

# flacNews

FREE LEGAL ADVICE CENTRES

## 40 Years of FLAC

### Celebrating four decades of the Free Legal Advice Centres in Ireland

**FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.**

We provide necessary legal services to the public, including an information and referral line, and we support a network of 74 free legal advice centres throughout Ireland.

The helpline, available at **1890 350 250**, is open during office hours Monday to Friday. While it does not provide legal advice, it offers basic information on the law and referrals to an appropriate service or centre. Our centres are open in the evenings and are staffed by volunteer lawyers who advise people on their legal queries. We do not offer representation.

**In 2008 FLAC answered some 9500 queries on its helpline** and provided **non-means tested legal advice to about 7500 people at its centres**, which are operated in



conjunction with Citizens Information Centres. FLAC's website offers a wealth of useful information and is available at **[www.flac.ie](http://www.flac.ie)**

FLAC campaigns on a range of issues connected with our core areas of work: civil legal aid, social welfare law and credit & debt law. In addition we seek to advance the use of law in the public interest.

We take cases to challenge the law and so promote access to justice on behalf of marginalised or disadvantaged groups. Some cases have led to important law reform and enhanced rights for such groups.

Underpinning our campaigning and casework is a strong tradition of research and policy work. FLAC generates submissions on legal and social policy developments and proposes reforms to the law. The organisation produces substantive reports on our key areas of work as well as smaller publications designed to explain and make relevant legal issues for a wider audience.

Our newsletter, *FLAC News*, is now in its 19th year and appears quarterly. To mark the organisation's 40th anniversary, *FLAC News* will include a special insert documenting the four decades of the organisation's existence in photographs and press clippings. This will appear in each issue throughout 2009.

This third issue of 2009 covers the 2000s, a time of tremendous growth and change for the organisation. We hope you enjoy this series and welcome any feedback.

**FLAC News is available free on subscription, in print or PDF format. For this 40th anniversary year, it is being sent to all Irish legal practitioners. If you want to receive an electronic version rather than a printed one, or no longer wish to receive FLAC News, please e-mail us at [flacmedia@flac.ie](mailto:flacmedia@flac.ie)**

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The views of individual contributors do not necessarily represent the views of FLAC.

# EU social security network discusses HRC

The trESS (Training and Reporting on European Social Security) network is a European Commission initiative administered by Ghent University in collaboration with 27 independent social security experts from each of the Member States. The current independent expert for Ireland is Mel Cousins.

The objectives of the network are to:

- ▶ Increase knowledge amongst stakeholders in relation to the coordination of social security systems in Member States.
- ▶ Form strong networks at the national level.
- ▶ Monitor problems with the implementation of social security regulations.
- ▶ Carry out legal analysis in relation to social security issues.

Each year the independent expert submits a report on developments at the national level in relation to EU regulations 1408/71 and 574/72 which are concerned with the harmonisation of social security systems across the EU. The country reports are then compiled into a single European report. In the 2008 report on Ireland, the Habitual Residence Condition (HRC) was highlighted as an area of concern.

It was in this context that Saoirse Brady, FLAC's Policy and Campaigns Officer was invited to make a presentation on the operation of the HRC to the trESS seminar. (This presentation is available to download from the trESS website:

[http://www.tress-network.org/TRESS-NEW/PUBLIC/SEMINARS/PRESENTATIONS/IE\\_2009\\_2\\_en.ppt](http://www.tress-network.org/TRESS-NEW/PUBLIC/SEMINARS/PRESENTATIONS/IE_2009_2_en.ppt))

The seminar also heard from Claes Tenggren of the European Commission who discussed recent developments and the forthcoming EU Regulation 883/2004 which is due to come into force in March 2010. This regulation will allow greater harmonisation of social security regimes throughout the EU. It will also simplify and enhance co-operation and information sharing between national institutions. trESS project manager Michael Coucheir discussed the objectives and operation of the trESS project in further detail while legal expert Jean-Philippe Lhernould gave an overview of recent European Court of Justice decisions which may be useful in interpreting EU law in the field of social security.

Attendees at this year's seminar included representatives from the European Commission, officials from the Department of Social and Family Affairs and Health Service Executive, Appeals Officers from the Social Welfare Appeals Office, Social Security Commissioners from Northern Ireland and advocates from Citizens Information Centres as well as individuals from other interested individuals working in the area.

The trESS network may prove to be a valuable resource for people working in the sphere of social welfare or European social security law in Ireland and the website can be accessed at <http://www.tress-network.org/>

## NIHRC launches homelessness report

In September the Northern Ireland Human Rights Commission launched a report entitled *No Home from Home - Homelessness for People with No or Limited Access to Public Funds*. The report examines the increasing problem of homelessness in Northern Ireland for immigrants in

a variety of different circumstances who cannot access housing nor any social welfare payments due to their immigration status. Practitioners south of the border may also find it useful.

Download the report at <http://nihrc.org/>

# Legal aid: It's not just about the money

In August 2009, in advance of a promised Bill on criminal legal aid, the Minister for Justice, Equality and Law Reform reportedly said that the scheme needed the addition of a means test.

Newspapers described how the Minister has concerns around anomalies and difficulties leading to abuse of the system which needed to be removed. At the time, FLAC issued its response, noting that in fact criminal legal aid already has a means test – a practical one, where the circumstances of the applicant for criminal legal aid are actually examined.

While recognising that an accountable government must guard against abuses in the system, FLAC warned against imposing the kind of restrictions set by the current civil legal aid scheme, which result in a substantial bureaucracy, and unfairness to many applicants where a person who is assessed at a single euro under a “disposable income” of €18,000 is eligible for legal aid – albeit with a hefty contribution to pay – but a person assessed at a single euro over that limit does not get any help, no matter how desperately needed.

According to the Department of Justice's Annual Report for 2008, the cost of the Criminal Legal Aid Scheme amounted to €55.3 million in 2008, an increase of nearly €10 million on 2007. However, this rise was simply the result of a growth in the number of criminal prosecutions of people who needed legal aid. The Courts granted 19 percent more legal aid certificates for criminal matters in 2008 than in 2007. The Department had actually set a pay freeze for legal practitioners operating under the Scheme in 2008.

Concerns about the cost of legal aid arise in other jurisdictions too. The UK government is seeking cuts to the budget of the Legal Services Commission, the body which oversees

the entire state-funded legal aid system there. Nonetheless, the UK Legal Aid Minister Lord Bach has said: “The UK has one of the best-funded legal aid systems in the world and it is a vital service for many people, particularly during the current economic downturn. More and more homeowners, employees and those facing financial hardship, are vulnerable to civil law problems at this time. We need to do all we can to ensure that legal aid is prioritised effectively so that more people are able to access it to and resolve their legal problems.”

That service does not reach everyone who needs it. According to a Citizens Advice Bureau report issued to mark the 60th year of state-funded legal aid in the UK:

Despite legal aid's achievements society and its laws have grown far more complex in recent years and too many people cannot access legal help when they really need it. Of the third of the people who experience legal problems in any one year – only 38 percent succeed in getting help. Eight per cent of people in England and Wales have tried to get advice for a civil justice problem and failed. This equates to 2.3 million people. This suggests there are still critical barriers to accessing civil legal services – a fact that presents an ongoing challenge for the Community Legal Service.

It is not just legal aid practitioners and advisors in the UK who are concerned about the continuing gaps in civil legal aid in the UK. In a report issued by the House of Commons Justice Committee in July 2009 on proposed changes to the family law civil legal aid system, the Committee commented:

Much of the debate about family legal aid reform inevitably revolves around fees and payments, which gives the impression that the issues are solely about how much to pay

lawyers. It is all too easy to lose sight of the overall purpose of family legal aid which is the provision of a service to families, and particularly to children, to enable them to gain access to justice and to help them navigate effectively through an increasingly complex system. The families, and particularly the children, involved are often confused, emotionally damaged and vulnerable.”

The debate in the UK and the concerns expressed by lawyers, judges, citizens information bureau, politicians, community law centres and many others, about attempts to cut back an already inadequate service that may not give people the access to legal advice they need for complex legal problems, has a resonance in Ireland too.

Already, the state-funded civil legal aid service here is problematic. In various Legal Aid Board Law Centres, clients in real and immediate need of legal advice and assistance may have to wait for up to 6 months for a first appointment. And now it appears that the government proposes to introduce a Criminal Justice (Legal Aid) Bill in Autumn 2009 which will impose further restrictions on criminal legal aid.

Whatever restrictions to existing systems or changes are contemplated in Ireland, it is important that all the decision-makers remember why legal aid is state-funded at all. That is because the crucial right of access to justice cannot be achieved without it.

While legal aid alone will not guarantee that people will be able to understand the law as it applies to them, nor that they will be able to apply it to their own circumstances, it does nonetheless assist very poor people in dealing with the complex and difficult world of legal rule and regulation. As such, it is fundamental in a society that respects the rule of law. It must be guarded.

## Opinion: The case for coordinated action to protect borrowers

**D**uring the summer months, the current economic and banking crisis continued to create difficulties and misery for many people. There is no doubt that there were a minority of borrowers who borrowed more than – in hindsight – they should safely have done, but equally there is no doubt that many lenders sold credit recklessly, or at least without properly assessing whether people could repay it. Many who borrowed from one or more lenders on one or more terms of repayment truly believed they were contributing to Ireland’s economic boom. They believed this when they mortgaged their houses to finance their businesses or took out numerous loans. They also believed it when they developed, over years, the habit of borrowing and repaying to expand their capacity to live and to work. Irish social habits now routinely include borrowing and lending but the regulation of those who lent the money was extremely light.

Now events are moving with frightening speed, leaving many people exposed and vulnerable. People who could afford repayments while they were working are in difficulty when they lose their jobs. For many, there is no realistic way of selling a home to pay off a mortgage originally obtained to house a family. Even if a house can be sold, the chances are that it will not realise enough to pay off what is owed on it. But yet, at government level, the emphasis remains on saving the financial institutions and protecting our investment reputation worldwide. As this edition of FLAC News goes to print in September 2009, the NAMA legislation is being introduced in the Oireachtas and will be debated. But where is the parallel legislation to protect vulnerable borrowers? It does not exist.

It is not that legislators are not aware of the plight of borrowers. The Minister for Social & Family Affairs, Ms. Mary Hanafin TD recognised the value of the Money Advice and Budgeting Service (MABS)

when she announced the appointment of five full-time and 14 part-time new money advisors in August 2009. FLAC welcomed this increase in resources to MABS, an organisation which is on the frontline in advice and assistance to those with financial difficulties. We pointed out however that money advice alone would not solve people’s problems, although such advice, if delivered in a timely and sensible way, can help address many aspects of over-indebtedness. Nonetheless, this will not deliver the kind of comprehensive protection that is needed. That requires a central government focus on the crisis of people in debt, and co-ordination and co-operation between government departments.

A good example of the absence of a co-ordinated strategy and apparent cross-purposes arose in the enactment recently of two pieces of legislation which have the potential to serve entirely contradictory aims.

In a late amendment to a major work of land law reform in June 2009, the Minister for Justice Equality and Law Reform, Mr. Dermot Ahern TD, proposed the inclusion of a provision in the Land and Conveyancing Law Reform Act 2009 which will require lenders, in housing loans taken out after the Act is commenced, to issue any proceedings for repossession in the Circuit Court. Heretofore, lenders had a choice of the Circuit or the High Court. High Court proceedings tended to be more difficult to access and understand, and more expensive for borrowers who ended up paying all of the costs of the case. In the Dáil debate, the Minister said that “(t)his provision will make life somewhat easier for those people who are subject to repossessions” and would “ensure there was more understanding” for them. While this clause is worthless for all those who already have mortgages and who therefore can only avail of the very weak protection in a Financial Regulator’s code dealing with mortgage arrears, it is nonetheless a useful reform

of the law for future borrowers.

At the same time as this reform was suggested, the Minister was also suggesting changes to the rules of the Circuit Court. This was done by way of a private direction to the Circuit Court Rules Committee, and was not advertised or discussed in the Oireachtas. We are now told that the Minister’s aim was to enhance the change introduced in the Act. However, on FLAC’s analysis, the new rules, brought into effect on 8 July 2009 by Statutory Instrument No.264 of 2009, do the opposite to what they were intended to do. While they do produce a simpler and more streamlined procedure in the Circuit Court, the lender is more likely to benefit from this than the borrower. In FLAC’s analysis, the revised rules will make court proceedings in the Circuit Court more expensive than they were, will speed up the capacity of the lender to recover a property and will reduce the negotiation opportunities for borrowers. They may even result in an order for repossession of a person’s home without the case ever coming before a judge. FLAC has asked the Minister to rescind the statutory instrument to allow some time for a re-think, and a revision which would actually increase borrower protection. At the time of writing, a reply is awaited.

Between January and June this year, there has been a four-fold increase in debt-related calls to FLAC’s telephone information and referral line and a doubling of debt-related visits to our countrywide legal advice centres over the same period in 2008. This increase reflects what most people know without statistics – that many feel vulnerable and insecure and subject to the whim of lenders, who might be slightly bounded by protocols, but are certainly not governed by them. Thus there is a pressing need for government to show that they are at least as aware of the rights and problems of borrowers as they are of the banks.

# Short-term Loans, Long-term Hardship: The US Experience of Payday Lending

*Kelly Mackey was the recipient of FLAC's Thomas Addis Emmet Fellowship in 2008. She spent nine weeks studying at the University of Washington, Seattle and as a legal intern with the Washington Appleseed Centre for Public Interest Law in Seattle. There she concentrated on researching the legislative response of other states to predatory lending, in particular so-called 'payday lending', and on identifying alternative credit options.*

For almost 100 years, payday lending was deemed by US legislature to be usurious and prohibited by State laws across the United States. Since 1996, statutory limitations have been repealed or relaxed to allow for the provision of quick credit to consumers.

A 'payday loan' is a small-value, short-term, unsecured loan made to a borrower who guarantees repayment by providing a post-dated cheque or pre-authorised debit. There are now an estimated 22,000 outlets nationwide generating an estimated \$27 billion in loan volume. Currently, 35 states permit high-cost payday lending while 15 states and the District of Columbia prohibit extremely high-cost payday lending.

The industry has been criticised for exploiting financial hardship for profit. And there is certainly merit to the argument: Low-income individuals are targeted by payday lenders as consumers of their high-interest product. The typical payday loan customer comes from a low-income community and has little or nothing by way of assets – rendering them ineligible for a secure, lower-interest form of credit.

Critically, an average of 80% of borrowers take out more than one loan per year and of that cohort, 87% take out a subsequent loan within the very next pay period, or - in other words - at the borrower's earliest opportunity. A recent study by the Center for Responsible Lending (*Phantom Demand: Short-term due date generates need for repeat payday loans, accounting for 76% of total volume, July 2009*) found that most payday loan borrowers have to

take out subsequent loans because repayment of the original loan left them without adequate means to meet their needs. The borrower becomes mired in a cycle of debt. When one considers that the payday loan product often carries an average of 400% APR, it is apparent that the success of the industry's business model relies on the conversion of occasional borrowers into chronic and dependent borrowers.

The combination of short-term and high-cost has resulted in an unhealthy trend of perpetual indebtedness which has been identified across the United States since the liberalisation of payday lending laws. In response, many states have either capped interest rates on payday loan products or reintroduced state-wide bans.

The most recent proscription was introduced in the District of Columbia in January 2009. D.C. effectively prohibited the payday industry from operating within its jurisdiction by capping interest rates at 24% – the same maximum rate as banks and credit unions – and, accordingly, payday operators in D.C. ceased trading overnight.

However, the payday lending industry finds ways of circumventing prohibitive or restrictive laws by either relocating to more favourable states or onto the internet. And while the industry continues to find new ways to survive, the demand for the short-term, high-interest loan product has only gained more popularity. Indeed, the industry's advertising practices are almost as aggressive as its collection practices.

In terms of solutions, the majority of measures introduced to draw cus-

tomers away from predatory lending institutions are coming from credit unions. Credit unions in various communities across the United States have devised small-dollar loan products with less debilitating levels of interest for their customers. However, these alternatives are only available in a limited number of districts and to existing customers. Perhaps what is needed is for larger credit institutions and banks to provide some of the innovative solutions developed by such smaller institutions in order to create greater access to payday loan alternatives.

However, the lending institution may itself be inimical to vulnerable borrowers, as many of these are "unbanked" because they do not meet the minimum registration criteria for mainstream credit and banking products.

The experiences of the 15 prohibiting states and D.C. have shown that policy-makers and legislators are able to protect individuals from usurious interest rates by capping APR. The Center for Responsible Lending recommends a 36% APR cap (federal regulation already mandates that loans to military personnel be capped at 36%) as it would curtail the practice of lenders trapping borrowers with ballooning repayment rates.

This would also encourage the proliferation of short-term loan products with a more manageable repayment period and break the cycle of supply creating demand, which has created a culture of indebtedness among financially vulnerable communities across the United States.

# Thomas Addis Emmet & William Sampson

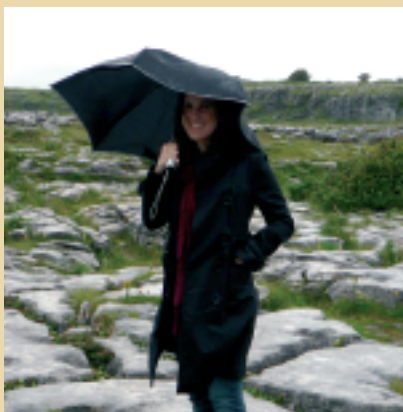
Each year FLAC gives one Irish student the opportunity to take part in a programme run in conjunction with the University of Washington, Seattle, as part of the **Thomas Addis Emmet Fellowship**. During a two-month stay in the United States, the candidate has the chance to work in the field of international public interest law and earn invaluable first-hand experience in human rights and public interest cases. At the same time, a student from the University of Washington comes to Ireland to work with FLAC over the summer as part of the William Sampson Fellowship.

The Thomas Addis Emmet Fellow for 2009 is **Helen Nolan**, a 21 year-old student of law in Trinity College Dublin. Here she describes her time in Seattle, while the William Sampson Fellow, **Kristine Duncan**, outlines below her experience with FLAC:



Left: Thomas Addis Emmet Fellow 2009, Helen Nolan, pictured in Seattle at the Safeco baseball field for a Mariners game.

Below left: William Sampson Fellow 2009, Kristine Duncan, pictured in the West of Ireland



Over the summer I interned with FLAC as part of the William Sampson Fellowship in Comparative Public Interest Law. The Fellowship is arranged through my law school in the United States, the University of Washington in Seattle. Interning at FLAC allowed me to gain perspective on my own legal system and as well as see how public interest lawyers in Ireland address the complex legal issues that face the State today.

The first project I worked on for FLAC was the follow-up report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights. I researched and summarised the State's progress on the Enforcement of Court Orders Act as well as the lack of progress on the rights of transgendered persons and same-sex couples. This project taught me a great deal about the structure of the UN Human Rights Committee as well as Ireland's policies surrounding a number of complicated and sensitive issues. Working on the ICCPR report also highlighted for me a number of injustices at home in the US, where the rights of certain populations are not even as advanced as those the Human Rights Committee deemed inadequate in Ireland.

I was also fortunate to be at FLAC for the launch of its Debt report and subsequently the passing of the new Enforcement of Court Orders Bill. It was

While in Seattle, the Appleseed Foundation was in the middle of a move, so I ended up working on Appleseed projects taken on by the pro bono department of a large corporate firm, Foster Pepper. I was involved in two projects. The first was a report examining access to transportation for low-income individuals in Washington, particularly in terms of access to employment. My research covered the way insurance rates are decided, the power of the Insurance Commissioner to reform insurance laws, and alternatives to car ownership (such as car-sharing, car-pooling and individual employers providing employees with access to cars).

The second project examined the merits of using alternative data (for example, utility bill payments) to improve/build credit scores for people with 'thin credit'. I was in charge of the preliminary research into current use of alternative data and other possible alternatives

not only educational but inspiring to see the public support and government reaction to the report, which brought light to the grievous problems caused by the Enforcement of Court Orders Act 1940 that allowed a person to be imprisoned for non-payment of debt even in his/her absence from court. I feel quite fortunate to have been even a small part of the launch for the report, *To No One's Credit*, by Paul Joyce. Seeing the Enforcement of Court Orders Act debated and eventually passed in the House of the Oireachtas also gave me a new interest in politics that my American education up to this point had not managed to provoke.

In addition to gaining perspective and a rejuvenated interest in the political process, I hoped to be able to contribute in some way to the tremendously important work that FLAC does in bringing justice to those who otherwise do not have access to it. My final project this summer was to begin FLAC's contribution to the

## Fellowships

(such as micro-lending).

In terms of academic work, I missed the first term of the course at the University of Washington, but was able to attend a few of the online classes in the second term. We looked at a variety of practical topics (such as confidentiality and conflict policies in a firm, the use of eyewitness testimony and racial profiling) as well as issues specific to public interest law (for example, mandatory pro bono service and compensation for legal services attorneys). I was able to hear about other student experiences clerking for judges and working for state departments.

I really enjoyed the experience. Though my direct contact with Appleaseed itself was limited, I was involved in exactly the kind of work I hoped to be. I was researching areas I knew nothing about, so that was challenging, but it was interesting to look at issues that wouldn't necessarily be important in Ireland, yet have a huge effect in the US.

Social Welfare Casebase, which was created by Northside Community Law Centre in order to help those currently involved in social welfare appeals gain an understanding of the rationale behind appeal officers' previous decisions. I aimed to use my knowledge of similar casebases in the United States to make the decision summaries of cases FLAC has brought before the Social Welfare Appeals Office as helpful as they can be to those who are involved in taking similar cases to appeal.

I spent the last year immersed in the intricacies of the American legal system, and while this is necessary to become a lawyer in the States, it makes it easy to forget that the world's legal systems give rise to their own problems and solutions. Interning at FLAC not only reminded me of this, but also allowed me to see first-hand how some of these complex problems can be solved with creativity, innovation, and people who truly care.

## Rule of Law in Developing World

*Michael Irvine is a Consultant with Matheson Ormsby Prentice solicitors with extensive experience in international consultancy. He was President of the Law Society of Ireland 2005-2006.*

**T**he Bar Council of Ireland and the Law Society of Ireland came together in early 2007 to provide a programme to enhance the Rule of Law in the developing world. Government policy enumerated in the White Paper on Irish Aid in September 2006 set out that "improving governance, reducing corruption and building democracy must be an integral part of Irish Aid's work." The Rule of Law is at the nexus of these objectives.

The Bar Council and the Law Society have attempted to ensure that any person in either body may play a part in the programme. Open meetings are held quarterly at which any member of either profession may speak on any topic related to the enhancement of the Rule of Law in the developing world. Attendance at these meetings, held alternately on Bar Council premises and at the Law Society, usually comprises about 50 to 60 lawyers.

In 2009, it was resolved by both bodies to incorporate a company limited by guarantee with charitable status so that a structure could be established to formally undertake the tasks/projects assigned to it. The company is now in the process of incorporation and will be established shortly. It will be jointly funded by the Bar Council and Law Society in its initial stages. Irish Aid have provided funding for all of the pro-

grammes or projects undertaken to date. These include the following:

- a) Training for lawyers from historically disadvantaged backgrounds in commercial law in South Africa (project in existence since 2002).
- b) Training for lawyers in human rights and criminal law in Ethiopia (project undertaken in 2008 – see Brian Gallagher's article on page 8).
- c) Assistance in the redrafting of the Rules of Procedure for the courts in Bosnia/Herzegovina (project undertaken in 2008).
- d) Training of Judicial Assistants in Zambia (project undertaken in 2009).

Other programmes have been undertaken to assist the judiciary or lawyers in Tanzania, Kosovo and Sri Lanka. These have not been funded by Irish Aid. A programme on Access to Justice is at a preparatory stage for Malawi and an educational project is also proposed in Kosovo.

It is envisaged that work will grow and hopefully the establishment of the Company will enable a greater awareness of the efforts of the legal professions in Ireland in this field. Practitioners are most welcome to come along to the quarterly meetings - further information can be obtained from the Law Society or Bar Council.

## Films show life in Direct Provision

**I**n May a number of FLAC staff attended the screening of *Living in Direct Provision – 9 Stories* in the Irish Film Institute. The digital stories (short films) were the result of a media workshop run by FOMACS – the Forum on Migration and Communication based in Dublin Institute of Technology (DIT) – in conjunction with Integrating Ireland and the Refugee Information Service.

The nine asylum seekers and refugees participated in a six-month process during which they came up with the con-

cept for their individual stories and recorded it using multi-media technologies. The short films cover issues such as living in direct provision, family members living in other countries, racism and potential sexual exploitation of asylum seeking women.

It is hoped the stories will be shown to a wider audience across the country to raise awareness of everyday challenges faced by asylum seekers in Ireland.

**View them at [www.fomacs.ie](http://www.fomacs.ie)**

# Irish legal project fostering

*Brian Gallagher is a former Chairperson of FLAC and is now managing partner in Gallagher Shatter, with a wide range of legal practice including constitutional and administrative law, civil litigation, employment law and family law. Brian is a member of the Law Society's Human Rights Committee. He is involved in the Law Society's 'Rule of Law' project (see page 7 for details).*

was in a group which travelled to Addis Ababa in November 2008 at the request of the Ethiopian Ministry of Justice to provide training to judges, prosecutors and ministry staff. The trip was part of the wider 'Rule of Law' project of the Law Society and Bar Council of Ireland. It comprised five days of seminars intended to promote an awareness and understanding of the fundamentals of the administration of justice and a respect for human rights and the rule of law. Nearly 90 legal professionals and staff from all over Ethiopia participated in each session. Seminar topics included international human rights law, the importance of an independent judiciary, access to justice, criminal law basics, alternative dispute resolution and regulation of the legal profession.

Ethiopia has a very advanced constitution (available in English) and civil/criminal legal system. Parallel to this it also has systems of customary and religious courts, particularly in rural areas. The statutory legal system takes precedence over the customary/religious ones. For many Ethiopians, however, access to the statutory system is difficult or impossible, given that in a country of about 70 million people, there are only approximately 1500 lawyers.

From discussions with our Ethiopian colleagues, it rapidly became clear to me that the basic problems with access to justice in Ethiopia today bear many similarities to those experienced in Ireland when FLAC was set up 40 years ago, although they are much more severe than in the Ireland of the 1960s. Ethiopia does not provide a state system of free legal aid or advice in either criminal or civil matters. There are serious resource problems; judges and prosecutors are poorly paid and many have second jobs. Legislation is not distributed in a timely fashion; issues of the official Gazette containing new federal

laws are not sent out to either courts or other legal officers. Legal libraries are practically non-existent. Members of the public are generally almost totally ignorant of the country's laws and/or legal system.

Obviously the most likely reason for these deficiencies is lack of funding. Participants were acutely aware of the shortcomings of the country's legal system and were very willing to make improvements (I was reminded that in Ireland in the 1960s, while we did have access to statutes and statutory instruments, we had very few Irish legal textbooks).

The training was the context for my meeting with the Executive Director of the Ethiopian Women Lawyers Association (EWLA), Ms Mahdere Paulos. I was very much reminded of FLAC when I met the EWLA. It describes itself as a "non-profit, non-partisan organisation with an objective of enhancing the political, economic, legal and social rights of women". To achieve these aims, EWLA "has set its programmes through research and law reform advocacy, public education and legal services". The legal services they provide consist of free advice and counselling to women, mediation for disput-

ing spouses and provision of free legal aid for court appearances. Since its establishment in 1995, approximately 73,000 clients have benefitted from EWLA legal support, provided from its head office in Addis Ababa and its branches in the nine districts of the city, its six regional offices and its 54 local committees. Because of the national shortage of lawyers, much of the work is done by paralegals.

Mahdere told us that EWLA's work includes examining old laws which are contrary to the current constitution, providing paralegal training, paying litigant travel expenses and providing a toll-free telephone advice service. They have devised a 'conciliation form' which is sent to the husband and mediation ensues. Family law problems can be difficult to solve by mediation, as the women come for help only as a last resort. However, because of the trust people have come to place in EWLA, about 80 percent of problems are apparently resolved. The EWLA takes very different stance on family law from the traditional process, where community elders tell women they must obey their husband. EWLA paralegals inform the women of their legal rights and also deem it part of their brief to recom-



*Brian Gallagher (seated, centre) pictured with participants in the legal training courses organised by the Rule of Law project in Ethiopia*

Photo courtesy of Brian Gallagher



## 2000 to the present: Working for the public interest

**D**uring this decade FLAC invested in developing a **legal advice service** at every key Citizens Information Centre in Ireland where a service was not in place in conjunction with the dedicated staff and organisers at CICs around the country. All counties have at least one legal advice service and centres outside Dublin (apart from Cork City) operate independently of FLAC, although we refer volunteers to them and assist them with their legal advice service in any way that we can.

FLAC is deeply indebted to the **volunteer barristers and solicitors**, current and past, who have given so generously of their time providing legal advice to members of the public in FLAC centres. In 2008, FLAC through its data collection programme recorded 7,500 callers attending centres for a consultation with a solicitor.

During this decade, FLAC has also resourced its **telephone information and referral line** which is now taking in excess of 10,000 queries per year and we are also constantly developing legal information leaflets and booklets for members of the public, including a series of information leaflets which cover matters such as separation and divorce, employment rights, the Small Claims Court and wills/probate.

FLAC has long been a vocal advocate of **debt law reform** and has been working in the area throughout the decade. In 2003 FLAC published its report *An End Based On Means?* which condemned legal procedures for dealing with debt as outdated. It was followed by a conference in February 2004 proposing alternative debt settlement approaches. FLAC made various subsequent law reform proposals around credit regulation and debt enforcement, leading in 2009 to another report, *To No One's Credit, the debtor's experience of Instalment and Committal*

*Orders in the Irish legal system*, the culmination of a major piece of research, including interviews with people experiencing indebtedness who have been through the legal system.

Campaigning for expansion and **reform of the civil legal aid system** remains a core issue for FLAC's work. In 2005 FLAC published an in-depth assessment of the Irish system including its *Blueprint for Civil Legal Aid*, calling for fairer means testing and action on unmanageable waiting lists. The government introduced some improvements in the state scheme in September 2006. Coinciding with its 40th anniversary in 2009, FLAC launched its report on *Civil Legal Aid in Ireland: 40 Years On*. The report highlighted ongoing issues with the state scheme of civil legal aid: long waiting times; limited resources; and the continued exclusion of important areas such as employment tribunals.

During this decade FLAC has also been concerned with the treatment of people in the **asylum/protection/leave to remain system**, particularly with regard to their treatment under the state's 'direct provision' which requires asylum seekers to live in hostel-type accommodation. In 2003 FLAC published a report, *Direct Discrimination? An analysis of the scheme of Direct Provision in Ireland*. An updated report will be published in late 2009. FLAC initiated a campaign to restore universal Child Benefit in 2006 which led to work on the Habitual Residence Condition that continues today and has yielded important clarifications on the law in this area of **social welfare**.

While well established in other jurisdictions, **Public Interest Law** is an emerging concept in Ireland. Starting with a major conference in 2005, FLAC ran a series of public seminars and roundtables featuring eminent speakers to raise awareness of PIL in Ireland. In

2008 FLAC established the Public Interest Law Alliance to focus and coordinate groups in Irish civil society wishing to use law to advance socially progressive goals.

FLAC's most high profile public interest case currently is *Foy -v- An t-Ard Chlaraitheoir & Ors*. Dr Lydia Foy sought legal recognition following gender reassignment and, represented by FLAC in the High Court, obtained the first ever Declaration of Incompatibility with the ECHR in 2007. However FLAC has taken other cases that further public interest in recent times, such as its action to end the discrimination in participation on juries for deaf people and a separate case on the jury ban for older people.

In 2008 FLAC, in conjunction with the ICCL and IPRT, produced a Shadow Report to the state's Country Report on compliance with the United Nations International Covenant on Civil and Political Rights. At a follow-up conference in 2009, UN Human Rights Committee member Professor Michael O'Flaherty decried the "scandal" of government cuts to the Irish Human Rights Commission (IHRC) and the Equality Authority, only weeks after the UN recommended increasing their resources.

FLAC has continued the **Thomas Addis Emmet Fellowship** throughout this decade, sending Irish law students to Seattle to work in a US public interest environment and hosting US recipients of the **William Sampson fellowship** in our offices each summer. Since 2007 FLAC has hosted an annual lecture in memory of socio-legal activist **Dave Ellis**.

Over four decades, FLAC has campaigned to improve the lives of disadvantaged people in Irish society and its campaign for **equal access to justice** for all is ongoing.



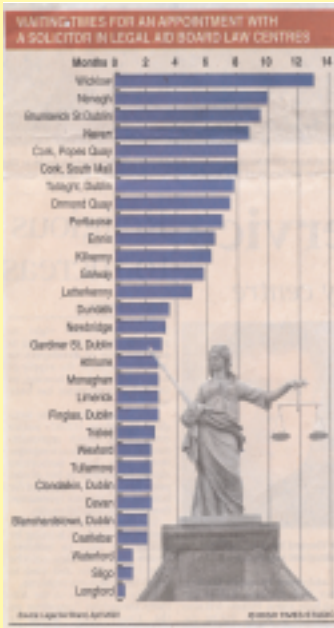
At the launch of FLAC's campaign to restore universal Child Benefit, September 2006: Senator Ivana Bacik; Maria Corbett, Children's Rights Alliance, David Joyce, ICTU; Jacqueline Healy, MRCI



On 8 March 2004, at a conference on reform of laws on consumer debt: Tom Keating (MABS), Paul Joyce (FLAC), Felix O'Regan (IBF) and Peter Ward (FLAC)



*Irish Independent*, 3 December 2008



## Wait of up to 13 months for legal aid appointments

**NANDA HANNERY**  
People on low incomes are waiting up to 13 months for appointments with solicitors in the State's law centres, new figures show.

The campaigning organisation, the Free Legal Aid Centre (FLAC), yesterday called for urgent action to address "alarming" delays which are denying thousands of people access to justice.

However, the head of the Legal Aid Board which runs the law centres is predicting that due to budget cuts and more government-qualifying means tests will lead to a further increase in waiting times this year.

The board provides low-cost legal aid and advice in civil cases, including family and marital disputes and domestic violence complaints, for people on modest incomes, who are means-tested.

Its latest figures show that in almost a third of the State's 30 law centres, clients faced waiting times of at least seven months for a legal appointment with a solicitor last April.

Wicklow law centres had the longest waiting time, of 13 months, with waits of 10 months in Roslags, Co Tipperary, six months in Roslags, Co Wick and eight months in the law centres in Cork. The average waiting time was almost five months.

FLAC, which also provides legal services to disadvantaged people, claims there are low-income earners who cannot afford their own solicitors and "desperately" being denied the fundamental right of access to the courts.

"Thousands already on the poverty line may have their circumstances seriously worsened by the long wait," said its executive director, Ms Catherine Hickey.

The government on the Legal Aid Board's budget from €11.5 million last year to €12.2 million this year, around €7 million less than the organisation had sought from the Department of Justice, Equality and Law Reform.

The board's director of legal aid, Mr Frank Kelly, said this year's figures were disappointing and had led to delays in recruiting staff in 18 centres.

"It's fair to say that waiting times are probably going to increase by another month or two on average and hopefully stabilise before reducing by the end of this year," he said.

He said the backlog in the Wicklow law centre was particularly acute because it had been due to the closure of a small number who recently died.

Irish Times, 9 June 2003



At the FLAC/SICCCA conference on 'Realising Rights', 30 June 2005, (L-R): Sarah Flynn, Donncha O'Connell, Dave Ellis



Launching FLAC's report and blueprint on civil legal aid, 22 July 2005 (L-R): Peter Ward BL, Padraic Kenna (NUIG), Catherine Hickey (FLAC)



At FLAC's conference on Public Interest Law and Litigation in Ireland, 6 October 2005 (L-R): Canadian lawyer Ellie Venhola, FLAC Director General Noeline Blackwell and Mrs Justice Catherine McGuinness

## Challenging bad laws can change attitudes - seminar

**CAROL COULTER, LEGAL AFFAIRS COMMENTATOR**

The taking of test cases, even if they are unsuccessful, can change public attitudes, an international conference on public interest law will be told today. The conference, in Dublin's Royal Hospital, is organised by legal rights organisation FLAC.

Talita Buitrago QC has represented those campaigning for gay rights and the Pacific for environmental rights and for trade union rights. She was one of the founders of the Justice Project, which aims to reform Australia's defunct policy, particularly with regard to its compulsory detention of "unauthorised arrivals".

He pointed out that the number of people arriving in boats is now a rising trend at about 120,000 annually. This compares with 120,000 coming into the country as official immigrants.

"It is notable that the unauthorised arrivals we lock them up, poor, women and children, for four or five years."

He told The Irish Times that Australia also took in 32,000 refugees annually, at a cost of \$200 million per annum. The remainder came from those who applied for asylum following their "unauthorised arrival" and those who obtained Commonwealth visas to remain after overstaying Australia.

Some of them overstayed on previous visas, and then sought asylum. Only 20 per cent of those who sought asylum after such legal entry were granted it, yet some of them was detained, he said. However, over 90 per cent of the "unauthorised arrivals" eventually obtained asylum status, after spending long periods of time in detention.

"We're looking up innocent people with the intention of deterring others. Is this an ethical way to treat people?" he asked.

He pointed out that if the law was a bad law in the first place, a test case would be unsuccessful. But challenging it could change public attitudes.

Honourable Kenna observed that the government should be responsible for addressing the problems in the United States almost 10 years after segregation in schools was found to be unconstitutional, according to social scientists.

Robert Garcia is the head of the Centre for Law in the Public Interest in Los Angeles. It campaigns against test cases with campaigning for equal access to education, parks and transport in Los Angeles.

He pointed out that half a century after the seminal P54 case, Brown v the Board of Education, which found the segregated schools of the southern states to be unconstitutional, 95 per cent of the children in schools in Los Angeles are of colour. White families are fleeing to the suburbs or sending their children to private schools.

"Twenty years per cent of the people in New Orleans did not have access to transportation," he told The Irish Times. "Of course, it's not that, but it's not that."

Today's conference will also have speakers from Northern Ireland and the Republic, Britain, Canada and South Africa.

The Irish Times (p. 2, p. 3, 8-13-14) is published by The Irish Times Limited, 60-62 D'Urbey Street, Dublin 2, Ireland and distributed by Spinnaker USA Inc, 35-00 46th Avenue, L.I.C. NY 11501-3422. In USA call 800 969 1258.

Irish Times, 6 October 2005

## Legal rights group calls for end to prison terms in debt cases

**CAROL COULTER, LEGAL AFFAIRS EDITOR**

**ENDING THE use of imprisonment in debt enforcement and promoting the use of mediation and debt restructuring, are among the recommendations of the legal rights campaigning group, The Free Legal Aid Centre, in a major report being presented today.**

A number of clients of the Helix Advice and Support Service (HASS) were interviewed in the report by FLAC.

The report, an debt enforcement, highlights the issues of preventing those who find themselves unable to pay their debts, leading to small claims being issued against them which, when breached, can lead to imprisonment.

In 2008, 276 people were imprisoned in connection with debt, with the average time served being 21 days. The debt is well over when the person is released.

The report proposes improving access to information for debtors who find themselves faced with legal proceedings, through the publication of an explanatory booklet in plain language writing, the options available and the consequences of not responding to the issuing of proceedings. All the legal documents should be plain English, it says.

It also should be promoted and advanced nationally to ensure that help is sought at the earliest opportunity, and the money advice process should be promoted as an alternative to court proceedings.

Given the cost of public spending, a co-ordinated approach to the provision of services complementary to those of legal aid and advice, citizens' information and family support should be developed, it says. Funding for HASS should increase to reflect the increased demand on its services, reduced in waiting lists.

The Legal Aid Board should promote its services on the area of financial matters as well as family law, and it should seek to co-operate with HASS.

Legal aid officers should also assist people to establish that the debt is not a valid debt, rather than always assuming it is. A person threatened with imprisonment for debt should always be able to dispute legal proceedings, the report states. The creditor should be able to make proposals on repayment. Any judgments should be based on a comprehensive financial statement of their financial affairs.

The division on imprisonment recommendations should be made to private rather than in open court, and debtors should be entitled to have advisers with them to put forward proposals. They should be clearly advised of their right to apply to the court for a variation of the payment order.

They should also be informed, where a consent order is issued, that imprisonment is not inevitable and that by raising up and going to court, an application acceptable to the court it can be avoided. They should also be informed of their right to appeal a consent order, the report recommends.

Mediators should be promoted as an alternative to court proceedings, with legislation to provide for it. It also recommends that should involve the establishment of a Debt Restructuring and Mediation Service, setting in practice, which would facilitate agreement on a flexible repayment, and which could have a debt settlement role.

**Irish Times, 18 Feb 2008**

Irish Times, 6 July 2009

## Ruling may improve access to civil legal aid

**A landmark judgment may mark the beginning of the end for those hapless citizens languishing on civil legal aid waiting lists, writes Paul Joyce**

The High Court has ruled in favour of the State in a case which will allow the State to recover the cost of legal aid for those who are not eligible for legal aid. The ruling is a landmark for the State and for those who are not eligible for legal aid.

The case involves a claim for legal aid for a person who was not eligible for legal aid. The court found that the State was not liable for the cost of legal aid for that person.

The ruling is a landmark for the State and for those who are not eligible for legal aid. It may improve access to civil legal aid for those who are not eligible for legal aid.

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Irish Times, 12 February 2005



Irish Independent, 18 May 2008



Irish Times, 3 February 2004



Right: Irish Examiner, 20 October 2004

Dr Lydia Foy with FLAC Solicitor Michael Farrell following the issuing of the first ever Certificate of Incompatibility with the ECHR in her case for gender recognition in the High Court, 19 October 2007



Left: Singer Mary Coughlan (centre) launched FLAC's report on debt enforcement on 6 July 2009. Also pictured are Paul Joyce & Noeline Blackwell.



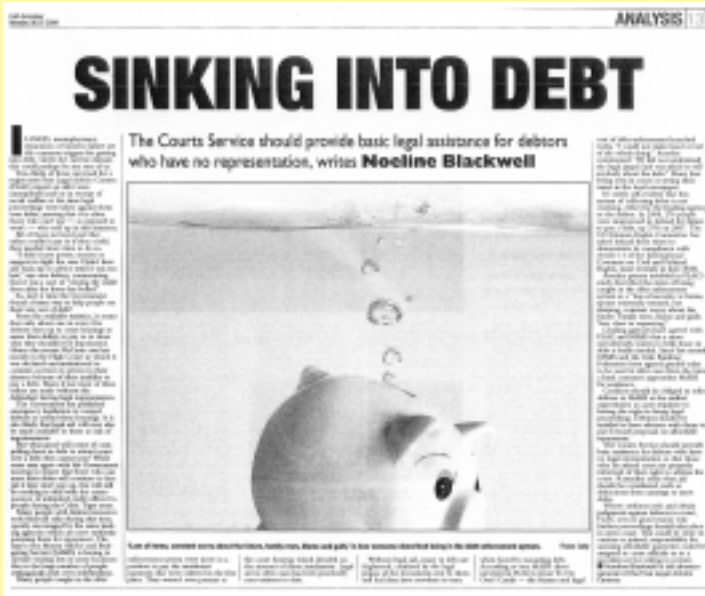
At a FLAC seminar on public interest law, 30 April 2007 (L-R): Solicitor John Costello, retired judge Costello and Prof W Kingston.



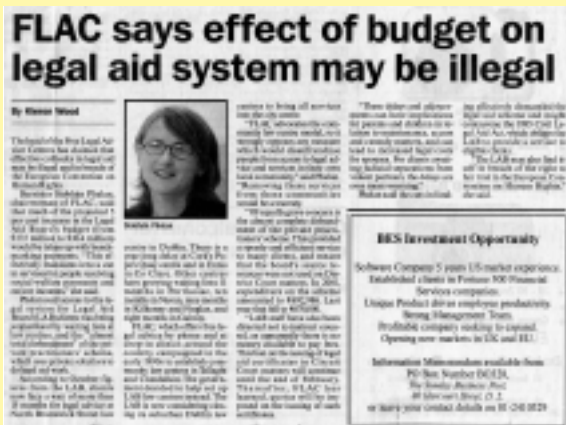
At the joint NGO follow-up conference on ICCPR, 6 April 2009 (L-R): Eamonn MacAodha (IHRC), Prof Michael O'Flaherty, Michael Farrell (FLAC), Dr Maurice Hayes, Tanya Ward (ICCL).



Dr Maurice Manning (R) launched FLAC's report *Direct Discrimination?* on 16 July 2003. Here also FLAC solicitor Eleanor Edmond, FLAC Chair Siobhan Phelan and Ruslan Tschoev



Irish Examiner, 6 July 2009



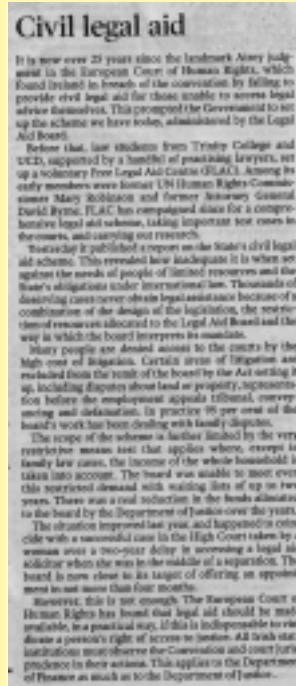
Irish Examiner, 7 December 2003



At the Thomas Addis Emmet Fellowship award ceremony, 10 June 2002 (L-R): the Hon. Mr Justice Donal Barrington, Chief Justice Keane, Fellowship recipient Paul O'Connell and FLAC Chair Siobhan Phelan.



Irish Times, 25 October 2001



Irish Times, 23 July 2005



Right: Irish Examiner, 3 December 2008

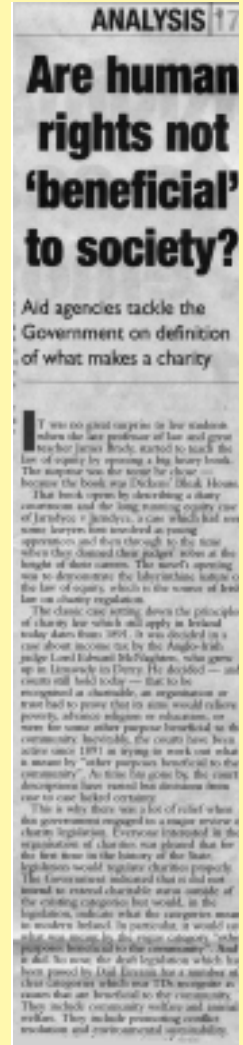
Below: Lawyer Colin Gonsalves speaking at a public interest law seminar in India (right: FLAC Director Noeline Blackwell) 6 Sept 2006



Irish Independent, 23 December 2008



FLAC was recipient of a People of the Year award in 2004. Accepting on behalf of the organisation on 9 October 2004 were (L-R) Siobhan Phelan, Peter Ward and Iseult O' Malley of FLAC Council.



# the rule of law in Ethiopia



Photo courtesy of Hilikka Becker

L-R: *Ercus Stewart SC, Patrick Dillon Malone BL and Hilikka Becker, solicitor with the Immigrant Council of Ireland, who also travelled to Ethiopia to provide training on legal practice and procedures to local practitioners*

mend HIV tests where there is domestic violence involved.

The EWLA carries out research and advocacy and where there is a need for new legislation (especially in the area of gender-based violence) it makes submissions to Parliament. Anecdotally, the EWLA also supplies copies of the Penal Code to police, as in many cases this is not supported by central government.

Domestic violence is deeply rooted and culturally acceptable in Ethiopia. Much of EWLA's time is devoted to projects aimed at eradicating gender-based violence, and on our visit we heard of projects such as 'Best Area Husband,' with a calf as the prize. This may seem to our Noughties, sophisticated mindset to be ineffectual, but the EWLA is convinced that using non-confrontational methods and respecting traditional practices will achieve much where the state itself has few or no resources to devote to eradicating gender-based violence.

My experience in Ethiopia convinced me that the FLAC methods are successfully applicable in countries which are very different from Ireland.

## **CASE STUDY: Here is an example of a case taken on by EWLA lawyers, from a booklet of selected casework:**

In the course of K's marriage, she gave birth to three children. After her husband's death, his grandchildren from a previous marriage pursued K and her three children in the Sharia courts (Muslim religious court) claiming a share of the late husband's estate. K refused to be judged by the Sharia court and wanted the matter dealt with in the state courts. Article 34.5 of the Ethiopian Constitution states that "the Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute," i.e. the consent of both parties is required to give the Sharia court jurisdiction.

Despite this constitutional right, the Sharia court denied K's request to be judged by the state courts and gave judgment in favour of the grandchildren. K appealed to the Upper Sharia Court of Appeal which reaffirmed the judgment. K then came to the EWLA

which decided to take on the case and represent her in the state courts. It was concerned that the higher Sharia court had denied K's constitutional right and that this would affect not just her but all Muslim women in Ethiopia. Furthermore, the Constitution states in Article 3.1 and 3.7 that women have equal inheritance rights with men. EWLA brought the matter unsuccessfully before the Supreme Court (as in Ethiopia the civil courts are not permitted to adjudicate on constitutional issues).

EWLA then brought the matter before the 'Council of Constitutional Enquiry' which is the body charged under the Ethiopian Constitution with dealing with constitutional matters. There the error in interpretation was acknowledged and judgment given in favour of K. EWLA complained that this case took a very long time from start to finish - some four years, but I told them it would take at least as long in Ireland!

## FLAC casework makes progress in clarifying law on habitual residence

**On 1 September, FLAC issued a briefing note on the Habitual Residence Condition (HRC) which is a resumé of work the organisation has been doing to clarify the law in this area. The briefing summarises four recent decisions by the Chief Social Welfare Appeals Officer and explains how the positive decisions help clarify Irish law on habitual residence, which remains to some degree arbitrary and confusing. The briefing is summed up below:**

The Department of Social and Family Affairs had appealed positive decisions by Social Welfare Officers in four cases to grant Child Benefit to mothers in the asylum/protection/leave to remain process during 2008. FLAC represented the four women in the reviews by the Chief Social Welfare Appeals Officer and also applied for review of a further four cases where the Appeals Officer had ruled against the appellants based on the 2003 Supreme Court case of *Goncescu v Minister for Justice, Equality & Law Reform*.

The Department claimed that following the *Goncescu* ruling, nobody in the asylum/protection/leave to remain process could qualify under the Habitual Residence Condition (introduced in 2004) as they could not be considered resident in Ireland.

This was now a stricter departmental position than was previously the case, where the five criteria laid out in the Social Welfare and Pensions Act 2007 were taken into account. It now seemed that the Department was excluding people in the asylum/protection/leave to remain process as a class from qualifying under the HRC, as detailed in its Guidelines to Deciding Officers dated June 2008.

FLAC argued that the *Goncescu* ruling was not relevant in deciding social welfare cases, given that it concerned unsuccessful applicants for asylum/leave to remain who were seeking to stay in Ireland as self-employed businesspeople based on EU agreements.

Further, FLAC queried how the Department used advice from the Attorney General in regard to these

cases. The AG had advised that time spent in the asylum process could not be considered 'residence'. However the AG had given the opinion that time spent in the state was only one of the five factors used in determining habitual residence, and that other factors such as forming relationships, putting down roots in communities and having children attending local schools could help to establish habitual residence also.

By August 2009, the Chief Social Welfare Appeals Officer had decided on four of the total eight cases. He found that the *Goncescu* ruling was not relevant to social welfare cases and noted the Department's failure to quote the rest of the AG's advice with regard to residence.

In practice this means:

1. The Department and Deciding Officers cannot exclude applicants for asylum/protection/leave to remain as a group from satisfying HRC. Each case must be decided on its own facts.
2. The length of time spent in the State is not the deciding factor in determining habitual residence and given that applicants for asylum/leave to remain are not allowed to work or leave the state while their application is processed, the "centre of interest" criterion and the future intentions of the applicant should be duly considered.
3. Contacts and associations developed while in the asylum/leave to remain process can help satisfy HRC criteria.
4. As regards precedents, the Chief

Social Welfare Appeals Officer seeks to ensure consistency and thus deems it important to identify underlying general principles in any case. Therefore it is open to claimants to cite examples of previous cases where people in the asylum/protection/leave to remain process met HRC criteria.

FLAC suggests that claimants who have spent long periods in the process, awaiting decisions through no fault of their own, should not be penalised or prevented from having that time recognised in determining HRC and should argue that it be taken into account.

It should be noted that not everybody in the asylum/protection/leave to remain process will now qualify under HRC. In order to satisfy this condition, applicants must still satisfy the criteria in the 2007 Act.

It should also be noted that the Department had unilaterally decided to withhold all payments to clients who had successfully appealed decisions until the review of the decision had been completed. FLAC issued judicial review proceedings in one case but the decision review was completed and payments made (with arrears) shortly before the hearing date for proceedings. Thus the issue is still outstanding for future reviews of successful social welfare appeals where the Department again refuses to issue payment.

**For the full briefing paper, please go to the FLAC website:  
[http://www.flac.ie/download/doc/09\\_09\\_01\\_hrc\\_briefing\\_note\\_final.doc](http://www.flac.ie/download/doc/09_09_01_hrc_briefing_note_final.doc)**

## New legal resource for homeless people

**M**ercy Law Resource Centre is a new organisation which will open its doors to the public this September. It is the brainchild of the Sisters of Mercy who saw that law was becoming increasingly important as a way of influencing public policy and shaping society and who wanted to use this force on behalf of those most marginalised in society.

After much consultation and research, it was finally decided that the new service would be aimed at those who are experiencing homelessness. It was felt that people going through the experience of homelessness were particularly disadvantaged because, as well as contending with material poverty, they had to contend with societal attitudes and prejudices. These are particularly strong when people are struggling with additional issues such as addiction, mental illness, leaving prison, prostitution and so on.

Because people in these situations can be alienated by authority, they may find the legal system difficult to access and negotiate. Accordingly, the Centre is trying to develop a service that will be



*Pictured above are Tony O'Riordan, Manager of of FLAC's Public Interest Law Alliance (PILA) project and Michele O'Kelly, solicitor with the Mercy Law Resource Centre*

friendly, easy to access and responsive to the needs of its client group. Innovative features include dealing with any area of law with which clients have problems, meeting clients at times and in places that suit them e.g. early morning advice clinics in homeless hostels and providing a befriending service where clients are accompanied and supported through the process of accessing legal services. In this way, the Centre hopes to make some effort towards overcoming the cultural and psychological barriers that can stand in the way of people's access to justice.

In addition to working with individual clients, the Centre will offer legal support to voluntary and community organisations working in the field of homelessness and related areas. It also wants to use the law to advocate on behalf of people going through homelessness for changes needed in law, policy and social attitudes.

MLRC will start with the services of solicitor Michele O'Kelly and administrator Cairiona O'Hara.

## Public interest litigation – Northern style

**A** new initiative has recently been established in Belfast named the PILS Project (Public Interest Litigation Support). After a 2005 study showed that there was a need and demand for dedicated strategic litigation project in Northern Ireland, the Committee on the Administration of Justice (CAJ) sought funding from Atlantic Philanthropies to embark upon a five-year pilot project in the area. Funding was granted in 2007 and the project was established in May 2009.

The PILS Project will work to advance human rights and equality in Northern Ireland through the use of and support for public interest litigation. Its definition of public interest litigation is the use of litigation or legal action which

seeks to advance the cause of minority or disadvantaged groups or individuals, or which raises issues of broad public concern.

The main aims of the project are to:

- a. Enhance awareness of public interest litigation and facilitate communication between non-governmental organisations working in this area through The PILS Project Stakeholder Forum and other awareness raising activities;
- b. Provide financial and/or legal support to public interest cases which meet the PILS Project case criteria;
- c. Work with the legal profession to increase levels of *pro bono* activity in Northern Ireland;
- d. Raise awareness of and seek to tackle existing barriers to public interest

litigation through the organisation of conferences and seminars, production of publications and other non-litigation based activities.

Strategic oversight of the Project lies with a five member Board. The project has 3 staff: Melissa Murray is Project Manager and Solicitor, Marieanne McKeown is Development Officer and Mickey Ghanni works as the Finance Officer. The team can be contacted at Arthur House, 41 Arthur Street, Belfast, BT1 4GB, telephone: 048 90446201 or [www.pilsni.org](http://www.pilsni.org).

FLAC and PILA look forward to working closely with PILS over the coming months and years to promote the use of the law in the public interest across Ireland.

## Focus on FLAC: Don Crewe Solicitor & member of FLAC Council

**D**on Crewe is a member of FLAC's National Council and is a partner with Patrick Buckley & Co Solicitors, based in Cork. He first encountered FLAC in UCC in 1979, when he joined the University's FLAC association as first year law student. He never did manage to break that early connection and has been involved with the organisation ever since; as he says himself, "Every time I thought I was out..."

Having finished his BCL in 1982 and LLB in 1985, by the time he was apprenticed Don had become involved in providing legal advice and information to the public in the FLAC advice centres in Cork. At that time there were two centres, one on Tuckey St and the other in the Blackpool Community Centre. Don volunteered in both, and feels he benefitted very much from the experience and contact with the public that volunteering in a FLAC centre brings. He was a volunteer for much of the 1980s and 1990s.

He joined the National Council of FLAC in 1989 and has remained on the Board ever since. The Council was, at the time he joined, much more involved in hands-on management of the organisation, as the staff was very small. In the years since then however the organisation and staff have grown vastly and the Council's role now is more one of governance and strategy. As he comments, "in fact, FLAC is about to enter into a new phase of strategic planning towards the end of 2009 so it is very timely to reflect on how the structure has changed over the years."

Don works as a solicitor in general practice specialising in commercial work and so his involvement with FLAC is a welcome opportunity for him to exercise his interest in other areas of law such as access to justice, debt, employment and social welfare law. "Issues like debt and employment law are very topical and relevant to increasing numbers today and FLAC's work on credit and debt law in particular is very timely and important," Don comments.

The growth in FLAC's profile over the



last number of years is very heartening, says Don. It is great to see FLAC making a difference and being recognised for many decades of hard work. However, other simple things like moving to its own premises on Dorset Street have also made a big difference for the organisation. Another development that has much potential for effecting positive change in Irish society is, he believes, the Public Interest Law Alliance (PILA) project. Ultimately, says Don, change is what FLAC is trying to achieve – change that will "establish, maintain and improve people's basic rights and meet the challenge of a transformed social, political and economic environment."

He feels that FLAC, with its strong resources of volunteers and staff, is well placed to help people impacted by economic recession and be a strong voice and advocate for change to enhance people's rights. Into the future Don hopes for improvement in the legal aid scheme. While funding is a huge problem, FLAC must continue to campaign for

better provision of civil legal aid for the public as it is needed now more than ever. He hopes FLAC's new project, PILA, will go on to make the connections between the various stakeholders and create a new general concept of using law in the public interest in Ireland, based on Irish conditions and resources rather than following a specific model from abroad. He hopes PILA will expand the limited view of public interest law as only being about litigation and will bring people together to see how the law can be used in a mixture of ways.

At the end of the day, Don would like to see FLAC continue to work on improving basic human rights for vulnerable and under-resourced people, in key areas like housing, social welfare, health and employment – basic issues that affect those who have been impacted most adversely over the last year. FLAC has to target these areas, as he says, "so those with the least voice and least political clout have somebody battling for them."



## Inside the Centre: The Free Legal Advice Centre @ Clondalkin CIC, Dublin 22



**Michael O'Dwyer, a partner in a firm of solicitors, volunteers in the FLAC Centre in Clondalkin on Tuesday evenings and is rostered in about once a month. The centre is based in the Citizens Information Centre (CIC). Below Michael speaks about his work with FLAC:**

**A**s it is not means tested and is intended for those who cannot afford to engage a private solicitor, FLAC is an important access point for people requiring straightforward, speedy legal advice who cannot wait for advice from or an appointment with the Legal Aid Board (LAB). With the Civil Legal Aid Act 1995, the state established the LAB to provide legal representation and advice in civil matters to people meeting financial criteria. However, waiting times to see a LAB solicitor in Clondalkin currently can be up to two months.

I think there is a general lack of knowledge among people about their entitlements to state civil legal aid and how to apply for and access the service. The LAB is under a statutory obligation to disseminate information in relation to its services. Added to this, the LAB is excluded by law from acting in certain areas, for example in the Employment Appeals Tribunal, the Social Welfare Appeals Tribunal, the Equality Tribunal and areas such as local authority housing.

At Clondalkin FLAC, I provide advice on a range of legal queries including family law, court related matters, housing/landlord issues, probate issues and, more increasingly since the economic slump, employment law and credit/debt issues. It was

assumed that the tide of the Celtic Tiger economy would raise all boats. A lot of people got caught up in the hype of Irish economic success and over-extended themselves financially.

It is now apparent that the high level of Irish personal over-indebtedness resulted from a culture that encouraged easy credit, fuelled by the belief that the economy would continue to grow and that any slowdown would come as a 'soft landing'. To use an analogy, unfortunately the economy crashed into the Hudson River. It is barely afloat, with some people 'injured', and a takeoff for the economy in its present form is not estimated for some time.

For example, some Clondalkin FLAC clients got car financing or signed up to mortgages (including sub-prime mortgages) that focused more on their ability to meet a certain repayment per month than on the high fixed-interest rates applicable or the potential for disaster if circumstances deteriorated due to reduced pay, working hours or redundancy.

A lot of people now find themselves in dire financial distress, having to negotiate with lenders without assistance and facing court applications for repossession of their homes, despite the recent Code of Conduct for Mortgage Arrears from the

Financial Regulator. Repossession applications may be delayed or put on hold, but they remain active and hanging over the heads of those affected. If a person has taken out a 100% mortgage and the property is now in negative equity, even if he/she hands back the keys to the lender, he/she will still owe the difference between the current house value and the original purchase price, plus costs and penalties.

The Money Budgeting and Advice Service provides a very highly respected financial advice service; however once legal proceedings are issued, a person requires legal advice and representation. Individuals and families struggling to keep their heads above water financially who cannot afford a private solicitor must be able to seek legal aid if they are to access the legal system and protect their position.

Another example is of employers taking advantage of the economic downturn to lay off staff under the guise of 'cost savings for company survival'. A post may be reported as redundant, where in fact this may not be the case. It is very difficult for an employee being let go to take a case to the Employment Appeals Tribunal if he/she cannot afford it, as the civil legal aid scheme does not cover representation at quasi-judicial forums. This is not consistent with the right to a fair hearing as guaranteed by the Irish courts and international human rights law. The European Court of Human Rights has held (in *Airey vs Ireland*) that the state has a duty to provide legal aid where the rights and obligations of the individual are in question and the matter is so complex that the applicant could not reasonably be expected to represent him/herself effectively.

In summary, people with legal problems require legal help at the earliest possible opportunity in order to avoid a slew of other problems developing which may prove more costly to the state in the long term. FLAC is providing a stop-gap for these problems but ultimately the state must take appropriate action to serve its citizens adequately in this area.

## The Poor Can't Pay: FLAC joins campaign for fairness in cutbacks



Photo by Patrick Bolger Photography

**F**LAC has joined the 'Poor Can't Pay' Campaign, a civil society movement that believes people earning the minimum wage or living on social welfare are not responsible for our present economic crisis and should not be penalised in the forthcoming budget. You can support the campaign by visiting [www.thepoorcantpay.ie](http://www.thepoorcantpay.ie) to send an email to your local representatives.

*Pictured left are representatives of campaign member organisations seated around the "cabinet" table on Molesworth Street – in the shadow of Dail Eireann – to appeal to the Government to consider the harsh impact cuts will have on thousands of families and single people living on welfare or struggling on low incomes.*

### EU appoints new grouping to monitor racism

**T**he European Union's Fundamental Rights Agency (FRA) has appointed the Irish Council for Civil Liberties (ICCL) and University College Dublin (UCD) School of Social Justice as the FRA's new RAXEN National Focal Point on racism, xenophobia, islamophobia and anti-Semitism in Ireland.

The ICCL/UCD consortium will be assisted by a panel of the country's top academic experts, as well as by the Immigrant Council of Ireland (ICI), which has been subcontracted to develop the communications work of the RAXEN National Focal Point.

RAXEN National Focal Points are the FRA's recognised national coordinators, contracted to manage an information network including government departments, research bodies, statutory human rights and equality bodies, NGOs and social partners. Based on information gathered through this network, the ICCL / UCD consortium will provide regular reports to the FRA on racism and related forms of intolerance in Ireland.

### Date for your diary: FLAC annual lecture for 1 December

FLAC's third annual **Dave Ellis Memorial Lecture** will take place on Tuesday 1 December at 6pm, followed by a wine and cheese reception.

Venue will be confirmed. We are delighted to announce that **Dr Maurice Hayes** will deliver this year's lecture. All are welcome. We extend a special welcome to all current and past FLAC volunteers.

For further information, please email us at [info@flac.ie](mailto:info@flac.ie) or phone us at (01) 8745690. You can also check the website for updates under our Events section.

### ERA complaint to European Union

**E**quality and Rights Alliance (ERA) has lodged a complaint to the EU Commission following the savage cuts to the equality and human rights sector. ERA members contend that the Irish Government has used the cover of financial cutbacks to mount a targeted attack on Irish Equality and Human Rights institutions. This has undermined the ability of the Equality Authority to function as a designated national body under EU equality directives.

In particular, the combination of a budget cut and an accelerated decentralisation programme have undermined the ability of the Equality Authority to effectively fulfil its prescribed functions. The Authority's budget was cut by 43% last October while cuts to other Justice departmental agen-

cies were in the order of just 2 to 5%. In addition, the McCarthy report has recommended a further 10% reduction in the Authority's non-pay budget.

The complaint was prepared by Orlagh O'Farrell who worked formerly as a lawyer with the European Commission and is the Irish member of the EU's network of independent legal experts on anti-discrimination law.

ERA has also submitted a petition to the EU Parliament on this issue. ERA has received the support of all opposition MEPs who are signatories to the petition. For more information and to read the full text of both the complaint and petition, go to: <http://www.eracampaign.org/complaint-to-the-eu>

# Public consultation on responsible lending and borrowing in the EU

It may be too late for Ireland but the European Commission has recently invited submissions to a consultation on responsible lending and borrowing which closed at the end of August.

Nonetheless, FLAC felt that it was important that we attempted to put on the record our view of how reckless attitudes to credit in Ireland played a significant role in the 'boom to bust' scenario that is the new reality for so many today. FLAC's submission to this process can be accessed on our website at [www.flac.ie](http://www.flac.ie).

At the time of writing, the economies of many EU Member States are said to be recovering and doubtless there are many across the EU who look forward to fresh lines of credit being opened, whether as consumers or to develop and maintain small businesses.

Equally, there are doubtless lenders out there in search of new market places. There is no doubt that credit oils the wheels of economic activity but the pursuit of economic growth without regulatory vigilance is a recipe for disaster. Consistently, the worldwide recession and US sub-prime crisis was said to be the main catalyst for our deteriorating economic situation. The reality is that while it played a significant part, poor regulation and largely unfettered access to credit were crucial elements contributing to the current debacle.

Consistently too throughout the boom period the State maintained that competition would look after the interests of consumers. In fact it seems to us that competition between credit providers reached such a fever pitch that would-be consumers were bombarded with credit offers and common sense was in many instances abandoned.

A sub-prime lending market saw lenders issuing loans at high interest rates to people with impaired credit

histories on the assumption that an already overheated property market would remain buoyant. Calls to properly regulate the sub-prime market were ignored until long after the damage had been done.

What role has the European Union played so far in curtailing reckless lending? The answer would appear to be not a great deal. The common standards of consumer protection adopted in the first Consumer Credit Directive were confined in the main to ensuring that consumers received transparent information in relation to credit agreements and the updated directive that has recently been agreed does not substantially alter that approach.

Equally, there has never been an attempt to agree a directive that would impose some minimum standards of fairness in relation to debt enforcement procedures. This has allowed a Member State like Ireland to maintain outdated debt recovery and bankruptcy procedures despite huge increases in credit and over-indebtedness.

It is notable too in this regard that the EU has nonetheless seen fit to agree a number of legal instruments to make debt collection and judgment enforcement easier across borders. If the EU can harmonise cross-border debt collection, should it not insist on common standards of fair treatment for consumer debtors?

## Summary of FLAC's submission

In brief, FLAC's submission suggested that the primary onus should be on creditors to ensure that credit is provided responsibly. Financial institutions have the necessary expertise to assess risk, whereas consumers often lack the financial and legal knowledge necessary to fully understand credit products and their consequences. In many instances during the boom, loans were granted where financial information and existing

commitments should have indicated that default was inevitable.

This is not to say that some borrowers were not reckless too in the manner in which credit was consumed. A responsible lending culture should involve the provision of safe, responsible and comprehensible products, linked to genuine assessments made by the lender of the borrower's capacity to repay at rates of interest that are profitable for the lender but not exploitative.

In response to the specific question as to whether there were any classes of credit agreement that might be regarded as inherently unsuitable for consumers, FLAC suggested that a 100% mortgage at the height of a property boom, the latest in a series of multiple credit cards, or a Hire Purchase agreement on a very expensive vehicle might be potential examples. The role that mortgage intermediaries and credit intermediaries had played in lining up customers for credit was outlined and, in particular, the lack of objectivity of intermediaries whose commission often depended upon a successful loan application.

FLAC suggested that meaningful reform would require a multi-pronged approach, enhancing consumer information and education on financial products, curbing sharp and dishonest marketing practices, and imposing minimum standards of care on credit providers. The key to the success of a reformed regulatory system, however, lies with enforcement. Lenders facing civil and criminal sanctions for breaching regulatory requirements will be discouraged from engaging in reckless lending.

Although increased regulation may increase costs and complicate transactions, a balance must be struck between a free-for-all and unduly restricting access to credit. Consumers in Ireland are currently paying the price for the lack of balance.

