

Rights News

Ireland's Ongoing State of Emergency

Professor Fionnuala Ní Aoláin, UN Special Rapporteur on Counter-Terrorism

GUARD OUR RIGHTS CAMPAIGN UPDATE ■ DR SINDY JOYCE ON TWITTER FREEDOM OF ASSOCIATION IN IRELAND TODAY ■ AND MORE....

Editorial by Liam Herrick

e start 2019 with a good deal of optimism and resolution to address some longstanding human rights violations. Police reform is now in the critical phase. In September, we had a major victory in persuading the Commission on the Future of Policing that human rights must provide the basis for the necessary overhaul of An Garda Siochána. The devil will be in the detail, however, and in 2019 ICCL will be focussing on how the reform

process grapples with the difficult issues of police intelligence, surveillance, minority rights and oversight

A further crucial area of police reform relates to public order and protest. Both law and police policy managing peaceful protest have been shown to be deficient on several occasions, most recently at the eviction at North Frederick Street September. In 2019, ICCL will work with protest groups and lawyers to

raise awareness of the right to peaceful protest and to campaign for reform. We also believe 2019 will see ratification of the Optional Protocol to the Convention Against Torture and reform of the Electoral Act - both essential human rights landmarks.

Equality and privacy will remain priorities too. In particular, we are fighting to stop the roll-out of the Public Service Card system. The Government

has consistently refused to disclose crucial information about the legality of the system but we are confident that the law is on our side!

> It has been a very successful 2018 for civil liberties, but we are gearing up for some tough campaigns in 2019 - and we are

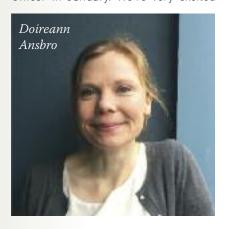
looking forward to your support in winning some key battles in the months ahead. 🛛

Liam Herrick, **Executive Director** Irish Council for **Civil Liberties**

Staff changes at ICCL

WE ARE DELIGHTED TO ANNOUNCE that Grace Tierney joined us as Funding Development Officer in November 2018. Grace joins us from the international development agency Suas.

We also welcomed Doireann Ansbro, formerly of the International Commission of Jurists and UN Special Procedures, as our new Senior Research and Policy Officer in January. We're very excited



about working with both Grace and Doireann on our 2019 priorities.

We bid a fond farewell to Maeve O'Rourke who is moving on to NUI Galway where she will no doubt inspire countless unsuspecting law students to dedicate themselves to human rights.



ON THE COVER: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Fionnuala Ní Aoláin. See more on page 6.

ABOUT THE ICCL

enjoyed by everyone.

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Guard Our Rights: the campaign for Garda reform

ON 14 SEPTEMBER WE launched Alyson Kilpatrick's groundbreaking report A Human-Rights Based Approach to Policing in Ireland. The report addresses how and why a rights-based approach to Garda reform could be implemented.

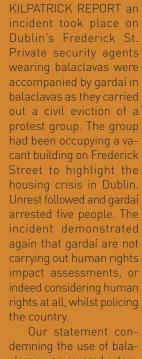
The Kilpatrick report came just days before the the Commission on the Future of Policing (CFP) published its report on Garda reform. The CFP report echoed many of the observations Kilpatrick made

and indeed it was also informed by the ICCL submission to the process in January. Ultimately, the acceptance by the CFP that human rights should be the basis for future reforms of Irish policing marks the successful outcome of decades of ICCL campaigning on this issue. We now wait to see how this commitment is translated into action.

The report was the pinnacle of our 2018 campaign for Garda reform which began with our submission to the CFP. Many of you also attended the public meeting on community policing on 18 July, where we heard from Gareth Noble, Fiona Whelan and David Joyce.

Garda reform is an issue that we (ICCL and our members and supporters) have been working on since our inception over 40 years ago. In fact, it is one of our very reasons for existing.

So don't be in doubt: we'll keep pushing for reform in 2019!



Eviction on

TWO DAYS BEFORE

WE LAUNCHED THE

Frederick

Street

Our statement condemning the use of balaclavas was covered extensively. The Garda commissioner later publicly requested a report on the incident, in line with our calls.

The following week, the Minister for Justice announced his support for outlawing the recording of police on duty! Our rebuttal of his arguments was widely covered in the media.





Alyson Kilpatrick with a copy of her report

Lifecycle of a Hate Crime

EMILY LOGAN, CHIEF COM-MISSIONER OF THE IRISH HUMAN RIGHTS AND EQUAL-ITY COMMISSION, launched our seminal report **Lifecycle** of a Hate Crime in July. The report shows that Ireland is seriously deficient in tackling hate crime.

The authors highlight that the absence of any laws against hate crime has led to a "policy vacuum" in relation to crimes motivated by prejudice in Ireland. From the point at which a victim reports a

crime to An Garda Síochána to the point at which a judge sentences an offender, the hate element of a crime is filtered out of the criminal justice process.

The Coalition Against Hate Crime, a coalition of civil society organisations including ICCL, has called for the introduction of hate crime legislation for a number of years.

This report is the product of a two year international research project involving five EU states, coordinated by the

Irish Council for Civil Liberties (ICCL) and was funded by the European Commission. The Irish research was conducted by the Hate and Hostility Research Group at the University of Limerick.



links in this article...

Policing in Ireland: https://www.iccl.ie/justice/kilpatrick-report/ Life Cycle of a Hate Crime: https://www.iccl.ie/hatecrime/

Abortion legislation: where do we stand now?

ICCL WARMLY WELCOMED the introduction of abortion services in Ireland on 1 January 2019. Along with our members and supporters, we have been campaigning on this referendum since before the first abortion referendum in 1983 and are pleased that the women of Ireland will, in the main, have access to reproductive healthcare.

Following the overwhelming and historic 'yes' vote in May 2018, ICCL advocated a number of amendments to the proposed legislation:

We recommended that the mandatory three-day waiting period be removed from the legislation, as it reinforces patriarchal notions of women being incapable of making their own decisions and is incompatible with World Health Organisation standards. What is more, the waiting period is likely to impact most harshly on those who are in abusive relationships, who live in remote areas, who depend on others for care and who live in Direct Provision.

■ We further called for amendments to the legislation in respect of the 'serious risk to health' ground and the criminalisation provision. We believe that the requirement for doctors to certify that a risk is 'serious', coupled with a draconian criminal penalty for abortions performed outside the legislation's parameters, will create a chilling effect and cause harm.

Along with our colleagues in Lawyers for Choice, we will be watching the implementation of the legislation very closely. We foresee grave consequences to the government's failure to decriminalise abortion and the inclusion of several obstacles to access to services in the legislation.

Safe Zones

ICCL ATTACHES GREAT IMPORTANCE TO THE RIGHT TO PEACEFUL PROTEST. However, the right to protest does not include a right to intimidate, harass or prevent women from accessing health care, including abortion services. Recent protests at health clinics appear to have been targetting women with the intention of deterring them from accessing health services.

...the right to protest does not include a right to intimidate, harass or prevent women from accessing health care...

The Irish government is obliged by international treaties to which we are party, as well as by our own Constitution, to protect the right to privacy. It is also obliged to protect access to healthcare and to ensure that healthcare professionals working in these settings have the right to work in a safe environment. We've been calling for exclusion zones around health clinics in order to protect these rights.



DR SINDY JOYCE TAKES OVER ICCL TWITTER ACCOUNT!



ICCLtweet@ICCLtweet

DR. SINDY JOYCE TOOK
OVER THE ICCL twitter account
on Woman Human Rights
Defender (WHRD) Day on 29
November 2018 as part of the
Front Line Defenders
#WHRDtakeover, where women
human rights defenders took
over the Twitter accounts of
allied organisations in their
country for one day.

Here we compile a selection of her tweets from that day together.

The full text can be found at https://www.iccl.ie/equality/whrdtakeover/

And you can find Sindy online: @SindyLJoyce

 Tweets
 Following
 Followers
 Likes

 6,281
 1,388
 7,932
 2,903



Tweets

Mincéirs (Irish Travellers) are a traditionally nomadic ethnic minority indigenous to Ireland, distinct from the majority Irish population. Mincéir is our true name in our own language i.e. Cant/Gammon. Our history is largely unrecorded, partly due to our oral tradition and state historical neglect.

Previous to the 'Irish Free State', Irish people were portrayed as nomads, beggars, ignorant, uneducated, backward, superstitious, drunk and violent people, a discourse which was entirely transferred onto us. Our nomadism was a constant reminder of the past and there was no room for us in a new Ireland.

Through the inter-war years and for some time after, the trades of Mincéirs were fundamental aspects of the Irish rural economy. Rural depopulation increased mobility on the part of the rural community, while the advent of plastic, increased mechanisation, urbanisation, and government policy ensured that our way of life changed profoundly. In the face of such dramatic changes, we were forced to migrate into more urbanized areas where we were not quite as welcome as we had once been in rural Ireland in previous decades.

Racism and discrimination in urban areas was rife and most of the sedentary population did not want to live alongside us. There were many protests against us moving into cities and towns, thus the government of Ireland decided to intervene in what they termed the "Traveller Problem". Authorities soon came up with "a solution" and in 1963 one of the most significant and racist reports ever produced in relation to Ireland's indigenous community was published.

It was the first Irish government report in relation to us and its commission had no Mincéir representative or contact with the community. The whole aim of the report was "rehabilitation" and the hope for eventual "absorption" into the sedentary population. Charles J. Haughey, in addressing the Commission stated "that there could be no 'final solution' until itinerant families were absorbed into the general community".

Framing us as a 'problem' from the beginning, the report codified the State's ideological opposition to nomadism in a manner which had not previously existed. The majority of the Irish public accepted the report with ignorance and as beneficial for Travellers. For example, a reader's letter to The Evening Press in 1964 entitled 'Homes for Itinerants' read: "It is only by offering homes and the opportunities of leading a normal life that there is any chance of the itinerants becoming normal members of society".

So we were not seen as 'normal members of society'.

At the core of anti-Traveller racism is the assumption that nomadism is not a valid way of life. The State response has been to outlaw it and measures taken have been to "assimilate/absorb" us to stop us from being who we are. The dominant powers viewed us as 'less than' or 'inferior' to the majority population, they viewed us as people that were somehow 'failed settled people' or 'broken' in that we needed to be 'fixed' and 'aided' in becoming 'settled' which can easily be defined as cultural and ethnic genocide.

Since our identity was viewed as 'inferior', the next stage is denial of that identity and the assimilation of us. Assimilation is an institutional response to ethnicity denial, which leads to the issues we see today. From this what is often referred to as "Failure in delivery" of services and resources, is in fact, a successful policy of identity denial and anti-Traveller racism.









States of Emergency: Lecture by UN Special Rapporteur on Counter-Terrorism

ICCL and our partners in INCLO were honoured to host the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Fionnuala Ní Aoláin, at the Royal Irish Academy in Dublin on 21 November.



UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Fionnuala Ní Aoláin, at the Royal Irish Academy

AT THE LECTURE THE SPECIAL RAP-PORTEUR made particular reference to Ireland and Northern Ireland, saying that "the Island of Ireland, more so than many parts of the world has experienced emergency law, emergency practice and the seepage of the exceptional into the ordinary in ways that has not served

the rule of law nor the protection of human rights well." She said there had been "consistent and trenchant concerns about the use of the Special Criminal Court and the Offences Against the State Act as a 'work-around' the ordinary protection of the law".

Professor Ní Aoláin referenced her

own decades-long academic work when she emphasised that "emergencies start off as exceptional but almost without exception experience mission creep. [They] start off a short-term, finite proposition and invariably end up being extended, in some cases as in Ireland over decades, becoming a norm both politically and legally".

The Special Rapporteur emphasised that "States of emergency are synonymous with extensive and sustained human rights violations", and that the definition of terrorism was often nebulous enough to allow targeting of legitimate dissent.

Professor Ní Aoláin also launched two reports by INCLO and our friends at Privacy International, both of which denounced the lack of response from Irish authorities regarding requests for information on the sharing of intelligence with other States.

ICCL's Elizabeth Farries said "In Ireland and elsewhere, there is insufficient oversight, review, and transparency to the existing agreements" citing the Department of Justice response to one such request which went: "for security reasons, it is not the practice to publicly comment on the detail of counter-terrorism arrangements. It should be noted that our history on this island means that regrettably we have been engaged in counter-terrorism work for decades".





Mass surveillance system doesn't comply with European law



IN NOVEMBER 2017 ICCL, TOGETHER WITH DIGITAL RIGHTS IRELAND, made urgent recommendations for legislation that protects our private communications and complies with EU law and international human rights norms. We're still waiting.

Meanwhile, the Gardaí and other government agencies have compelled state phone and internet service providers to disclose tens of thousands of requests for data attached to our personal phone and internet communications.

While this is not the content of our

private emails and phone calls, the communications data is still very revealing. It can draw a broad portrait of an individual's activities, friendships, opinions, and private life as effectively as the content itself.

Following the 2016 revelation that the Garda Síochána Ombudsman Commission was accessing journalists' communication records from service providers under force of our legislation, former Chief Justice Mr. John L. Murray headed a review of the Irish law.

The Murray Review found that Ireland

has legislated a system of mass surveillance 'of virtually the entire population' of Ireland. It is not only journalistic sources that are threatened. The system of collecting private communications data in Ireland is not in compliance with European Law.

In January 2018, the Oireachtas Justice Committee accepted the our recommendations for updated legislation that is compliant with EU law and human rights letter. A full year later we have not seen that updated legislation. Meanwhile, the Gardaí continue to access our private communications data illegally and in contravention of our collective enshrined rights.

Public Services Card: What are they hiding?

THE DEPARTMENT OF SOCIAL PROTECTION and the Data Protection Commissioner (DPC) have both refused to provide information on the DPC's years-long investigation into the legal basis for the **Public Services Card**.

We brought a request under Freedom of Information (FOI) legislation to the Department about the status of the investigation only to have them refuse it on grounds that it may "be contrary to the public interest" or that the "requester concerned would thereby become aware of a significant decision that the body proposes to make." It has also been reported that the DPC, when it does finally conclude its report, only intends to make a summary of its report publicly available.

We think this is outrageous. At ICCL we believe the PSC is illegal. This is because it violates privacy rights without being a necessary or proportionate measure to secure its aims. If the card is illegal, then the public deserves to know. If the DPC decides that the card is legal, well, then we'll want access to the entire report so that we can understand their reasons.

We'll be appealing the Department's refusal to release this information to us. Watch this space.

ICCL questions facebook at the Dublin Human Rights Festival



Left to right: Craig Dwyer of Transparent Referendum Initiative, Siobhán Cummiskey, content policy head, Facebook EMEA, and Elizabeth Farries, ICCL

On 25 November, Elizabeth Farries joined Craig Dwyer of Transparent Referendum Initiative for a fireside chat with Siobhán Cummiskey, content policy head, Facebook EMEA. We questioned the methods Facebook use to moderate hateful content online, their efficacy, and the human rights concerns implicated, including freedom of expression.

Is Freedom of Association under threat in Ireland?

Update on Electoral Act reform

THE CAMPAIGN TO REFORM THE ELEC-TORAL ACT is really heating up now. Why are we calling for reform? Because the Electoral Act is hampering the work of legitimate and effective organisations. It's threatening freedom of association in Ireland

Over the past six months we've really been working hard to raise public awareness of the problem, and to garner political support for change.

In December we sent an open letter signed by 60 organisations calling for reform to An Taoiseach Leo Varadkar. We also sent him a petition signed by 1226 individuals. In January the Irish Human Rights and Equality Commission called for reform in line with the changes we recommended

On 11 October Michael Barron of EQUATE spoke publicly for the first time about his experiences of the law at an ICCL event. He described the concerted campaign of complaints about EQUATE's funding. The demands the regulator made were so onerous that they contributed to EQUATE's decision to wind down. This was despite the fact that EQUATE had complied with the law.

Michael was joined by April Duff of Education Equality and Fiona Crowley of Amnesty International Ireland. April spoke of the threat of legal action that the regulator employed against their volunteers. Fiona addressed the personal impact that Amnesty's case against the regulator had on staff.



Tina Roche (centre), CEO of The Community Foundation for Ireland, at the 11 October event organised by the ICCL. Mary Lawlor (left), former Director of Front Line Defenders, looks on

L'nesola

organisations from doing this work on

education

In a closed discussion afterwards many organisations revealed they've also been feeling the pressure from the regulator.

In July, the Department of Foreign Affairs once again spearheaded a UN campaign to protect activists abroad. We called for the same principles to be applied at home!

ICCL will keep this pressure up as we move into 2019. Senator Lynn Ruane is bringing forward a private members' bill with proposed amendments to the Act. We'll be supporting that as it moves through the Seanad and beyond.



links in this article...

An open letter to An Taoiseach: https://www.iccl.ie/news/open-lettertaoiseach-electoral-act/

Left: an article about Michael Barron, founder of Equate, detailing that organisation's struggles with campaign funding laws

Fix 'ambiguous' electoral act, says baptism barrier campaigner



YES for free speech!

A SIGNIFICANT VICTORY FOR HUMAN RIGHTS in Ireland which almost passed under the radar was the popular vote to remove blasphemy as a Constitutional offence. The victory is an important step for free speech and the modernisation of our democracy, and brings Ireland into line with international best practice in human rights, as called for by the UN Human Rights Committee.

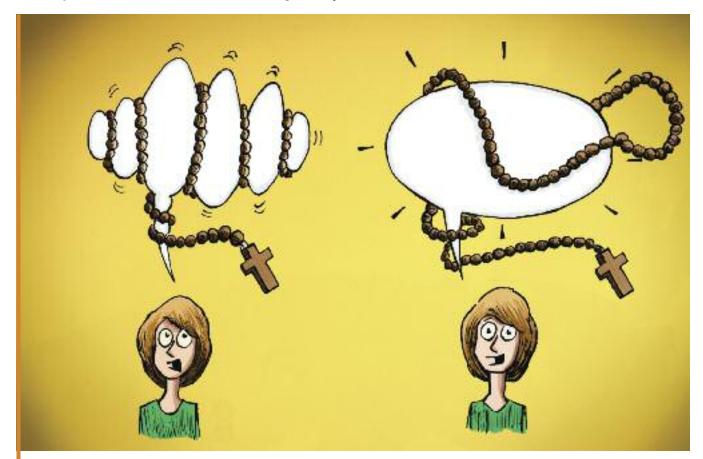
During the ICCL campaign for a Yes vote, our guiding principle was respect for freedom of expression. However, we also argued that the right to free speech is limited when necessary to protect people from hate- and hostility-motivated crime.

Hate crime is entirely different to blasphemy because it is directed towards individuals or groups, rather than ideas or institutions. There is no legislation in place to deal with hate crime in Ireland at the moment.

We'll continue to work towards protection against hate crime in 2019. ◎



Left to right: Colm O'Gorman of Amnesty International, Gina Menzies, theologian and journalist, and Liam Herrick, Executive Director of ICCL at a press conference



Cartoonist Harry Burton responds to victory in the blasphemy referendum

ICCL provides follow-up report to UN Torture Committee

ON 26 NOVEMBER 2018 ICCL SUBMITTED A REPORT to the United Nations Committee Against Torture (CAT).

In our report, ICCL:

■ Demanded that Ireland ratify the UN Optional Protocol to the Convention Against Torture and create a National Preventive Mechanism that independently inspects all places of detention in Ireland, including *de facto* detention in health and

social care settings, and in Direct Provision.

- Called for swift changes to the powers and functions of the Garda complaints mechanism, and criticises the secrecy that characterises many investigations into alleged Garda misconduct.
- Rejected the Government's repeated claim that it knows of 'no credible evidence' that systematic torture or ill-

treatment, or criminal abuse, was perpetrated in Magdalene Laundries and called for a truth-telling process, and proper accountability and redress.

The report forms part of the process of 'follow-up' to the CAT's second set of Concluding Observations on Ireland, published in August 2017. The CAT designated the above three problems as 'follow-up' issues, requiring a response from the Irish Government within one year.

ICCL's 2017 report to the Committee Against Torture, along with the reports of numerous other NGOs working in Ireland, contributed to the its Concluding Observations.

The Irish Government's follow-up report to the Committee Against Torture was published in August 2018. Our November report provides further information to the CAT in relation to the three 'follow-up' issues.

The ICCL report demanded the creation of a National Preventive Mechanism that independently inspects all places of detention, including de facto detention in health and social care settings, and in Direct Provision...



Activist Stixy Nyaluso of MASI and ICCL's Maeve O'Rourke present our follow-up report to UNCAT

Protest: the power for people-driven change

2018 was another phenomenal year for protest and the power of change in Ireland. People living in this country know that protest is an extremely effective tool for democracy. There can be no doubt but that the repeal of the 8th Amendment was in large part down to the people who have been on the streets since 1983, and particularly since 2015 after the Marriage Equality demonstrations.

...what happens when protest touches on the economic interests of the State?

We are at a juncture now where protesters and activists, buoyed up by the referendum victory, are empowered and equipped to use protest as a tool to make rights a reality for everyone in this country.

But what happens when protest touches on the economic interests of the State?

In September we were horrified to learn of heavy-handed tactics used during an eviction of housing rights activists from a building at North Frederick Street in Dublin's North Inner City. Eight people were arrested and five others were injured after they took "direct action" and occupied a vacant property. Gardaí present wore balaclavas as they assisted masked men to evict the activists from the property.

We called for a swift public report from the Garda Commissioner regarding the Gardaí's decision-making in advance of the operation, and the reasons for and circumstances of the arrests and injuries sustained by protesters. We also criticised the Minister for Justice when he suggested outlawing the recording of Gardaí during the course of their duties around protest.

We'll be working hard in

2019 to ensure the right to protest is fully respected by the State, and that its power for good is understood by the public. Together with our international colleagues in IN-CLO, we have been invited to provide information to the UN Human Rights Council for an unprecedented general comment on Article 21 of the International Covenant on Civil and Political Rights, which protects the right to protest. We plan to conduct a broad consultation with protest groups and activists to inform this report.

Save the date!

We'll also be working with our international colleagues on a campaign which celebrates protest through art. As part of that, we'll host a day-long special event on censorship of dissident artists at Project Arts Centre on 30 April.





Top: ICCL attended the Take Back The City protest, after the heavy-handed eviction of activists at North Frederick St. Above: we also attended the Homes For All demonstration



Inside Police Custody

IN DECEMBER WE LAUNCHED OUR **Inside Police Custody** report in Brussels. The impetus for the project was to examine whether the right to a fair trial is guaranteed in nine members States of the EU.

The comparative report examines the rights – to interpretation and translation, to information, and to a lawyer – of suspects and accused persons as they are experienced at the investigative stage of the criminal process.

The research was funded by the Justice Programme of the European Commission and carried out by partner organisations in nine countries and co-ordinated by ICCL.



HERE AT ICCL, WE WOULD NOT BE ABLE TO CONTINUE TO FIGHT FOR JUSTICE and equality for all people in Ireland if it wasn't for the generous support from our funders and supporters.

From all of us on the team, thank you. 2018 was an incredible year – because of you!

Together, we can continue to do important work for people that need it most, hold government accountable, and speak truth to power. Our work goes on and your continued support makes in possible.

Join our fight by becoming a member, or giving anything you can.

Funders

ICCL's Members

ICCL would like to thank our funders and supporters who make our work possible:

Sigrid Rausing Trust
The Open Society Foundation
The Community Foundation Ireland
The Irish Human Rights and Equality
Commission
The European Commission
The Friends of ICCL



Left to right: Dr Maeve O'Rourke, Liam Herrick, Minister Christina McElvie, and Sandy McPhee.

On 11th September 2018, ICCL was honoured to welcome the **Scottish Government's Minister for Older People and Equalities, Christina McKelvie**, to our offices. The Minister was in Ireland to meet with Irish Government and human rights bodies and organisations to discuss cooperation and areas of common interest between Ireland and Scotland in relation to equality and human rights.

Join ICCL

To become a member of ICCL go to: https://www.iccl.ie/join

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To donate to ICCL go to: https://www.iccl.ie/donate



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