



# 2008

annual report

**FOR PEACE, JUSTICE AND HUMAN RIGHTS**

**Sponsors** Kader Asmal MP, Baroness Kennedy QC, Michael Mansfield QC

**WINNER OF THE BEACON PRIZE FOR NORTHERN IRELAND 2007**  
**WINNER OF THE IRISH WORLD DAMIEN GAFFNEY MEMORIAL AWARD 2008**



## **FOR PEACE, JUSTICE AND HUMAN RIGHTS**

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990.

Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict.

BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW takes no position on the eventual constitutional outcome of the conflict.



## A HUMAN RIGHTS DAY MESSAGE

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2008 has been a busy year for British Irish RIGHTS WATCH, as always. Invisible to the naked eye has been a lot of internal work, renewing our Board, drawing up a Strategic Plan for the next five years, and overhauling our in-house governance mechanisms. However, so far as the outside world has been concerned, it has been very much business as usual.

There have been two important outcomes of our internal discussions. The first has been to re-affirm that, funds permitting, BIRW will stay in business for as long as our services are needed, but no longer. We are developing a set of benchmarks to enable us to judge that the point has been reached when our work is done. Secondly, we have decided to extend our remit to including learning the many lessons that have emerged from our work over nearly two decades. Sadly, Northern Ireland provides many examples of how not to deal with terrorism, as well as positive lessons about the importance of upholding and promoting human rights, no matter how difficult the circumstances. We feel that we have learned a great deal, and we are keen to share that experience with others.

This year has brought us another award for our work, in the form of *The Irish World's* Damien Gaffney Award, for which we are very grateful. We are also delighted to have been nominated by a prestigious set of sponsors for the new Council of Europe Parliamentary Assembly Human Rights Prize 2009.

Next year will see important developments. The Bill of Rights is due to be published any moment now, and in the new year the report of the Consultative Group on the Past will be available. Both documents will provide an opportunity for BIRW to do what it does best, ensuring that human rights are placed at the heart of the peace process. We will also be helping the family of Patrick Finucane to celebrate his legacy with a weekend of events in February. The Rosemary Nelson, Billy Wright and Robert Hamill Inquiries will all require our attention, and in September the long-awaited report of the Bloody Sunday Inquiry is due. These will be some of the highlights alongside all our normal casework, research and policy work, backed up as ever by our indispensable administrative team.

Thanks for all their hard work to our Director Jane Winter, Researcher Caroline Parkes, and Administrator Elizabeth Folarin, as well as all our interns, volunteers, consultants, Sponsors and Board members. Also much appreciated is the support of our funders and all those who have made donations throughout the year in support of our work.

Helen Shaw  
Chair  
British Irish RIGHTS WATCH  
10 December 2008



## DIRECTOR'S REVIEW OF THE YEAR

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The Northern Ireland Assembly may have been reconvened in 2007, but by the end of 2008 there has been very little to show for it. Most of this year has been taken up with petty, sectarian wrangling which has done no-one in Northern Ireland any favours. As a result, the peace process has been limping somewhat and, while the underlying trend remains positive, there are pockets of Northern Ireland, such as Ballymurphy in west Belfast, where it feels as if very little has changed.

January saw the appointment of not one but four Victims' Commissioners, following the controversy over the original appointment of Bertha McDougall. We feared that this would reinforce the divisions between some victims, but the four Commissioners have worked together, trying to turn their diversity into a strength.

Dealing with the past has been a major focus this year. The Consultative Group on the Past, despite the imperfections in the process by which it was established, seems to have been asking the right questions and we look forward to seeing their report early next year. In the meantime, the police Historical Enquiries Team

has been on a steep learning curve, but continues to place the needs of families at the heart of their work. We have detected some real progress, for example in making bolder findings, so we were devastated in November when it looked as if budget cuts were going to force them to lay off nearly all their staff. However, in the nick of time the government saw sense and came up with the cash.

In February our Sponsor Professor Kader Asmal MP formally retired from the South African Parliament, where he gave distinguished service as Minister for Water and Forestry Affairs and Minister for Education. No-one who knows Kader will be remotely surprised to hear that he gave as his reason for retirement his desire to have more time for politics!

Most of the year, it seems, was spent commenting on various sets of yet more counter-terrorism measures. However, in October our persistence paid off when the House of Lords definitively defeated government proposals for 42-day detention; secret inquests in contentious cases were also dropped.

Another constant theme has been our opposition to the deployment of tasers (electronic stun guns) in Northern Ireland, where the first taser firing took place in Derry in August. A flawed equality impact assessment, carried out grudgingly by the PSNI only after it had decided to pilot the use of tasers, and a failure to heed the advice of both the UN Committee Against Torture and the Committee on the Rights of the Child, have called into question the PSNI's claim to place human rights at the heart of policing.

Another challenge to that claim arose from the wholesale bugging of solicitors' consultations with their clients in the Serious Crime Suite at Antrim. Ironically, this news broke at around the same time that British Irish RIGHTS WATCH, Liberty and the Irish Council for Civil Liberties won our case in the European Court of Human Rights against the UK government for bugging our telephone calls. ►



## DIRECTOR'S REVIEW OF THE YEAR

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In June it was my unhappy duty to testify before the Rosemary Nelson Inquiry. Not only did the experience bring back sad memories, but it was also very confusing because Counsel to the Inquiry asked all the questions, so that one was never sure whether the questions were those of the Inquiry or those of one of the interested parties, most of whom have their own agendas to pursue and interests to defend. Sadly, this year brought reports of further concerns for their safety from solicitors working on controversial cases.

Much of the first half of the year was spent working on the Bill of Rights for Northern Ireland. The Bill of Rights Forum delivered its lengthy report at Easter and by June we had sent a detailed response to the Northern Ireland Human Rights Commission, who are tasked with advising the Secretary of State. Their report is due at the end of this year.

A highlight of the year was the findings of the UN Human Rights Committee, who took up a number of our concerns about human rights in Northern Ireland. This year also saw the

publication of the fourth edition of our guide to the human rights mechanisms at the UN: *Human Wrongs, Human Rights*.

In July the government apologised for the handling of the McGurk's Bar bombing in 1971 – it was a rather quiet apology, but it was a start.

August saw the tenth anniversary of the Omagh bombing, which claimed the lives of 29 people and two unborn babies and injured many others. Yet again we add our voice to that of the victims in calling for an independent public inquiry into not only those terrible events, but the complete failure of the criminal justice system to deliver justice for those victims, as the collapse of the Sean Hoey trial so vividly demonstrated.

The Prisoner Ombudsman, Brian Coulter, resigned during the year because he was not granted sufficient powers or independence to carry out his work. We applaud his honesty and his courage. We have always maintained that his remit was flawed and unworkable. We were encouraged to see a spate of arrests in the autumn for the murder of journalist

Martin O'Hagan in 2001. However, the fact that all but one of those arrested is now out on bail, including two men charged with murder, is not a hopeful sign for successful prosecutions.

In November we protested to the Irish government about swingeing cuts in the budgets of the Irish Human Rights Commission and the Equality Authority.

The year ended on a high with BIRW being nominated for the prestigious Council of Europe Parliamentary Assembly Human Rights Prize. Our thanks to all our nominators.

Jane Winter  
Director  
British Irish RIGHTS WATCH  
10 December 2008



## DAMIEN GAFFNEY AWARD

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Photograph by Brendan Vaughan, courtesy of the The Irish World

### **BIRW BOARD MEMBER BARBARA STOW ACCEPTS THE AWARD FROM PADDY GOWAN, MANAGING DIRECTOR OF THE IRISH WORLD**

In February 2008 BIRW Director Jane Winter won the Damien Gaffney Award, created by the newspaper *The Irish World* in memory of their promising journalist who died before his time. Unfortunately, Jane was unable to accept the prize in person, so Barbara Stow deputised for her. Barbara read out the following acceptance speech on Jane's behalf:

*"I want to thank Barbara Stow, who is a member of my Board, for accepting this award on my behalf, and to apologise that I am unable to be here in person – I am very sorry to be missing the craic! For those who do not know about our work, British Irish RIGHTS WATCH is an independent charity that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human*

*rights have been affected by the conflict, used by all sides of the community, and we take no position on the eventual outcome of the peace process. It is a tremendous honour to receive The Irish World Award this evening, most especially as I am not myself Irish. It is particularly pleasing to receive an award in memory of Damien Gaffney, who contributed so much to the world in his tragically short life. It is also the greatest possible pleasure and honour to have been nominated for this Award by Michael O'Hare. As many of you will know, his twelve-year-old sister was shot dead, while on her way to confession, by a British soldier in 1976, and Michael has spent long years battling for justice in her name, a battle in which BIRW has been privileged to support him. I would like, if I may, to dedicate this award to Majella's memory, and to thank The Irish World most sincerely for this wonderful award."*

According to Barbara, it was quite a night, *The Irish World's* hospitality being legendary!



## INQUIRIES

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Throughout 2008, we continued to engage with the Billy Wright, Robert Hamill and Rosemary Nelson Inquiries, to campaign for an independent public inquiry into the murder of Patrick Finucane, to wait for the report of the Bloody Sunday Inquiry, and to regularly advise and liaise with the families of the victims and their lawyers. There were a number of developments in all four cases.

### • INQUIRY INTO PATRICK FINUCANE'S CASE

In 2001 at Weston Park, the United Kingdom government entered into a written agreement with the Irish government to appoint an independent judge to look into six cases of alleged collusion. If the judge recommended a public inquiry, then the government undertook to hold one. Retired Canadian Supreme Court judge Peter Cory was appointed to review the cases, and ordered an inquiry in all four Northern Ireland cases. The UK has honoured its promise in relation to Rosemary Nelson, Billy Wright and Robert Hamill, but it has broken its pledge in relation to Patrick Finucane, the Belfast lawyer murdered in 1989 by the UDA. There is compelling evidence that the police, the army and the intelligence service all colluded in his death. His family continue to campaign for an independent public inquiry, with the full support of BIRW.

### • BILLY WRIGHT INQUIRY

LVF leader Billy Wright was murdered inside the Maze Prison in 1997 by INLA members. However, a prison guard was called away from a watchtower at the very time of the murder and a crucial camera was out of action, raising questions about possible collusion. In January the Billy Wright Inquiry published a damning report on non-disclosure of information to the Inquiry by the Police Service of Northern Ireland. During the year the Inquiry heard evidence which put it beyond doubt that Billy Wright was under continual surveillance while he was in jail, and that prison governors and the police had been warned about the murder. In June Derek Batchelor QC, the Counsel to the Inquiry, left abruptly in unexplained circumstances. He was replaced by Angus Stewart QC, but in November David Wright, Billy Wright's father, said that he had no confidence in him. Given the wholesale destruction of prison files and the non-disclosure of other evidence, BIRW is concerned that the Inquiry may not be able to establish the full truth about the murder.

### • ROBERT HAMILL INQUIRY

Robert Hamill, a young Catholic, was kicked to death in 1999 by loyalists in the presence of four police officers, one of whom later allegedly assisted one of the suspects in a cover-up. The Inquiry has been seriously delayed by applications by a number of police officers for anonymity and by a long dispute with the Secretary of State for Northern Ireland about whether the actions of the Director of Public Prosecutions could be scrutinised by the Inquiry. This decision falls to the Secretary of State, rather than the Chair of the Tribunal, because, like the Billy Wright Inquiry, the Robert Hamill Inquiry has converted to become an inquiry under the Inquiries Act 2005. Robert Hamill's family had to judicially review the Secretary of State in the High Court, at huge public expense, to establish that he has applied the wrong test – one of fresh evidence – instead of the correct test of the public interest. Forced to reconsider his position, the Secretary of State finally decided that the Inquiry's existing terms of reference included the actions and decisions of the DPP, although the Inquiry apparently is not allowed to consider the merits of anything done by the DPP. Oral hearings will now begin on 9th January 2009. ▶



### • ROSEMARY NELSON INQUIRY

Rosemary Nelson was blown up in a car bomb planted by loyalists in 1999 after her life had been threatened on a number of occasions by both police officers and soldiers. Numerous warnings about her safety were ignored by the police and the government. In June BIRW Director Jane Winter gave evidence to the Inquiry. At the end of her evidence, she said:

*"I would like, if I may, to read a very short statement which I have prepared, as the Inquiry will be aware, without the benefit of legal advice or representation. I, like many other witnesses who have appeared and will appear before this Inquiry, have an advantage that, of necessity, the Inquiry does not enjoy. I knew Rosemary Nelson. She was a warm, generous, fun-loving and – above all – intelligent woman. She was also a woman of great personal courage. She loved justice and*

*she hated injustice. She was, quite simply – and this was no mean feat for someone who lived in such a troubled place and in such troubled times – a person who knew the difference between right and wrong. Those who imagine that Rosemary was engaged in a campaign to discredit the RUC, and that she manipulated people of good faith like myself and many others of greater standing than me into supporting her alleged crusade are deluding themselves and can not have known Rosemary Nelson. The sad truth is that the boot was on the other foot. Rosemary Nelson was the victim of a callous campaign of denigration which culminated in her brutal and vicious murder. I hope that this inquiry will not get bogged down in the minutiae of who said what to whom, or who wrote what to whom, but will keep the shocking facts of Rosemary Nelson's life and death at the forefront of your deliberations."*

### • BLOODY SUNDAY INQUIRY

In April, BIRW wrote on the tenth anniversary of the formal opening of the Bloody Sunday Inquiry to enquire why it was taking so long to produce the Inquiry report and when the report would be published. The reply we received did not give us much hope that the report would be published this year. In November 2008, Lord Saville, the Inquiry's chair indicated that he would not deliver the report until September 2009, after he stated that the previous deadline had been underestimated. A further increase in the already inordinately long wait is stressful for the victims, some of whom have died in the interim without ever seeing the report, and all of whom have already endured long years of grief, injustice, and uncertainty.



BIRW was instructed in eleven new cases in 2008, and also received a large number of one-off requests for assistance or direction. BIRW's total caseload is now at approximately sixty, many of them landmark cases. The cases range from large bombings in the 1970s, to cases of collusion in the 1980s, to ongoing paramilitary murders in the 1990s and 2000s. Many victims fear intimidation if they make it known publicly that they have contacted a human rights organisation such as BIRW and thus we can only illustrate our casework work where the victims who have given us their permission.

### • DANIEL HEGARTY

The long-awaited report of the police Historical Enquiries Team into the fatal shooting of Daniel Hegarty in the Creggan in 1972, and the wounding of his brother Christopher, was delivered this year. The shootings happened during Operation Motorman, the military action to destroy the no-go areas (places the security forces could not patrol) in Derry. Daniel was only fifteen years old, and Christopher only sixteen. Both boys were unarmed, as was a third young man, who escaped injury. The HET found that the boys were unarmed; were shot at close range without warning; there was no effective investigation into the shootings; and that the family deserves an apology from the government. To date, no such apology has been forthcoming.

### • LUDLOW FAMILY MEET THE TAOISEACH

In January, BIRW travelled to Dublin to join the family of Seamus Ludlow for their first-ever meeting with the Taoiseach, Bertie Ahern TD. Seamus Ludlow was murdered near Dundalk in 1976 by loyalists from north of the border who included serving soldiers. The Taoiseach was asked to consider establishing a specific, time-limited inquiry into the failure to bring the perpetrators to book. So far, the Ludlow family's pleas have fallen on deaf ears.

### • DAVID MCILWAINE AND ANDREW ROBB

In mid-April, BIRW accompanied Paul McIlwaine to a meeting at Stormont with the Deputy First Minister of the Northern Ireland Assembly, Martin McGuinness MP MLA, and his then opposite number, Jeffrey Donaldson MP MLA. Paul McIlwaine is the father of David McIlwaine, murdered along with Andrew Robb in February 2000. Paul McIlwaine was concerned that some of those suspected of

involvement in these cruel murders were in receipt of government contracts. The meeting was constructive and instructive. We had not known before, for instance, that government contracts in the past openly included money to pay for protection from paramilitaries. However, by November Paul McIlwaine was still struggling to establish the extent of indirect government support for known paramilitaries.

In the autumn, Mark Burcombe was convicted of conspiracy to cause grievous bodily harm to Andrew Robb and given a prison sentence of two years and four months. The relatively minor charge and light sentence reflected the fact that he has offered to give evidence for the prosecution against another man charged with the murder of both young men. That case is currently at trial. ▶



## CASEWORK

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### • MCGURK'S BAR BOMB

The fight of the relatives of those who died in the McGurk's Bar Bomb in 1971, carried out by loyalists but blamed on the IRA, continued throughout 2008. The Historical Enquiries Team released their report into the incident to some criticism from family members. On 14 July, BIRW welcomed the adjournment debate about the McGurk's Bar Bomb, which was organised by Michael Connarty MP, whose great-uncle, Philip Garry, was killed in the bombing. During the debate the Minister of State for Northern Ireland, Paul Goggins, said:

*"Although my right honourable friend and I cannot speak for those ministers who made statements at the time, we are deeply sorry, not just for the appalling suffering and loss of life that occurred at McGurk's Bar, but also for the extraordinary additional pain caused to both the immediate families and the wider community by the erroneous suggestion made in the immediate aftermath of the explosion, as to who was responsible. Such perceptions and pre-conceived ideas should never have been allowed to cloud the actual evidence."*

Undoubtedly the apology was good news but we felt that late on a Monday night in an almost deserted chamber was not the appropriate venue for such a significant event; we raised this with the Secretary State. The McGurk's families are awaiting a revised copy of the HET report, and the results of a Police Ombudsman's investigation into the incident.

### • MICHAEL MCKEVITT LOSES APPEAL TO SUPREME COURT

BIRW has grave concerns about the stability of the convictions against Michael McKevitt, who lost his appeal in July 2008 against his convictions for membership of the RIRA and directing terrorism. Our concerns stem from the fact that the primary evidence against him came from a paid informer who had a vested interest in testifying, and also that vital police evidence that contradicted one of the informer's claims was withheld by the prosecution until after the informer's evidence was over.

### • BALLYMURPHY

BIRW has continued to monitor the situation in Ballymurphy in West Belfast throughout 2008. Thankfully, the violence against the Notarantonio and Devlin families appears to have subsided. This may be in part due to the conviction of four members of the Notarantonio family for the manslaughter of Gerard Devlin. There are however ongoing concerns regarding issues such as compensation, housing and access to education. BIRW continued to engage with the PSNI, Police Ombudsman and Compensation Agency about these issues, as well as provide support to family members.

### • GEOFFREY GREY

Geoffrey Grey was killed in a loyalist feud in October 2002. There has been absolutely no progress in the police investigation and the case is currently awaiting a review by the PSNI's Retrospective Murder Review Unit, which looks at unsolved murders that happened between April 1998 and the end of 2004.



## POLICY WORK

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BIRW has worked consistently on a wide variety of issues in 2008, such as the introduction of tasers (electronic stun guns) and proposed developments in counter-terrorism legislation. Our work has also included participation in consultations on the Police Ombudsman, prisons, inquests, the law on murder, equality and policing the past. This has required BIRW to give evidence to the Northern Ireland Affairs Committee, and attend conferences, such as the George Mitchell conference, and seminars.

### • COUNTER-TERRORISM BILL 2008

2008's policy work began with the publication of the Counter-Terrorism Bill. BIRW was highly concerned by a number of proposals within the Bill, not only the controversial proposal to extend pre-trial detention to 42 days; but also proposed changes to inquests in England and Wales, which would have led to greater secrecy in controversial cases. BIRW published a briefing on the Bill, which was sent to all MPs.

In May we attended a conference on the Bill, organised by the Joint Committee on Human Rights at which Security Minister Tony McNulty MP and the Director of Liberty Shami Chakrabati spoke.

In the summer, BIRW made a submission to the Joint Committee on Human Rights in response to the publication of their report on the Bill. We explored the issues of pre-charge detention, the lowering of the threshold for charging someone with an offence, post-charge questioning, control orders, and bail for terrorism suspects, and highlighted the importance of learning the lessons from Northern Ireland in the application of counter-terrorism legislation.

In June, the Counter-Terrorism Bill was voted upon in the Commons. The Government won but only by nine votes, following the DUP's decision to support the Bill. However, in October, the Bill was defeated on 42-day

detention in the House of Lords, with a majority of 191. This led the Government to finally see sense and realise that undermining human rights and curtailing civil liberties will weaken rather than strengthen the fight against terrorism. The Government also dropped the "secret inquests" provisions. BIRW's lobbying efforts on these issues, along with that of many other human rights NGOs, had paid off.

The battle is far from won, however, as the Bill still contains several other clauses which cause concern, such as the disclosure of information to the intelligence services and the proposals for the use of that information, where protections such as legal privilege and confidentiality would no longer apply. ►



### • POLICING IN NORTHERN IRELAND

#### **PSNI deploy tasers**

Despite the concerns voiced in many quarters, the Police Service of Northern Ireland deployed the electric stun guns known as tasers in January 2008. Tasers have been implicated in hundreds of deaths worldwide, and are particularly dangerous if fired upon pregnant women, children, or people with heart conditions. What made this decision particularly hard to swallow was the fact that the PSNI has decided to arm its officers with these potentially lethal weapons before knowing the results of an equality impact assessment (in other words, whether tasers have a disproportionate impact on disadvantaged groups). Tasers are not an alternative to firing live ammunition, they are another weapon in the PSNI's already formidable arsenal. BIRW is opposed to the use of tasers because, unlike other weapons used by the police, it is not possible to moderate their effect; tasers deliver a massive, and very painful, electric shock, over the strength of which a police officer has absolutely no control.

We made a detailed submission to the PSNI's consultation on its equality impact assessment of tasers. We explained our opposition to these potentially deadly weapons, which inflict so much pain that the United Nations has designated them as instruments of torture. We argued that the deployment of tasers constitutes a violation of Article 2 of the European Convention of Human Rights (right to life) and Article 3, which prohibits torture, and that their use contravenes the Human Rights Act 1998.

We followed this submission with a joint NGO letter to the Northern Ireland Policing Board about the process followed in the deployment of tasers.

In August, the PSNI fired its first taser in Derry. The victim subsequently described himself as a "guinea pig", encapsulating our own sense that the PSNI was determined to use this weapon in defiance of public opinion and the concerns expressed by both the Policing Board and the Equality Commission, with a view to

undermining the legal challenge being brought in relation to their use by an un-named child, who was given leave in September to judicially review the decision to deploy tasers. Of particular concern was the fact that children were present in the house where it was used, and the victim was subsequently detained under the Mental Health Act, indicating a disregard for the guidelines on its use.

On 3rd October, the United Nations Committee on the Rights of the Child condemned the use of tasers and AEPs (plastic bullets), particularly in relation to children. Yet only the previous day the Policing Board, by a majority vote, agreed to back the PSNI's deployment of tasers, and the PSNI continues to defend the judicial review brought concerning the devastating effect of these potentially lethal weapons on children. When the PSNI's equality impact assessment was finally published it was full of flaws. These developments led us to conclude that the PSNI and the Policing Board's claim that human rights lies at the heart of policing should be re-examined. ►



### • POLICING IN NORTHERN IRELAND

#### **Policing the past**

BIRW has participated in the ongoing debate on how to police the past. Early in the year, BIRW made a submission to the Northern Ireland Affairs Committee's inquiry into the effect on policing of "historic inquiries" and the provisions of the Inquiries Act 2005 and other legislation which might require the police to divulge covert sources. We argued that, with so many unsolved murders arising out of the conflict, money spent on projects such as the PSNI's Historical Enquiries Team is money well spent in terms of helping those who have lost loved ones to find closure. On 2nd April, BIRW's Director, Jane Winter, testified before the Northern Ireland Affairs Committee on the issues of the cost of dealing with the past and the use of informers in inquiries. Her testimony is available on the Committee's website.

BIRW has continued to engage with the PSNI's Historical Enquiries Team, which looks at deaths arising out of the conflict. Together with other NGOs we have helped to bring about a number of improvements in the way the HET relates to victims and produces its final reports.

#### **Dealing with the past**

This aspect of our work was enhanced by BIRW's engagement with the Consultative Group on Past. In late 2007, BIRW made an extended submission to the Group, drawing on our 18 years' experience of working on the conflict. In May, the Group published its interim thoughts, which we read with interest. A subsequent meeting with the Consultative Group in October has indicated not only the wide public response to the Group's work but also that the Group has worked hard to listen to all points of view and tackle the underlying issues, such as the lack of any agreed narrative about Northern Ireland's past, and the need for many kinds of support for all victims. The Groups' final report will be available in early 2009.

### • BILL OF RIGHTS

In April the Bill of Rights Forum, made up of representatives of all the major political parties and of civil society, produced its final report on a Bill of Rights for Northern Ireland. In June, BIRW produced a lengthy and detailed response to the report, which we submitted to the Northern Ireland Human Rights Commission, which is expected to produce its advice to the

Secretary of State for Northern Ireland by the end of this year. Our response was timed to reach the Commission as it began a concentrated round of deliberations and discussions about its advice. We would like to pay tribute to the outstanding work of Aideen Gilmore of the Committee on the Administration of Justice, who represented human rights groups on the Forum.

In June BIRW, together with CAJ, met with the Northern Ireland Human Rights Commission to discuss the methodology behind the Commission's advice to the Secretary of State on the Bill of Rights. We also attended a conference by the Human Rights Consortium, which drew together the Convener and the legal advisor for each working group of the Bill of Rights Forum, as well as an independent external expert, to discuss the work done thus far and the way forward. It was clear that the working groups had been impacted by the shortness of the timeframe for comments and extensive debates about the phrase "the particular circumstances of Northern Ireland" stipulated in the Good Friday peace agreement. ►



### • CRIMINAL JUSTICE

#### **Prisons**

BIRW responded to the Northern Ireland Affairs Committee's report on their inquiry into the state of prisons in Northern Ireland. Like many reports on this topic, positive recommendations were made with regard to expanding the prison estate and addressing the needs of vulnerable women prisoners. However, our concerns focussed on the need for a properly costed and timetabled plan covering the whole of the prison system – the estate, the prisoners and the prison staff – as well as improvements to the criminal justice and mental health systems in order to improve prisons in Northern Ireland.

#### **Police Ombudsman**

In September, BIRW wrote to the Secretary of State, Shaun Woodward MP, to express our concern that the Police Ombudsman apparently did not have the resources he needed to carry out routine enquiries. Our concern about lack of resources for the Police Ombudsman has been long-standing. We have always argued that it is a false economy to create such an office, and the expectations that go with it, without giving it the tools to do the job.

#### **Inquests**

BIRW made a submission to the Joint Committee on Human Rights about the proposed Coroners and Death Certification Bill; although this Bill currently focuses only on England and Wales, we had real concerns that it may also be applied to Northern Ireland. The Bill ignored much of the work of Professor Tom Luce and his team in their Fundamental Review of Inquests (2003), who proposed robust changes to the coronial system in Northern Ireland as well as the rest of the UK. BIRW made a number of suggestions to the Committee including the need to take into account 30 years of conflict in Northern Ireland and the need for inquests to provide an effective investigation, in line with Article 2 of the European Convention on Human Rights (right to life).

#### **Reforming the law**

In October, BIRW made a submission to the Northern Ireland Office on proposed reforms to the law on murder, manslaughter and infanticide. We raised concern about the changes to the abolition of the existing defence of provocation and its replacement with "killing in response to words and conduct which causes the defendant to have a justifiable sense of being seriously wronged", which seemed to us too wide for comfort. We also noted the problems with three recent key trials in 2008 in Northern Ireland, namely the trials of Sean Hoey for the Omagh bombing, Davison and Others for the murder of Robert McCartney and Notarantonio/Burns for the murder of Gerard Devlin. It is crucial that any changes to the legislative definition of murder and manslaughter are reflected in appropriate action by the police, the Public Prosecution Service and the judiciary, to ensure reliable convictions and increased confidence in the criminal justice system.



## INTERNATIONAL ADVOCACY

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This year we have once again complemented our domestic policy work with international advocacy, engaging with relevant international bodies and organisations to ensure that our concerns remain firmly on their agenda.

### • BIRW LOBBIES THE HUMAN RIGHTS COMMITTEE

In the summer BIRW, together with several other NGOs, attended the UK's examination by the United Nations Human Rights Committee, in Geneva. During an NGO briefing to the Committee, BIRW raised the issue of the use of less lethal force by the PSNI. The concerns of all the NGOs who attended, including the Committee on the Administration of Justice and Amnesty International as well as BIRW, were reflected in the questions put by the Committee Members to the UK government. Northern Ireland was the focus of a variety of questions including the use of AEPs (plastic bullets), the public inquiries into the deaths of Robert Hamill and others, and the failure by the government to provide an independent investigation into the murder of Patrick Finucane.

The Concluding Observations of the Human Rights Committee, published in late July, provided an excellent analysis of the UK's failure to fully comply with the International Covenant on Civil and Political Rights. This was most clearly seen in their observations regarding Northern Ireland. The Committee

expressed concern about the failure of the UK to establish or conclude a number of public inquiries into deaths in Northern Ireland, and the use of the Inquiries Act 2005. They said:

*"The State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland."*

BIRW were very encouraged to see that the Committee shared our concern regarding the use of AEPs; the Committee called for the close monitoring of AEP use and the need to consider banning them if it is established that they cause serious injuries. The Committee stated that the Government should monitor the situation in Northern Ireland to see if the specific criminal procedures outlined in the Justice and Security (Northern Ireland) Act 2007, which includes juryless trials in the Diplock courts, should be continued. Finally, the Committee expressed concern about the broad use of the Official Secrets Act 1989,

which may prevent the bringing of issues of public interest into the public domain; equally, they indicated that the UK's Government's application of libel law had discouraged critical media reporting on matters which were of serious public interest.

Later in the year, the UN Committee on the Rights of the Child echoed the Human Rights Committee's concern about the use of AEPs and tasers, particularly in relation to children.

### • ATTACKS ON DEFENCE LAWYERS

As we approach the twentieth anniversary of the 1989 murder of Belfast solicitor Patrick Finucane, we are sad to report that some lawyers are still operating under an atmosphere of threat. In late 2008, lawyers reported to us an assault on a solicitor by police officers, libel in the newspapers, and threats to their livelihoods because of cuts in legal aid. As a result, BIRW raised these issues with the United Nations' Special Rapporteur on the independence of judges and lawyers. ►



## INTERNATIONAL ADVOCACY

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### • MURDER OF JOURNALIST MARTIN O'HAGAN

BIRW continues to monitor the murder in 2001 of journalist Martin O'Hagan. In the autumn the police made eleven arrests and charged three people with murder. However, only one of those eleven remains in custody, where he is kept for his own protection after offering to give evidence for the prosecution. The appearance of a mystery Witness A also gives rise to concern. The UN Special Rapporteur on freedom of expression continues to follow this case and we continue to keep him informed.

### • UK STILL FAILING TO IMPLEMENT EUROPEAN COURT DECISIONS

In 2008 BIRW made our thirteenth(!) submission to the Committee of Ministers concerning the government's failure to implement the rulings of the European Court of Human Rights that there should be effective investigations into the cases of McKerr, Jordan, Kelly & Ors, Shanaghan, McShane, and Finucane. These rulings are now between five and seven years old. We called on the Committee to continue to monitor the UK's failure to comply with the rulings and to consider whether there are any sanctions that can be imposed on the UK if it continues to flout the rulings of the Court.

We welcomed the response of the Joint Committee on Human Rights to our comments on the government's response to human rights judgments generally. The Committee reiterated their concerns about the independence of inquiries under the Inquiries Act 2005, particularly in relation to the ability of family members to participate in such an inquiry, and noted their regret at the delay by the government in implementing Article 2-compliant investigations.



## LEGAL CASES

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### • BUGGING OF LAWYERS' CONSULTATIONS WITH CLIENTS

In February 2006 it emerged that a solicitor in Northern Ireland had been charged with offences related to domestic terrorism. While this is in itself shocking, even more shocking is the fact that the Police Service of Northern Ireland gathered evidence against him by bugging a consultation room at the Serious Crimes Suite in Antrim. Furthermore, this bugging had gone on for several months, and every lawyer who used that consultation room had been bugged, even though those lawyers were not suspected of any crime. The police refused to confirm or deny whether consultations had been bugged or to give undertakings that future consultations would not be bugged. Lawyers were naturally concerned that client confidentiality may have been breached and that defendants' right to a fair trial may have been violated. Such bugging is totally unacceptable because:

- it interferes with the lawyer/client relationship
- it diminishes the ability of the state to protect that relationship
- it undermines the role of solicitors as Officers of the Court
- it contravenes domestic and international human rights standards,
- it is disproportionate, arbitrary, unfair and unreasonable, and
- it is not in the public interest.

In November 2007, the High Court in Belfast found that the monitoring of such conversations to be unlawful, unless it is authorised by an independent person. The Applicants decided to appeal to the House of Lords, on the ground that the right to lawyer/client confidentiality is absolute and no-one, however independent, should have the right to bug consultations. BIRW has made a third party intervention in the case in support of the Applicants. The case will be heard from 8th to 10th December and our observers will be in court. ►



## LEGAL CASES

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### • DEFINITION OF POLITICAL OPINION

Two men who were former paramilitary prisoners were refused employment by the Simon Community because of their prison convictions. The Fair Employment Tribunal (FET) did not uphold their claim that they had been discriminated against on the grounds of their former political opinions. The men appealed to the Court of Appeal, who upheld the FET's decision. The Court ruled that the acceptance or approval of violence for political ends did not constitute a political opinion for the purposes of protection from discrimination. This ruling, which appears to fly in the face of common sense, removed from fair employment protection more than 30,000 former paramilitary prisoners, republican and loyalist. Since ex-prisoners find it harder than most to find employment, this ruling is potentially devastating for their employment prospects. The Equality Commission, which backed the two men at the FET and the Court of Appeal, were not minded to help them take their case to the House of Lords. BIRW and others make representations to the Commission, urging them to assist in overturning a very bad precedent. When the Lords gave the men leave to appeal, because their case raised a point of public interest, the Commission changed its mind and decided to help them. BIRW has banded together with the Committee on the Administration of Justice and the

Northern Ireland Association for the Care and Resettlement of Offenders to seek leave to make a third party intervention in the House of Lords.

### • UK WRONG TO BUG NGOS

The European Court of Human Rights has ruled in favour of BIRW, Liberty and the Irish Council for Civil Liberties in our long-standing case against the UK government for using the Capenhurst listening tower to intercept telephone calls between the UK and the Republic of Ireland. The Court ruled that our confidentiality had been unlawfully breached and – in language that is unusually strong for the Court – that there were insufficient safeguards to prevent an abuse of state power. Although the listening tower no longer exists and the case arose before the Regulation of Investigatory Powers Act (which regulates surveillance) came into force, the ruling is relevant in many other cases, which is a source of great satisfaction, especially in view of a media report that people in Northern Ireland are six times more likely than people elsewhere in the country to be the subject of interception warrants. We would like to publicly thank our legal team, who did a fantastic job on our behalf over the many years it took to before our case was resolved.



## OTHER ASPECTS OF OUR WORK

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### • BIRW STRATEGIC PLAN

Following the independent evaluation of our work in 2007, which dubbed BIRW as “a success story”, we have put a lot of improvements in place, particularly in terms of our governance and our internal policies, such as staff appraisal. We have also drawn up a strategic plan for the next five years.

Having considered carefully a number of options posed by the evaluators concerning our future, we have decided to remain as we are. BIRW have regarded ourselves as a time-limited project from the outset. We wanted to make a difference in terms of human rights to the conflict and the peace process in Northern Ireland – which we hope we have done and continue to do – but we do not want to outstay our welcome. We are also conscious of the knock-on effect of our existence, and our demise, for our sister organisations, particularly the Committee on the Administration of Justice (CAJ) in Belfast. We do not want to compete with them for funding or clients, but neither do we want to disappear leaving them to inherit a large amount of our unfinished business. As a result of another of the evaluators’ recommendations, BIRW are drawing up a list of parameters which enable us to determine when our services are no longer required. In the meantime, we hope and intend to stick around for as long as we are needed.

### • LEARNING THE LESSONS FROM NORTHERN IRELAND

However, we also decided to recognise the fact that BIRW has much to offer after nearly two decades of working on the conflict in Northern Ireland.

Although much of what we have learned about combating terrorism has been negative – in other words, how not to do it – we have also learned how central respect for human rights is in a situation where human rights themselves are under attack. We have worked tirelessly to apply what we have learned to the so-called war on terror. We have, together with other NGOs, argued against prolonged detention, house arrest, torture, and other draconian measures which, far from defeating terrorism, nurture it by creating miscarriages of justice and martyrs to the cause.

At the risk of sounding trite, we believe that it is the truth, rather than repression, that will make us free.

### • HUMAN WRONGS, HUMAN RIGHTS

This revised version of “Human Wrongs, Human Rights: A Guide to the Human Rights Machinery of the Human Rights Machinery of the United Nations”, co-authored by Jane Winter and Caroline Parkes, is the fourth edition of the guide. The guide provides a useful resource to individuals of all ages and backgrounds, schools and community groups, as well as making a contribution to the development of better awareness of human rights in Northern Ireland. Copies can be obtained from BIRW direct by simply e-mailing [birw@birw.org](mailto:birw@birw.org) (please put “UN guide” in the subject line) or by writing to BIRW at 13b Hillgate Place, London SW12 9ES. ►



## OTHER ASPECTS OF OUR WORK

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### • BIRW NOMINATES COLLEAGUE FOR LEADERSHIP AWARD

We were absolutely delighted that our colleague Aideen Gilmore at CAJ was singled out for a Certificate of High Commendation for her leadership skills by the Beacon Awards for 2008. We are privileged to have nominated her and are very glad that her contribution, particularly in relation to her work on the Bill of Rights, has been recognised.

### • EVENTS AND LEARNING

In February BIRW organised a seminar together with the Human Rights Centre in the School of Law at Queen's University Belfast on "Accountability in Transition", which considered the changing landscape of accountability mechanisms in Northern Ireland. Participants heard excellent contributions from Graham Ellison of Queen's; former Police Ombudsman Dame Nuala O'Loan; Kit Chivers, the outgoing Chief Inspector of the Criminal Justice Inspectorate; and Dave Cox, Director of the Historical Enquiries Team. The seminar was chaired by Keir Starmer QC, at that time one of the Northern Ireland Policing Board's human rights advisers, who later in the year was appointed the Director of Public Prosecutions for England and Wales.

In May, BIRW organised another highly successful seminar, again with Queen's, called "Putting the Past in Perspective". The participants heard very different viewpoints on dealing with Northern Ireland's troubled past from Dr Brandon Hamber of INCORE at the University of Ulster; Professor Monica McWilliams, the Chief Commissioner of the Northern Ireland Human Right Commission; Trevor Ringland, Chair of the One Small Step Campaign; and Patrick Corrigan of Amnesty International. Professor Colin Harvey of Queen's chaired the seminar. This was complemented by BIRW's attendance at a selection of conferences on victims and the past, including events by Families Acting for Innocent Relatives and Healing through Remembering.

BIRW also attended the George Mitchell Conference, entitled "Moving on From Conflict", at Queen's University Belfast. Designed to reflect on the ten years since the signing of the peace agreement in 1998, the conference elicited many thoughtful and thought-provoking contributions from speakers such as Senator George Mitchell himself, Tony Blair, and Archbishop Tutu, to name but a few.

### • BIRW NOMINATED FOR PRESTIGIOUS HUMAN RIGHTS PRIZE

Finally, we are overwhelmingly honoured to have been nominated for the Council of Human Rights Parliamentary Assembly Human Rights Prize by Professor Conor Gearty (Director, Centre for the Study of Human Rights, London School of Economics & Political Science); Dato' Param Cumaraswamy (former UN Special Rapporteur on the Independence of Judges and Lawyers); The Honourable Peter de Carteret Cory (former head of the Collusion Inquiry; Michael Posner (President, Human Rights First); Baroness Kennedy of the Shaws QC; Michael Mansfield QC; Professor Colin Harvey (Head of School of Law, Human Rights Centre, Queen's University of Belfast); Geraldine Finucane (widow of Patrick Finucane); Michael Ritchie (Director, Committee on the Administration of Justice); and Sarah Cooke, OBE (Human Rights Consultant). We know that we are up against Europe's brightest and best. We wish them all the best of luck and live in hope.



## ABOUT British Irish RIGHTS WATCH

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British Irish RIGHTS WATCH is an independent non-governmental organisation (NGO) that has been monitoring the human rights dimension of the conflict, and latterly the peace process, in Northern Ireland since 1990. BIRW is registered as a not-for-profit company and is a registered charity.

Its objects are:

1. The promotion by means of education and research of the proper observance and maintenance of human rights in Britain and Ireland and elsewhere in the world with particular reference to the conflict in Northern Ireland;
2. The promotion and dissemination of knowledge, information and understanding of such human rights by writing, publishing and distributing articles, reports, books and other documents and assisting in the same, by arranging and providing lectures and seminars, and by all other means of providing and exchanging information;
3. To procure the abolition of torture, extra-judicial executions, and arbitrary arrest, detention and exile.

### • HISTORY

British Irish RIGHTS WATCH arose out of the concern of a small group of people from England, Ireland and America, all of them based in London, about the human rights violations stemming from the conflict in Northern Ireland. Their work began informally in 1990, and consisted originally of organising seminars for lawyers, firstly in London and then in Belfast and Dublin. Gradually, lawyers and then campaign groups and individuals whose human rights had been affected began to regard them as a resource. In 1992 they played a key role in organising the Northern Ireland Human Rights Assembly in London, which attracted 254 written submissions alleging human rights violations arising from the conflict and over 250 participants. A panel of seven international human rights experts heard evidence over three days and produced a substantial report, *Broken Covenants*, that severely criticised the United Kingdom government for its failure to protect human rights. This Assembly generated even more demand for the group's services, and in May 1992 British Irish RIGHTS WATCH was formally established as a not-for-profit company. In 1995 the organisation achieved charitable status.

Until August 1994 its primary role was to monitor alleged human rights violations arising from the conflict in Northern Ireland. Since the ceasefires, it has enhanced its activities to include ensuring that proper respect for human rights is established in Northern Ireland in the wake of the conflict, with particular emphasis currently on the role of human rights in the emerging peace process.

British Irish RIGHTS WATCH's services are available free of charge to everyone, regardless of their religious or political affiliations or opinions, and we are proud that our services are requested and used by individuals and groups on all sides of the community. We take no position on the eventual constitutional outcome of the peace process and we are entirely independent of any other organisation, although we work very closely with other domestic and international NGOs who share our concerns. ►



## ABOUT British Irish RIGHTS WATCH

### • KEY ACTIVITIES

In fulfilment of its charitable objects, British Irish RIGHTS WATCH:

- researches alleged human rights violations arising out of the conflict;
- sends independent observers to trials, inquests and inquiries;
- provides consultancy services for lawyers;
- makes representations to international human rights bodies and organisations such as the United Nations;
- organises seminars for lawyers and others;
- makes third party interventions in human rights cases and provides expert testimony;
- publishes articles and reports;
- organises conferences; and
- disseminates the lessons from the Northern Ireland conflict.

### • STAFF



The Director is **Jane Winter**, from London, a founder member of British Irish RIGHTS WATCH with 18 years' experience of working on the human rights dimension of the conflict in Northern Ireland. She has previously worked as an adviser and advocate in the Citizens Advice Bureau service and the law centre movement. Jane is responsible for the day-to-day management of the organisation, supervising staff, liaising with statutory agencies and partner organisations, maintaining and developing relationships with funders, policy work, and undertaking casework and research. She holds the Beacon Prize for Northern Ireland 2007 and the Damien Gaffney Memorial Award for 2008.



The Researcher is **Caroline Parkes**. She has an MSc in Development Practice from the Centre of Development and Emergency Practice at Oxford Brookes University, where her research focused on developing human rights in post-conflict Bosnia. Prior to BIRW, Caroline worked in Nazareth, Israel, for an Arab arts organisation and for Marie Curie Cancer Care in London. Caroline monitors human rights developments relevant to our mandate, prepares policy submissions, undertakes casework and research, observes legal proceedings, assists with fundraising, and recruits and supervises interns.



The Administrator is **Elizabeth Folarin**. Elizabeth has considerable administrative and office management experience. Before joining BIRW, she worked for Somerfield Stores as office supervisor. Elizabeth ensures the smooth and efficient running of the office, managing our finances, maintaining the filing system, updating the website, overseeing our IT needs, supervising administrative assistance and acting as the Health and Safety Officer and First Aider. ▶



## ABOUT British Irish RIGHTS WATCH

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### • VOLUNTEERS AND INTERNS

BIRW has had the invaluable assistance of the following volunteers and interns during 2008:

**James Spybey**  
**Sauna Leven**  
**Mary Pimm**  
**Reginald Addy**  
**Saadi Omar**  
**Verena Elders**  
**Joanna Easton**  
**Sarah Duggan**  
**Leah Cleghorn**  
**Julie Crutchley**

Our interns and volunteers have assisted with a wide range of tasks. These included research into post Good Friday/Belfast Agreement deaths, observations of Parliamentary Committee hearings, continued research into conflict-related killings and other human rights abuses. We have also had several volunteers who have assisted with general office administration, mailings and filing. All of this work is greatly appreciated.

We also record our gratitude to those who have acted as observers at the Billy Wright and Rosemary Nelson Inquiries.

### • BOARD OF TRUSTEES

British Irish RIGHTS WATCH is managed by a Board made up of seven women, all of whom give their time and expertise free of charge:



**Helen Shaw**, who is the co-Director of INQUEST, is our Chair.



**Marion Fitzpatrick**, from London, who is Clinical Director at the Minster Centre. She is a practicing psychotherapist, supervisor and tutor. Marion is our treasurer.



**Fiona Murphy**, from Belfast, a founder member of BIRW and solicitor and partner at Bhatt Murphy.



**Barbara Stow**, is a consultant and was formerly an Assistant Prisons and Probation Ombudsman and Assistant Director for the Local Government Ombudsman.



**Roseanne Sweeney** is director of policy and communications at the London Drug and Alcohol Network and former BBC journalist.



**Sonya Sceats** is an international human rights lawyer working in the UK 'not for profit' sector. ▶



**Geraldine Scullion** is a lawyer based in Belfast working in the field of equality and human rights.



## ABOUT British Irish RIGHTS WATCH

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### • SPONSORS

British Irish RIGHTS WATCH is fortunate to be sponsored by three leading human rights lawyers:

**Professor Kader Asmal MP**, former Minister of Education in the South African government, who is also a professor of human rights law and the former Chair of the Irish Council for Civil Liberties;

**Helena Kennedy QC**, a campaigner for women's rights and a distinguished lawyer who has been involved in many leading civil liberties cases. Baroness Kennedy is an active member of the House of Lords;

**Michael Mansfield QC**, a highly successful barrister who has been involved in remedying many of the notorious Irish miscarriages of justice, including the cases of the Birmingham Six and the Guildford Four. He also appeared in the Bloody Sunday Inquiry.

### • SUPPORT FOR OUR WORK

British Irish RIGHTS WATCH is pleased to acknowledge with gratitude financial support during 2007 from the Atlantic Philanthropies, the Hilda Mullen Foundation, the Joseph Rowntree Charitable Trust, the Oak Foundation the Westcroft Trust, Matrix Chambers, and many individuals in Britain, Ireland and America.

The production of this Annual Report, which was designed by Robin Castle, was supported by a grant from Matrix Chambers.

**Donations are always welcome, acknowledged, and put to good use.**

If you would like to make a donation, please visit our website [www.birw.org](http://www.birw.org), or write to us. Thank you.

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