports the establishment of an Electoral Commission as an urgent priority because we believe it can strengthen the cohesiveness and transparency of electoral regulation.¹ We call for this body to be entirely independent of government. This should be guaranteed through primary legislation and direct funding from the exchequer as a priority – Electoral Commissions have been repeatedly promised, but we can not afford to wait any longer for reform of our electoral system.

2. **Freedom of Expression – Repeal Censorship and Protect On-Line Speech**

Freedom of expression, including artistic expression, is a fundamental right that should only ever be limited in the strictest of circumstances.² Ireland’s archaic laws on censorship of publications are now obsolete and should be repealed.³ Irish law on defamation should be reformed to ensure proper space for democratic debate and equality of arms. In our on-line world, any system of platform regulation should be based on human rights principles which are not limited to expression and also include privacy and full and equal participation. Any system of regulation of online expression should be based on human rights principles which protect privacy, expression, and full and equal participation.⁴

3. **Support Civil Society Freedom – Reform the Electoral Act**

The community and voluntary sector are playing an essential role in supporting those most at risk and in greatest need during this crisis. We face great

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ICCL’s submission on the establishment of an Electoral Commission can be found <https://www.iccl.ie/news/iccl-submission-on-electoral-commission/>

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ICCL’s report on freedom of artistic expression <https://www.iccl.ie/wp-content/uploads/2018/05/ICCL-Freedom-of-Artistic-Expression-and-Referendum-on-the-8th-Amendment.pdf>

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ICCL’s call for repeal fo Censorship Act <https://www.iccl.ie/news/human-rights-arts-organisations-repeal-censorship-act/>

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ICCL report on on-line communications <https://www.iccl.ie/wp-content/uploads/2019/07/190415-Online-content-regulation-ICCL-submission-FINAL.pdf>

challenges in maintaining our work due to the impact this crisis will have on our fundraising work. Protecting these services and the essential role of independent advocacy that civil society plays is more important than ever. The Electoral Act restricts political campaign financing in a number of ways. Certain restrictions are appropriate and necessary to protect the integrity of our elections. However, poorly drafted amendments to the Act mean that community organisations, residents' groups and charities have faced prosecution for expressing views on matters of public interest. The EU Fundamental Rights Agency has stated that this anomaly presents a serious threat to freedom of expression and association in Ireland. A Private Members Bill has been published to fix anomalies in the Electoral Act and to ensure that necessary rules on political financing do not impede on the rights of civil society groups to organise and advocate for social change. ICCL recommends the adoption of this Bill.⁵

4. Brexit – Give the People a Voice

As Brexit enters a new phase, we must ensure a human rights framework for the complex constitutional issues ahead. It is now inevitable that the coming years will see a fresh debate about the status of the North and the relationship between the various jurisdictions on these islands. The great success of the Good Friday Agreement was due in large part to the role afforded to human rights in that process and the inclusion of civil society in the formulation of the Agreement. ICCL recommends convening a Citizens Assembly to consider the consequences of Brexit for citizenship, human rights and equality in Ireland.

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The work of the Coalition on Civil Society Freedom is set out here <https://www.iccl.ie/human-rights/coalition-civil-society-freedom/>

Strengthen our Justice System

5. Reform of An Garda Síochána – Oversight and Accountability

Policing plays an essential role in protecting human rights, but police officers also have exceptional powers. Effective accountability and oversight of those powers is the key to ensure human rights compliant policing. The Commission on the Future of Policing (CFP) accepted ICCL's recommendations that a comprehensive restructuring of Irish policing should be based on principles of human rights.⁶ It is essential that promised legislation puts in place strong oversight and complaints mechanisms, including a new Independent Office of the Police Ombudsman. It's also vital that the proposed Policing and Community Safety Oversight Commission (PCSOC) has full powers of unannounced access to garda stations and oversight of intelligence and surveillance.

6. Establish an Ombudsman for Victims of Crime

Victims' rights must be respected by all agencies in the criminal justice process – police, prosecution, support services, and non-statutory agencies, in line with the Victims' Rights Act 2017. Victims of crime should also be able to access a quick, clear and independent complaints procedure. This requires an Ombudsman for victims rights within the justice system.

7. Implement EU Standards in the Criminal Justice System

The right to a fair trial is essential to democracy. Ireland has a strong tradition of fair trial rights, but there are areas in which we can strengthen our procedural standards to vindicate the rights of all parties to legal proceedings and ensure effective access to justice for all. The government should commit to protecting and improving fair trial rights in the Irish criminal justice system, including implementing relevant EU Directives on procedural rights.

8. Justice for Historical Abuse

Throughout the twentieth century, women and children were subject to appalling violence and exploitation in religious institutions. Despite recognition of the scale and severity of these human rights violations by the United Nations, the survivors and victims of these abuses continue to be denied justice and access to the truth about the circumstances of their detention, and in some cases even the truth about their own identity. We cannot move forward as a society until we address

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ICCL report on Garda Reform <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf>

these ongoing violations. Redress and compensation schemes must be administered in a fair and inclusive manner to ensure all victims receive support and assistance immediately and there must be accountability for those responsible for gross human rights abuses.

9. Ratify OPCAT and Ensure Inspections of All Places of Detention

Our tragic history of institutional abuse shows us that independent and effective inspection of the closed places where people are detained is essential to prevent gross human rights violations, up to and including inhumane and degrading treatment and torture. At present, garda stations, nursing homes, and direct provision centres are only some of the places of detention that are not subject to independent inspection in Ireland. Ratifying the Optional Protocol to the UN Convention Against Torture (OPCAT) would require the State to put in place a comprehensive inspection system everywhere people can be detained. A National Preventive Mechanism (NPM) would then be put in place to ensure that all places where people are detained are subject to inspection. Despite signing this treaty in 2007, Ireland remains one of the few European countries not to ratify it. This should be done as a matter of urgency.⁷

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ICCL position on ratification of OPCAT <https://www.iccl.ie/news/ratify-opcat/>

Build Social Cohesion – Leave No-one Behind

10. Equality in Response to Covid – Human Rights Impact Assessment

ICCL believes that human rights and equality principles can and should inform the public health response to the pandemic, including the re-opening of our society and economy. Human rights standards can provide a blueprint for deciding which restrictions should be lifted first and how the gradual lifting of restrictions should take place. As part of the impact assessment, disaggregated statistics on infection and death rates according to nationality, ethnicity, disability, gender and age will be essential, particularly in residential settings.

11. End Direct Provision

In 2019, ICCL made a submission to the Oireachtas Justice Committee's consultation on the Direct Provision system.⁸ We added our voice to those voices already calling for an end to the system. We identify the ways that the system facilitates human rights violations, including the right to dignity; the right to work; the right to education; the right to health; the right to respect for a private and family life; the right to effective access to the international protection system; and the right to access justice and a remedy for rights violations. The system may constitute arbitrary detention and may also violate the right to be free from cruel, inhuman or degrading treatment.⁹ We recommend its immediate dismantling and replacement with an own-door system of accommodation.

12. Introduce Hate Crime Legislation

There is currently no law to deal with attacks motivated by hatred in Ireland. We are witnessing a worrying rise in racism in Ireland, particularly with regard to racial minorities, including migrants and asylum seekers. Our laws and policies must be strengthened to sanction and help prevent hate crime and to provide justice for those who are victim to it. Hate crime legislation will also help address criminal behaviour which is targeted at other groups, including women, Travellers, LGBT+ people, and disabled people. Systems of recording hate crime and appropriate policing policies should be put in place to support this legislation.

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ICCL submission to Oireachtas Committee on Direct Provision, May 2019, <https://www.iccl.ie/wp-content/uploads/2019/06/190531-ICCL-ORourke-Submission-On-Direct-Provision-System.pdf>

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On 1 May 2020, ICCL and other NGOs sent a letter to the Minister for Justice and Equality relating to detention within Direct Provision www.iccl.ie/news/covid-and-direct-provision-joint-letter-to-the-department-of-justice/

13. Safe Access Zones

Repeal of the 8th Amendment was the culmination of decades of campaigning for equality by Irish women and civil society. ICCL is committed to ensuring that the rights provided for under the Health (Regulation of Termination of Pregnancy) Act 2018 are respected effectively in practice.¹⁰ Safe Access Zones are necessary to ensure women and pregnant people can access all health services, including abortion services, safely, privately and with dignity.

14. Right to Housing

ICCL supports the goals of the **Home for Good** campaign¹¹. The Campaign proposes that the Constitution be amended to make it clear that access to adequate, secure and affordable housing is an essential part of the common good. Any amendment can preserve the right to private property, while also offering the counterbalance of a right to housing. It will unlock the barrier to essential reforming legislation and be a vital part of ending the current housing crisis.

15. Drug Decriminalisation

ICCL supports the Safer from Harm campaign, initiated by Ana Liffey Drug Project.¹² We would like to see the adoption of a health based approach to the possession of small quantities of drugs for personal use, a trend we are seeing internationally. ICCL believes this is a compassionate and pragmatic response to drug misuse, grounded in the best available evidence. This is an opportunity to make an early intervention, when it matters the most, and provide those in need with guidance and support.

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ICCL's investigation into the rights issues raised by Safe Access Zones can be found here <https://www.iccl.ie/wp-content/uploads/2020/01/ICCL-Investigation-Abortion-Safe-Zones.pdf>

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Details of the Home for Good campaign can be found at <https://www.homeforgood.ie>

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Details of the Safer from Harm campaign can be found at . <https://www.saferfromharm.ie>

Digital Rights

16. **Outlaw and prevent image-based sexual abuse**

The Non-Fatal Offences Against the Person Act should be amended to outlaw the creation and/or sharing of private sexual images without consent – commonly but incorrectly referred to as “revenge porn”.¹³ There are, as yet, no specific laws addressing this phenomenon in Ireland. The Act should be amended so that a pattern of harassment does not have to be shown and single instances can be prosecuted.

17. **Halt the illegal Public Services Card project**

ICCL opposes government and corporate systems that interfere with or otherwise process our sensitive information unnecessarily. The rapid digitisation of government welfare and services systems is one example of how such interferences are undermining our personal data rights, and the poorest and most vulnerable amongst us are targeted in particular. The Public Services Card project is invasive, costly, and entirely unnecessary. Key aspects of the scheme have been found illegal by the Data Protection Commissioner, but the government is spending taxpayer money to appeal this. During the present crisis, the Government has dropped the requirement for the PSC for new social protection applicants, and the UN Special Rapporteur on Extreme Poverty has also written to the Government setting out the discriminatory effect of the PSC. Government should scrap this illegal project now.

18. **Guard against surveillance technology**

Facial recognition, CCTV, body worn cameras, DNA mapping, identity registration, smart phones and smart cities – increasingly sophisticated technologies are watching us all. These privately developed systems are attractively packaged; sold to us and our governments at profit; and then deployed with minimal public consultation or assessment. Meanwhile, our collective privacy and data protection rights are gradually submerged and ignored in a society which is normalising de facto surveillance. We must ensure our regulations and laws defend and protect our rights in the face of this growing surveillance threat. Ireland must adopt and adhere to a clearly defined legal framework specifying when, how, and if, surveillance tools can be used, by whom and in what circumstances. And we should always question whether we need to use them at all.

ICCL is calling on the HSE and Department of Health to pause and reflect on the advantages and disadvantages of producing a Covid-19 contact-tracing phone app. If the Department of Health goes ahead with such an app, it must ensure that the app is compliant with the right to privacy and must comply with data protection laws, including by publishing a data protection impact assessment.