

# flacNews

FREE LEGAL ADVICE CENTRES

## Ireland under UN spotlight over human rights record



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Judge Michael Kirby of the Australian High Court launching the ICCPR Shadow Report

*See page 8 for details.*

**O**n 14-15 July 2008, Ireland's human rights record was reviewed by the UN Human Rights Committee in Geneva under an important international agreement to which Ireland is party, the UN International Covenant on Civil and Political Rights (ICCPR). The Committee questioned Ireland on a wide range of important areas in which the State continues to neglect its obligations on civil and political rights under the Covenant.

These include two issues central to FLAC's campaigning, the rights of

transgendered people to proper identity documents and the continued use of imprisonment as a sanction for the failure to pay a civil debt.

It also included the State's reservations to the Covenant and the status of the ICCPR in Irish law, extraordinary rendition, abortion and the right to life, trafficking in human beings including children, detention of migrants and asylum seekers, conditions of detention in prisons, the continuing jurisdiction of the Special Criminal Court, summary removal and independent refugee appeals, dis-

crimination against non-traditional families, religion in education, funding of the Garda Síochána Ombudsman Commission (GSOC), Article 41(2) of the Constitution and the ethnicity of and discrimination against Irish Travellers.

Before the review, the Committee received written submissions from the State outlining its position with regard to the rights under the Covenant, including a periodic report which the State undertook to submit on ratification of the Covenant.

[continued on page 3]

## in this edition...

Ireland under UN spotlight over human rights record 1,3

Strasbourg body rejects Free Travel claim 2

FLAC volunteers honoured 2

Pre-budget submission 2009 4

UN International Day on Poverty 4

Law Society launches civil legal aid guide 5

Submission on Habitual Residence Condition 6

2008 Sampson Fellowship 7

New online forum for volunteers 7

ICCPR Shadow Report probes state of human rights in Ireland 8-9

Irishman re-elected to UN human rights watchdog 9

Concluding comments: How the Shaow Report matches up to UN appraisal 10-12

Data Collection Programme: January to June 2008 13

Comments on proposed merger of rights agencies 14-15

Responsible credit group calls for gov't action on credit crisis 15

Merger of equality and rights agencies would hurt society 16

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

# Strasbourg body rejects Free Travel claim

The Council of Europe's Committee of Social Rights has rejected by 10 votes to 4 a complaint by FLAC and the International Federation of Human Rights (FIDH) about the Irish Free Travel scheme. FLAC and the FIDH had claimed that the exclusion from the scheme of non-resident Irish pensioners when they come home to visit their families is in breach of the European Social Charter. One member of the Committee delivered a dissenting opinion.

This was the first ever case against Ireland under the Social Charter taken by a domestic NGO. FLAC argued that the exclusion of 40,000 non-resident pensioners, mostly in Britain, was discriminatory and in breach of Article 23 of the Charter, which requires member states to take measures "to enable elderly persons to remain full members of society for as long as possible", and Article 12.4, which provides for the retention of social security rights when moving between member states.

Extension of the Free Travel scheme to Irish pensioners abroad is officially Government policy but the Government fought this case very hard, even objecting to the right of FLAC and FIDH to take it at all. The Committee, which decides on

complaints under the Charter, ruled that the two bodies were entitled to take the case and that it was admissible, but then found against it on the merits.

The Committee "recognise[d] the close links that many [non-resident pensioners] wish to maintain with public, social and cultural life in Ireland". However, it said that because the Free Travel scheme is non-statutory it did not constitute a social security right under Article 12.4 of the Charter and that restricting it to permanent residents was not in breach of Article 23.

A Turkish member of the Committee, coming from a country with a long history of emigration, dissented, saying that non-contributory benefits could still be counted as social security rights and that it was not permissible to restrict Article 23 rights to permanent residents.

This was a disappointing result for Irish pensioners abroad who will just have to continue campaigning for this modest recompense for what they have contributed to the home country over the years.

A copy of the decision is available on the Council of Europe website under "Social Charter".

## FLAC volunteers honoured



FLAC has received an award from the International Society for the Reform of Criminal Law for its *pro bono* (free) legal services. Pictured at a reception hosted by the Law Society are (L-R) Catherine Hickey and Michael Farrell of FLAC, ISRCL President Damien Bugg and Law Society President James MacGuill.

# Ireland under UN spotlight over human rights record

[cont'd from front page]

Present at the review was a large government delegation headed by the Attorney General, Mr. Paul Gallagher SC, and including the Secretary-General of the Department of Justice, Equality and Law Reform, Mr. Sean Aylward.

The Committee also invites non-governmental organisations (NGOs) to submit independent reports and to lobby the Committee to draw attention to areas of concern where the State is failing to comply with its Covenant obligations. As previously reported in FLAC News, FLAC formed an alliance with the Irish Council for Civil Liberties and the Irish Penal Reform Trust in 2006 to compile and submit a joint report to the Committee. This report was endorsed by a number of Irish human rights NGOs. As this report 'shadows' the periodic report submitted by the State, it is referred to as a 'Shadow Report'.

While the Shadow Report was officially being launched in Dublin on 14 July 2008, representatives from the alliance as well as a large number of other Irish NGOs attended the review in Geneva in order to make a presentation to the Committee and lobby further on principle areas of concern.

For the NGO delegation, work began on the previous evening at a dinner with a number of Committee members including Prof. Iulia Antoanella Motoc (Romania), Prof. Michael O'Flaherty (Ireland), Judge Elisabeth Palm (Sweden) and Prof. Ivan Shearer (Australia). This provided the NGO delegation with an opportunity not only to discuss their issues with the Committee members, but also to learn more about each other's work.

The NGO delegation was given the opportunity to make a presentation to the Committee in the morning of 14 July. The meeting was chaired by Liam Herrick, Director of the Irish Penal Reform Trust and the presentation was delivered by Tanya Ward, Deputy Director of the Irish Council for Civil Liberties, on the principle areas of con-

cern to Irish NGOs regarding civil and political rights in Ireland today.

The Committee had the opportunity to pose a number of questions for further information and clarification. Informally, the NGO presentation was praised as one of the best the Committee had heard and together with the Shadow Report would serve as a model of best practice.

The examination began at 3pm on 14 July with a presentation by the Government delegation represented by the Attorney General. The Committee's regular practice is to review half of the issues arising under the Covenant in the first session of the review and the latter in the second session. After a presentation by the Government delegation, the Committee proceed to ask pointed questions which the delegation responds to and time is allowed for follow-up questions. Due to the absence of the Attorney General from the second session in the morning of 15 July, this format was unfortunately abandoned and time did not allow for many of the Committee's questions to be answered or for any follow-up questions.

Ireland's denial of the existence of a system which effectively allows imprisonment for those unable to pay a civil debt was described as "not entirely convincing" by the Committee, who stated that it fails to explain away the concerns of the Committee with regard Article 14(2)(g) of the Covenant in this regard.

On the issue of the State's failure to allow for birth certificates which would recognise a change of gender for transgender people, the Committee asked why the State did not simply change the law rather than appeal the case, since the State's failure was so clearly in breach of the European Convention on Human Rights as established in the Foy case.

In response the Government stated that



After the review: Office of the High Commissioner for Human Rights, Palais Wilson, Geneva.

**Back row** (L-R): Sophie Magennis, OCO; Alison Mawhinney, QUB School of Law; Jyothi Kanics, IRC; Aoife Daly, TCD; Ruth Ni Fhionnain, ICI; Liam Herrick, IPRT. **Centre-back:** Hilka Becker, ICI; Caoimhe Sheridan, IRC, Noeline Blackwell, FLAC; Mánuis de Barra, OCO. **Centre-front:** Natalie McDonnell, IFPA; Stephen O'Hare, Pavee Point; Edel Quinn, FLAC; Sonya Felton, Rehab; **Front:** Richie Keane, IFPA; Michael O'Flaherty & Elisabeth Palm, Human Rights Committee Members; Tanya Ward, ICCL.

it could not comment on a case currently before the Supreme Court. With regard to legal aid, the Committee, while acknowledging information indicating that waiting times for legal aid had been reduced, still requested further specific information such as how many cases are not granted both civil and criminal legal aid. The Committee were also interested in whether NGOs were allowed a right of appearance before courts and tribunals.

Ireland signed the Covenant in 1973, but did not ratify it until 1989. The State has undergone two previous reviews in 1993 and 2000. The ICCPR provides for a range of rights such as the rights to life, privacy, fair trial, liberty, freedom from torture, inhuman and degrading treatment, freedom from slavery, non-discrimination, the rights of the family and the rights of the child.

The implementation of the ICCPR by States is monitored by the UN Human Rights Committee which is an elected body of eighteen international experts who are nominated by their States but who operate on the Committee in a personal capacity.

► See related articles on pages 8, 9 & 10.

## Pre-Budget Submission 2009

### Focus on restoring universal Child Benefit

In view of the upcoming budget, FLAC is calling on the Irish government to consider its obligations and commitment to upholding the rights of all children living in Ireland by restoring Child Benefit as a universal payment.

Ireland ratified the UN Convention on the Rights of the Child in 1992. This requires the State to adhere to certain principles including Article 2, which obliges the State to “respect and ensure the rights... to each child within their jurisdiction without discrimination of any kind”. This includes any discrimination based on the status of their parents. Article 3(1) also states that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In addition, the government has made its own commitments to eliminating child poverty in Objective G of the National Children’s Strategy 2000-2010 (NCS) which states that “children will be provided with the financial supports necessary to eliminate child poverty.<sup>1</sup> Furthermore Child Benefit is seen as a significant tool in achieving this goal, as it is considered to be an “important means of reducing child poverty and supporting the welfare of children, given its universal coverage...”<sup>2</sup>

Statistics from the Reception and Integration Agency (RIA) from the end of July 2008 show that there are approximately 2240 children under the age of 18 currently living in Direct Provision, i.e. where the state provides board/food to them directly as opposed to a payment. These are all children of asylum seekers. A small number are already in receipt of Child Benefit but the majority are not, therefore inequalities exist within the system as well as in wider society. According to the above figures, the cost to the Exchequer of providing Child Benefit to this relatively small but very marginalised group would be less than €5 million in total.<sup>3</sup>

Currently a child living with his/her parents in Direct Provision is entitled to a mere €9.60 per week. The State provides basic food and lodging but parents find that they are supplementing their children’s diets as well as having to pay for school-related items and extracurricular activities out of this small allowance. The monthly Child Benefit payment of €166, while it come nowhere near to covering all the expenses of a baby or child living in Ireland today, will surely assist a family living on such a low income.

FLAC also endorses the recommendations made by the Irish Refugee Council (IRC) and related organisations to

increase the Direct Provision allowance to €65 per week for adults and €38 per week for children so residents in Direct Provision can live by a standard acceptable to all.

The restoration of Child Benefit to its former status as a universal payment is imperative if the Government wishes to realise its goal of eliminating child poverty in Ireland. Even with the downturn in the economy, the Government cannot afford to ignore its duty to ensure that all children living in Ireland are treated equally.

#### Footnotes:

1. The National Children’s Strategy, page 63
2. Ibid.
3. Based on the total number of children in Direct Provision at the end of July 2008 receiving Child Benefit at €166 monthly, which would cost €4,462,080.

**20 November marks the 2nd anniversary of the launch of FLAC’s campaign to restore Child Benefit as a universal payment in Ireland. This is a chance to highlight the continuing inequity of denying a basic right to some children growing up in Ireland, simply because of their parents’ immigration status. For further information, keep in touch via FLAC’s website - [www.flac.ie/campaigns](http://www.flac.ie/campaigns)**

## 17 October: UN International Day on Poverty

On 17 October, groups around Ireland will be joining in solidarity with counterparts around the world in marking United Nations International Day for the Eradication of Poverty.

The day is an opportunity to show friendship and solidarity with people living in poverty, honouring their struggles and renewing our determination to work for a world where everyone’s human rights and human dignity are respected.

The commemoration in Dublin will be marked this year by the unveiling of a commemorative stone bearing an inscription in English, Irish and French. It reads:

*Wherever men and women are condemned to live in poverty, human rights are violated.*

*To come together to ensure that these rights are respected is our solemn duty.*

*Joseph Wresinski*

The event takes place in Dublin on 17 October at the Famine Memorial, Custom House Quay at 11.00am. All are welcome to attend and parallel events encouraged.

The event’s organiser is ATD Fourth World, please contact them for further information and assistance:

17th October Group,  
c/o ATD Fourth World  
31 Mountjoy Square, Dublin 1  
t: 01 855 8191  
e: 17october@eircom.net

# Law Society launches guide to civil legal aid

**O**n Friday 5 September, Minister for Social and Family Affairs Mary Hanafin TD launched a booklet which should prove an invaluable new resource both for the legal profession and the general public.

The booklet, entitled *Civil Legal Aid in Ireland, Information for the Profession*, covers all aspects of the legal aid scheme including the services the scheme offers, information on the eligibility criteria and what contributions might be payable. The guide also details other schemes available such as the Refugee Legal Service, the mental health legal aid scheme, the Coroner's Court legal aid scheme and the Attorney General scheme.

The booklet was put together by the Legal Aid Taskforce, established by President of the Law Society, James MacGuill, to produce a constructive independent report on legal aid in Ireland and make recommendations on improving access to justice. The taskforce realised that there was a significant lack of information on the range of legal aid schemes available both in the legal community and amongst the general public and set about

producing a booklet encompassing details about the existing schemes. FLAC was acknowledged for its contribution to the publication.

Launching the guide, Minister Hanafin made the important point that "access to legal advice and access to court was one of the key tenets of social inclusion in this country." She praised the comprehensive nature of the booklet and the basic language used which, she said made it very accessible to everyone. She explained that it was very important that solicitors continue to educate themselves in relation to legislation and new initiatives by government and complimented James MacGuill for initiating the legal aid taskforce.

Minister Hanafin stressed the need for access to justice in these more challenging economic times and the crucial role members of the legal profession play in upholding this right. Further, she said this booklet would be beneficial not only in informing solicitors about the legal aid scheme, but would also be an important addition to every politician's office and in citizens information centre. She noted that in order for access to justice to be truly

guaranteed, the public must be informed of their right to such services.

Colin Daly, Managing Solicitor of Northside Community Law Centre and chair of the task force, agreed with Minister Hanafin on the need to make such basic information readily available to all. He noted that by increasing the basic knowledge amongst the public, of such legal services it would become more apparent what improvements are needed in order to tackle any unmet legal needs.

Anne Colley, chair of the Legal Aid Board, spoke of the necessity for an effective legal aid system as a social and egalitarian provision and an important tool to "ensure that the least advantaged in society are facilitated in accessing justice."

Ms Colley praised this initiative as valuable in combating the present lack of information on legal aid services in the profession. She underlined how important it was to clarify that the legal aid scheme not only provides services in relation to family law matters, but is in fact available in all areas of civil law other than a limited number of excluded areas.



Photos © Lensesmen

Pictured at the launch of the Law Society's guide to Civil Legal Aid are (back row, L-R): Elaine Dewhurst, Law Society; John McDaid, LAB; John Shaw; Ken Murphy, Law Society Director; Sinead Kearney; Noline Blackwell, FLAC Director; (front row) Moya Quinlan, solicitor; Anne Colley, LAB Chairperson; Minister Mary Hanafin; James MacGuill, Law Society President; Colin Daly, NCLC Managing Solicitor.

# Submission on Habitual Residence Condition

**F**LAC recently made a submission in response to a roundtable organised by the Irish Human Rights Commission outlining our concerns in relation to the application of the Habitual Residence Condition especially in light of the new 'Guidelines for Deciding Officers on the Determination of Habitual Residence' issued by the Department of Social and Family Affairs in June 2008. The guidelines clearly exclude some categories of people from satisfying the Condition, including people who are awaiting a decision on their residency status.

As FLAC has repeatedly pointed out, the Condition has negatively impacted on asylum seekers/persons living in direct provision who are already marginalised. They had been entitled to a number of payments, including Child Benefit, prior to the introduction of the Condition. This was brought in to curb an anticipated influx of "welfare tourists" following the accession of ten countries to the EU in May 2004.

FLAC raised several issues with the Commission regarding the current application of the Condition which have arisen in the context of our recent casework.

## New guidelines

Section 246 of the Social Welfare (Consolidation) Act 2005 as amended in 2007 sets out five criteria for determining whether someone meets the Habitual Residence Condition. The five criteria are taken from a judgment of the European Court of Justice, Case C 90/97 *Swaddling v UK*. By automatically excluding asylum seekers and people seeking leave to remain from meeting the Condition, the new guidelines seek to override these criteria. In our view, they appear to be *ultra vires* (or beyond) the powers of the Department as there is nothing in the legislation that allows for a blanket exclusion of a whole category of people such as those in the asylum or leave to remain process. Each case should be decided on its individual merits and the Deciding Officer should have regard for the five criteria set out in the statute.

The Department has provided an interpretation of the term "right to reside" in Section 5.1 of the Guidelines relying on a

Supreme Court decision made in 2003 in *Goncescu & Ors v Minister for Justice, Equality and Law Reform*. This decision was made before the HRC was introduced and it did not discuss the meaning of "residence" for the purposes of claiming social welfare entitlements. Furthermore, the appellants in the case had exhausted the asylum process and had deportation orders outstanding against them, so they could no longer be considered part of the asylum system, unlike the majority of people still living in direct provision. We do not think the *Goncescu* judgment justifies the Department's current position.

## Developments in recent casework

FLAC and other bodies working with people in direct provision have been involved in a number of appeals before the Social Welfare Appeals Office against Department refusals of various payments on the basis of the applicant failing to satisfy the Condition. In several of these cases, the Appeals Officer has reversed the decision of the Deciding Officer and granted a payment on appeal. In some of the more recent cases the Department has refused to implement the decision of the Appeals Officer while at the same time asking the Chief Appeals Officer to review the decision under Section 318 of the Social Welfare (Consolidation) Act 2005.

The Department has sought to justify its refusal to pay by arguing that the review is a continuing part of the appeals process. We question this, as the Social Welfare Appeals Office does not regard a review as a further appeal and there is specific provision in the legislation for an appeal to the

High Court on a point of law. The review process is informal, with neither time limits nor fixed procedure. To withhold payments at this stage seems to be just a way to delay payment for as long as possible.

In addition, representatives of the Department in recent appeals have objected to reliance on previous decisions of the Appeals Office, arguing they cannot set a precedent for other appeals. This objection may arise from a case in which an Appeals Officer cited a previous opinion of the Chief Appeals Officer upholding a decision to grant a payment to a person in the direct provision system who was still awaiting a decision on her status. The Chief Appeals Officer criticised the long delays in the asylum process and stated that the applicant should not be penalised for circumstances beyond her control. Both of these decisions have since been relied on in successful appeals. FLAC maintains that it is a fundamental principle of administrative law to rely on a precedent in order to ensure consistency in decision-making.

Other matters raised include:

- ▶▶ Delays in decision-making at first instance and then, if refused, to get an oral hearing for an appeal;
- ▶▶ The position of children refused Child Benefit because their fathers, who satisfy the Condition, are not cohabiting with their mothers, who are not considered habitually resident;
- ▶▶ The need for the publication of a comprehensive and anonymised version of Appeals Office decisions.

To view the submission in full, visit <http://www.flac.ie/news/>

## Casework Update

**Following a judicial review taken by FLAC, the HSE has agreed to pay Blind Welfare Allowance to an asylum seeker who had already won an internal appeal. The HSE had stopped payment to the man on the grounds that as an asylum seeker he was not "ordinarily resident" in the State. A HSE Appeals Officer held that this was not a requirement for this allowance and allowed the man's appeal, but the HSE still refused to pay.**

**The Judicial Review has now been settled with the HSE agreeing to pay the allowance and arrears. There seems to be a growing tendency by the Department of Social and Family Affairs and the HSE to refuse to accept Appeals Officers' decisions if they go against them and to refuse to pay the benefits pending further challenges. It is not at all clear that they have authority to do this.**

## 2008 William Sampson Fellowship

*The Sampson Fellow for 2008 was Kyle Silk-Eglit, a 2nd-year law student from the University of Washington, Seattle. Below is his account of time spent as a FLAC intern.*



Over the past summer I interned at FLAC as part of the William Sampson Fellowship coordinated through my law school at the University of Washington (Seattle). The experience introduced me to the complex legal issues confronting Irish society and taught me how public interest lawyers in countries throughout the world use the law as a vehicle for defending the rights of vulnerable populations.

Most of my time at FLAC was devoted to a case involving the marriage ban (repealed in 1974) which prohibited women from working in the public sector if they were married. I was fortunate enough to be able to work with FLAC Director, Noeline Blackwell, and Policy and Campaigns Officer, Saoirse Brady, in evaluating the grounds for bringing test case litigation to challenge the consequences of this discriminatory law. Specifically, many of the women who were adversely affected by the marriage ban are now approaching

retirement age only to realize that their pension benefits were significantly reduced due to their forced resignation from the workforce back in the 1960s and 1970s.

While the discrimination involved in this situation seems obvious, the grounds for bringing a lawsuit do not. In effort to evaluate FLAC's position in bringing a case I investigated Irish pension law as well as Irish equality legislation throughout the previous three decades and any relevant EU law on point, such as the Equal Pay for Equal Work directives. An enormous obstacle in bringing a test case was the statute of limitations as if the case focused on the initial dismissals as being the cause of action, those dismissals occurred over 30 years ago and may no longer be actionable. At first dismayed, I took the guidance of Noeline and Saoirse in understanding that the role of a public interest lawyer is to diligently represent your client and their cause and to leave no stone unturned in finding fertile grounds to bring a winning suit.

Through further research I uncovered a landmark EU case, *Emmott v Minister for Social Welfare*, which held that the implementation of a statute of limitations would be stalled if a Member State to the EU had failed to properly implement an EU directive. Thus, if Ireland's equality legislation did not properly account for the EU Equal Pay for Equal Work directives, then the statute of limitations might be stalled and our case move forward. FLAC is currently evaluating the likelihood of this option.

My learning at FLAC was not limited to legal assignments but even the daily interactions at lunch time and during office downtime were fantastic opportunities to discuss with my talented colleagues the similarities and differences between our two jurisdictions. Although there were clear differences between our two legal systems, public interest lawyers in both countries contend with similar issues and strive for the same goals; equality and justice for all. Passion for these ideals is the real lesson I learned at FLAC.

## New online forum for volunteers

FLAC recently launched a volunteers' forum on its website. This forum is exclusively for FLAC volunteer lawyers and law students. The forum was created to facilitate volunteers in exchanging ideas, working out difficult queries and accessing information on the different areas of law.

The forum is set out in two main sections: a 'FLAC and administrative matters' section and an 'areas of law' section, each with its own sub-sections. Each topic contains useful downloadable leaflets and documents so volunteers can have full access to materials relevant to each area of law and to important general documents like the Volunteer Guidelines. We also encourage volunteers to discuss matters that may arise in the centres, especially particular

areas of law that you may not be familiar with; for example, a complicated employment law problem, we have a number of employment law experts in our midst who could help you out.

Volunteers can sign up by registering at [www.flac.ie/forum](http://www.flac.ie/forum) - please use your whole name as a username so we verify that you are a volunteer with FLAC.



We hope you find this forum handy for matters that may arise in the centres - or you could just use it to chat...

# ICCPR Shadow Report probes

**A**longside the state examination and the NGO presentation and lobbying in Geneva, a formal launch of the NGO Shadow Report on Ireland's performance under the UN Covenant on Civil and Political Rights (ICCPR) took place on Monday 14 July in the Westbury Hotel, Dublin. FLAC Senior Solicitor Michael Farrell chaired the event.

Keynote speaker for the launch was Australian High Court Judge Michael Kirby. Judge Kirby compared the issues raised by the report on Ireland with the corresponding situation in Australia; he was particularly surprised by some aspects of the civil and political rights situation in Ireland, such as the resistance to adequately legislating for same-sex couples, the lack of provision for secular education and the exemption of the Gardaí from freedom of information legislation.

Michael Farrell spoke about FLAC's case on behalf of Lydia Foy, a transgendered woman with regard to Article 16 on the right to recognition as a person before the law and Article 26 relating to non-discrimination. In this case, the High Court had found

that Ireland was in breach of the European Convention on Human Rights in denying her an identity in line with her new gender.

Michael also raised the issue of 'universal' Child Benefit under Article 24 of the Covenant on children's rights, which had been withdrawn from those who were not "habitual residents". Effectively this means that the children of asylum-seekers, some migrant workers and other groups were unable to participate in many activities with other children. (Refer to the Shadow Report for a full discussion of these issues.)

Also speaking at the launch were Mark Kelly, Director of the Irish Council for Civil Liberties, and Sam Priestley of the Irish Penal Reform Trust. The ICCL and IPRT were co-authors of the Shadow Report along with FLAC. Mark Kelly spoke about Ireland's involvement in the CIA's extraordinary rendition of people to potential torture sites, in contravention of ICCPR Article 7. Mr. Kelly stated that evidence had come to light showing that rendition flights had landed at Shannon Airport, which

meant domestic law could apply and flights could be inspected.

Sam Priestley focused on prison conditions in Ireland which are often 'Dickensian' in style despite international criticism. By way of example, the government has still not committed to action on basic toilet facilities for all prisoners by providing in-cell sanitation as opposed to the practice of 'slopping-out' which can still be found in some Irish prisons.

The Shadow Report is primarily intended as an aide for the UN Human Rights Committee in its examination of Ireland's track record under the ICCPR. The Committee were very impressed by the report which they hailed as a model of best practice for other NGOs.

It is available to download (in PDF format) from <http://rightsmonitor.org> or you can obtain hard copies from the ICCL.

<http://rightsmonitor.org>  
<http://www.iccl.ie>  
<http://www.iprt.ie>



Pictured with Judge Kirby (R) is Ryan Dufty, a solicitor with Mason Hayes Curran and FLAC volunteer



Pictured L-R are Alma Clissmann, Law Reform Commission; Claire O'Regan, Solicitor; Colette Carey, Law Society



# state of human rights in Ireland



Photos © Maxwells

At the launch of the ICCPR shadow Report in Dublin on 14 July are (L-R) Sam Priestley (IPRT), Michael Farrell (FLAC), Judge Michael Kirby of the Australian High Court and Mark Kelly (ICCL).

## Irishman re-elected to UN human rights monitor

**P**rofessor Michael O’Flaherty has been re-elected for another four-year term to the UN’s Human Rights Committee. He received 136 votes, the highest of any candidate.

Professor O’Flaherty is currently Professor of Applied Human Rights and Co-Director of the Human Rights Law Centre at the School of Law, University of Nottingham. He is visiting Professor at the Sant’Anna School of Advanced Studies, Pisa and the Inter-University Centre for Democratisation and Rights, Venice.

He was elected on the nomination of the Irish government as State Party to the ICCPR. Prof O’Flaherty is involved in a number of international committees and is an advisor to UNICEF and other NGOs on human rights matters.

He began his career as a solicitor before going on to study human rights and international relations more extensively. He became involved in the UN’s work during the conflict

in the former Yugoslavia. He went on to hold several posts in the UN human rights infrastructure, including Chief of the UN human rights programme in Sierra Leone from 1998 to 2000 and Co-ordinator of Programmes in the Asia-Pacific region for the Office of the United Nations High Commissioner for Human Rights from 2000 to 2002.



The Human Rights Committee is established by the International Covenant on Civil and Political Rights, and has responsibility for the monitoring of States’ compliance with the Covenant, for individual and inter-state petitions, and for the preparation of General Comments which constitute the authoritative interpretation of provisions of the Covenant.

# Concluding comments: How the Shadow

In accordance with Article 40 of the UN International Covenant on Civil and Political Rights (ICCPR), it is the practice of the UN Human Rights Committee to adopt Concluding Observations – including recommendations – that detail not only areas of positive developments in issues arising under the Covenant, but also areas of concern.

Having considered both the written and oral submissions made in the case of Ireland, the Committee adopted and issued its Concluding Observations on 24 July 2008, following the third periodic review of the State. This document also provides that the State should forward information on its implementation of three specific recommendations to the Committee within one year. These relate to paragraphs 11, 15 and 22 of the Observations regarding extraordinary rendition, conditions of detention

and religion in education.

A comparison between the Committee's Concluding Observations after the second periodic review of Ireland in 2000 and those issued this summer show that a number of observations are carried through from the previous examination. This highlights some major areas of concern relating to civil and political rights in Ireland that the State has failed to address over the past eight years.

These areas are:

- » Incorporating ICCPR into national law;
- » Remedies for domestic violence;
- » Inequality between men and women, removal of article 41.2 of the Constitution;
- » Access to abortion;
- » Conditions of detention;

- » Retention of the Special Criminal Court;
- » Religious oaths for judges;
- » Detention of asylum seekers (though different aspects of this issue are addressed; in 2000 the focus is on grounds of detention and the right of access to judicial review of detention decisions and also the place of residence of refugees. In 2008, the Committee highlights the periods of detention of asylum seekers and the detention of minors, and the placement for detention of asylum seekers in ordinary prisons;
- » Permitted derogations under the ICCPR.

Below is a direct comparison between the Committee's 2008 Concluding Observations and the corresponding Shadow Report recommendations.

| Committee recommendation   | Shadow Report recommendation   |
|--|--|
| <b>Para 5.</b> The Committee urges the State Party to implement its intention to withdraw its reservations to Article 10 paragraph 2 and Article 14 of the Covenant. The State Party should also review its reservations to Article 19 paragraph 2 and Article 20 paragraph 1, with a view to withdrawing them in whole or part.   | From the <b>Introduction, para. 4:</b> Ireland has failed to withdraw any of its four remaining reservations to the ICCPR since its second periodic review in 2000 and we urge the State to adopt measures to enable it to withdraw these reservations.  |
| <b>6.</b> The State party should ensure that all rights protected under the Covenant are given full effect in domestic law. The State party should provide the Committee with a detailed account of how each Covenant right is protected by legislative or constitutional provisions.  | <b>Article 2:</b> The ICCPR should be given full effect in Irish law   |
| <b>7.</b> The State party should strengthen the independence and the capacity of the Irish Human Rights Commission to fulfill its mandate fully and effectively in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134), by endowing it with adequate and sufficient resources and linking it to the Oireachtas (Parliament). | <b>Article 2:</b> Funding and support for the Irish Human Rights Commission should be increased substantially and the Government should consider making the Commission directly accountable to the Irish Parliament.   |
| <b>8.</b> The State party should ensure that its legislation is not discriminatory of non-traditional forms of partnership, including taxation and welfare benefits. The State party should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.  | <b>Article 23:</b> Same-sex couples should not be discriminated against in relation to their intimate relationships. The right to marry should be extended and no difference in treatment should exist between opposite-sex and same-sex couples.<br><b>Article 26:</b> The Government should introduce legislation to recognise change of gender for transgendered persons. |
| <b>9.</b> The State party should continue to strengthen its policies and laws against domestic violence and prepare adequate statistics, including sex, age and family relationship of victims and perpetrators. Furthermore, it should increase the provision of services to victims, including rehabilitation.   | <b>Article 2:</b> The State as a matter of urgency should review and enhance remedies protecting against domestic violence as well as increasing supports.   |

# Report matches up to UN appraisal

| Committee recommendation  | Shadow Report recommendation  |
|---|---|
| <p><b>10.</b> The State party should reinforce the effectiveness of its measures to ensure equality between women and men in all spheres, including by increased funding for the institutions established to promote and protect gender equality. The State party should take steps to initiate a change of article 41.2 of the Constitution with a view to including a gender-neutral wording in the article. The State party should ensure that the National Women’s Strategy is regularly updated and evaluated against specific targets.</p>  | <p><b>Article 3:</b> The Irish Government should organise a referendum to amend the Constitution to include the gender-neutral form of Article 41.2 which also recognises the life of carers in the home. This should also include an explicit provision guaranteeing that women and men be treated equally. The National Women’s Strategy should be reviewed and updated with a specific time-frame and targets for achievements.</p>  |
| <p><b>11.</b> The State party should introduce a definition of “terrorist acts” in its domestic legislation, limited to offences which can justifiably be equated with terrorism and its serious consequences. It should also carefully monitor how and how often terrorist acts have been investigated and prosecuted, including with regard to the length of pre-trial detention and access to a lawyer. The State party should exercise the utmost care in relying on official assurances. The State party should establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated.</p>  | <p><b>Article 7:</b> The Government should set up an independent inquiry into the illegal transfer of detainees through Irish airports and the Gardaí should set up an investigations mechanism to regular monitor and perform spot checks on CIA planes and CIA chartered flights.</p>   |
| <p><b>12.</b> The State party should ensure that its provisions concerning states of emergency are compatible with article 4 of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 29 (2001) on derogations during a state of emergency.</p>   | <p><b>Article 4:</b> Given that a state of emergency does not exist in Ireland, the Special Criminal Court should no longer be in operation.</p>  |
| <p><b>13.</b> The State party should bring its abortion laws into line with the Covenant. It should take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or to abortions abroad (articles 26 and 6).</p>   | <p><b>Article 6:</b> The State should provide a legislative framework for the provision of safe and legal abortions in Ireland.</p>   |
| <p><b>14.</b> The State Party should take immediate measures to ensure the effective functioning of the Garda Síochána Ombudsman Commission. The State party should also give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation.</p> <p>The State Party should furthermore amend its legislation to ensure that inferences from the failure to answer questions by an accused person may not be drawn, at least where the accused has not had prior consultations with counsel. It should also provide more detailed information to the Committee regarding the types of complaints filed with the Ombudsman Commission.</p>  | <p><b>Article 9:</b> The Government should make available the resources necessary to enable the Garda Síochána Ombudsman Commission (GSOC) to independently investigate all complaints about members of the Garda. As an immediate measure, the resources required to enable the GSOC independently to investigate all complaints involving possible criminal conduct by Garda members must be made available. There should be no dilution of the GSOC’s current statutory powers. Persons arrested by the Gardaí should have a formal legal right to have a lawyer present during questioning.</p> <p><b>Article 14:</b> The Government should introduce Regulations to provide for a new form of Garda caution to clearly inform people of their right to silence and the possible consequences of remaining silent. Relevant guidelines should be developed for judges on the proper instruction of juries against drawing improper inferences from silence.</p> |
| <p><b>15.</b> The State Party should increase its efforts to improve the conditions of all persons deprived of liberty before trial and after conviction, fulfilling all requirements outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners.</p> <p>In particular, the overcrowding and the “slopping-out” of human waste should be addressed as priority issues. In addition, the State party should detain remand prisoners in separate facilities and promote alternatives to imprisonment. Detailed statistical data showing progress since the adoption of the present recommendation, including on concrete promotion and implementation of alternative measures to detention, should be submitted to the Committee in the State party’s next periodic report.</p> | <p><b>Article 10:</b> The current poor physical conditions in many of our prisons must be addressed as a matter of urgency. In particular, the Government should make a firm commitment to provide in-cell sanitation to all prisoners by a fixed date.</p>   |

| Committee recommendation  | Shadow Report recommendation  |
|---|---|
| <p><b>16.</b> The State Party should continue to reinforce its measures to combat trafficking of human beings, in particular by reducing the demand for trafficking. It should also ensure the protection and rehabilitation of victims of trafficking. Moreover, the State party should ensure that permission to remain in the State Party is not dependent on the cooperation of victims in the prosecution of alleged traffickers. The State Party is also invited to consider ratifying the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime 2000.</p>  | <p><b>Article 8:</b> The Criminal Law (Human Trafficking) Bill 2007 should be amended to allow for protection for victims of trafficking who are too afraid or unable to participate in a Garda inquiry.</p>  |
| <p><b>17.</b> The State Party should review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation. The State Party should take immediate and effective measures to ensure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose.</p> <p>The State Party should also ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied and separated children and that social services, such as the Health Service Executive, are involved in the age assessment of asylum-seekers by Immigration Officials.</p>  | <p><b>Article 9:</b> Detention for immigration purposes should be used as a last resort and should be subject to judicial oversight.</p> <p><b>Article 10:</b> A concerted effort is required to address the needs of prisoners from black or ethnic minority backgrounds, including those detained for immigration-related reasons.</p> <p><b>Article 8:</b> The Government should urgently set up an independent inquiry into the disappearance of separated children in the care of the HSE and subsequent Garda or other investigations. Separated children should be placed on a proper national register when they enter the country. Separated children should receive equitable treatment in care and should be formally placed with legal guardians where appropriate. There should be better monitoring of hostels and residence homes and the Ombudsman for Children should not be excluded from dealing with complaints from asylum seeking and migrant children.</p> |
| <p><b>18.</b> The State Party should ensure that its laws are not used to imprison a person for the inability to fulfill a contractual obligation (Covenant, Article 11).</p>   | <p><b>Article 11:</b> The Government should amend the law of contempt to ensure that it cannot be used to imprison an individual for failing to fulfil a contractual obligation or for inability to pay a civil debt.</p>   |
| <p><b>19.</b> The State Party should amend the Immigration, Residence and Protection Bill 2008 to outlaw summary removal which is incompatible with the Covenant and ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should also introduce an independent appeals procedure to review all immigration-related decisions. Engaging such a procedure, as well as resorting to judicial review of adverse decisions, should have suspensive effect in respect of such decisions.</p> <p>Furthermore, the State Party should ensure that the Minister for Justice, Equality and Law Reform is not charged with the appointment of members of the new Protection Review Tribunal.</p> | <p><b>Article 13:</b> Provisions to allow for summary removal in the IRP 2008 are incompatible with the State's obligations under the ICCPR and should be removed.</p> <p><b>Article 10:</b> All persons detained following refusal to land, asylum seekers detained for various reasons and persons detained pending deportation should be formally notified of their rights to challenge their detention, to inform a person of their choice of their detention, to have access to a lawyer and to have access to medical care.</p> <p><b>Article 13:</b> The State should introduce an independent appeals procedure to review all immigration-related decisions.</p> <p><b>Article 14:</b> All members of the new Protection Review Tribunal should be appointed independently through the Public Service Appointments Commission and not by the Minister for Justice.</p>  |
| <p><b>20.</b> The State Party should carefully monitor, on an ongoing basis, whether the exigencies of the situation in Ireland continue to justify the continuation of a Special Criminal Court with a view to abolishing it. In particular, it should ensure that, for each case that is certified by the Director of Public Prosecutions for Ireland as requiring a non-jury trial, objective and reasonable grounds are provided and that there is a right to challenge these grounds.</p>  | <p><b>Article 14:</b> There should be clear and transparent guidelines for the DPP, with the delegated authority of the Attorney General, to make his decision as to what circumstances he "thinks proper" for a person to be tried before the Special Criminal Court as held by the Human Rights Committee in their view in <i>Kavanagh v. Ireland</i>.</p> <p><b>Article 26:</b> The continued discretion of the DPP to send accused persons for non-jury trial before the Special Criminal Court is in breach of Article 26 ICCPR and should be addressed.</p>   |
| <p><b>21.</b> The State Party should amend the constitutional provision requiring a religious oath from judges and allow for a non-religious declaration.</p>   | <p><b>Article 18:</b> Judges should not be required to take a religious oath before joining the bench.</p>  |
| <p><b>22.</b> The State Party should increase its efforts to ensure that non-denominational primary education is widely available in all regions, in view of the population's increasingly diverse &amp; multi-ethnic composition.</p>  | <p><b>Article 18:</b> The State must increase its provision for the establishment of non-denominational education at primary and post-primary levels.</p>   |
| <p><b>23.</b> The State Party should take steps to recognize Travellers as an ethnic minority group. It should also ensure that in public policy initiatives concerning Travellers, representatives from the Traveller Community should always be included. It should also amend its legislation to meet the specific accommodation requirements of Traveller families.</p>   | <p><b>Article 27:</b> The Government should recognise Travellers as a formal ethnic group. In public policy initiatives concerning Travellers, representatives from the Traveller Community should always be effectively represented.</p>   |

# Data Collection Programme

## January to June 2008

This is now the fifth year of FLAC's Data Collection Programme. One of FLAC's core principles is to ensure that disadvantaged people can effectively access legal services. FLAC introduced the Data Collection Programme in 2004 with the view of having a better understanding of the legal needs of those attending our centres.

During the first half of 2008, 3,555 data collection forms were returned to FLAC head office. Forms were returned from 45 Legal Advice Centres around the country. These comprised of 19 centres in the Dublin area, and 26 centres outside the Dublin area.

Callers attending FLAC centres seek legal information and advice regarding one or more areas of law. The total number of legal queries recorded in the first half of 2008 was 3,855. During this period, FLAC callers mainly sought legal information and advice on civil law matters; only 6% requested information on criminal law matters. When examining the sort of civil legal matters on which advice was sought, we see that the most

frequently discussed area of law was family law, with 32% of the total number of the queries. However, the remaining 68% indicates that two-thirds of FLAC callers needed legal advice and information on a wide range of non-family matters. The main areas this year appear to be Employment Law, Housing and Property Law, and Consumer Law. Other civil matters brought to FLAC centres included civil litigation, defamation, insurance and road traffic accidents.

Roughly one in ten callers to FLAC centres in the first half of 2008 already had a private solicitor. The remaining callers receive first stop/ initial legal information and advice relating to their query. Where further legal advice or legal representation is needed FLAC advisors make referrals to appropriate agencies. This information was gathered in 3,328 cases between January and June 08, and shows that of these 66% clients were referred on to another body, while 34% were provided with sufficient legal information/ advice by FLAC volunteer advisors. Almost 1,000 callers were referred on to a private solicitor, and just over

750 to the Legal Aid Board. Just over 100 callers were referred on to family mediation services, while 95 were referred onto the District Court Office, 35 were referred onto MABS and 35 to Citizens Information Centres. The category 'other agencies' included PIAB, the Gardaí, the Small Claims Court, and the Law Society.

As well as the Data Collection Programme, FLAC also keeps a record of the areas of law enquired about over our telephone information and referral line, which is open to individuals, local organizations, advice agencies and social workers during office hours, Monday to Friday. One in every four calls to the information and referral line between January and June 2008 were in relation to an employment law query (27% of calls), while one in five calls were in relation to a family law query (20%). The most frequent types of calls changed from Family in 2007 to Employment in 2008. However, these both remain the subjects with the highest number of calls received, followed closely by Legal Services and Consumer Law.

| AREA OF LAW DISCUSSED AT FLAC CENTRES |                              | Jan-June 2008 |             |
|---------------------------------------|------------------------------|---------------|-------------|
|                                       |                              | Count         | %           |
| <b>Family</b>                         |                              | 1,233         | 32.0        |
| <b>Non Family</b>                     |                              |               |             |
|                                       | Employment Law               | 484           | 12.6        |
|                                       | Succession/Probate           | 151           | 3.9         |
|                                       | Property                     | 233           | 6.0         |
|                                       | Housing                      | 261           | 6.8         |
|                                       | Consumer Law                 | 236           | 6.1         |
|                                       | Credit and Debt              | 118           | 3.1         |
|                                       | Neighbour dispute            | 83            | 2.2         |
|                                       | Immigration / Refugee Law    | 121           | 3.1         |
|                                       | Social Welfare Law           | 84            | 2.2         |
|                                       | Will / Power of Attorney     | 143           | 3.7         |
|                                       | Client / solicitor relations | 44            | 1.1         |
|                                       | Negligence / Personal Injury | 204           | 5.3         |
|                                       | Other civil matters          | 231           | 6.0         |
|                                       | <b>Total non-family</b>      | <b>2,393</b>  | <b>62.0</b> |
| <b>Criminal Law</b>                   |                              | <b>229</b>    | <b>5.9</b>  |
| <b>Total legal queries</b>            |                              | <b>3,855</b>  | <b>100</b>  |

# Comments on proposed merger of rights

## by Michael Farrell, FLAC Senior Solicitor & member of

**A**s an individual member of the Irish Human Rights Commission (IHRC) and speaking in my personal capacity, I am seriously concerned at the proposal to merge the IHRC with the Equality Authority and several other bodies.

I am concerned because I believe this proposal could undermine an important commitment contained in the Good Friday Agreement; it could undermine confidence in the independence of the IHRC as the public's human rights watchdog; it could weaken the Commission and lessen its effectiveness; it could weaken the effectiveness of the other bodies involved as well; and it would not lead to any significant savings.

### The Good Friday Agreement

The establishment of two Human Rights Commissions, North and South, was a key component of the human rights provisions of the Good Friday Agreement, as was the commitment to establish a Joint Committee of the two Commissions "as a forum for consideration of human rights issues in the island of Ireland".

The Agreement contained a pledge by the British government to set up the Northern Ireland Human Rights Commission in addition to but separate from the Equality Commission for Northern Ireland and with a mandate to deal with wider human rights issues. The Irish government pledged to "establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland".

Symmetry and equivalence between the Commissions was and is very important. Radical change in the structure of the IHRC would also undermine the Joint Committee of the two Commissions as it would no longer be drawn from two bodies with precisely similar mandates and priorities.

I suggest that any significant change in the human rights mechanisms set up under the Good Friday Agreement

should require the consent of all the parties to that Agreement and I am concerned that if the Irish government begins to unpick important provisions of the Agreement for purely domestic reasons, that would leave it open to other parties to the Agreement to try to do likewise.

### The Independence of the IHRC

The independence of the IHRC is crucial to public confidence in it as an effective human rights watchdog. The UN Human Rights Committee in its review of Ireland's human rights record in July last actually called for a strengthening of the Commission's independence.

If the government can radically change the structure and mandate of the IHRC without any meaningful consultation with the Commission itself, the international human rights mechanisms like the UN High Commissioner for Human Rights or the Council of Europe Human Rights Commissioner, or the human rights community in this country, the public will have very little confidence in the Commission's ability to stand up to government and say uncomfortable things when necessary.

### Weakening the effectiveness of the IHRC and the other bodies

The IHRC has a mandate to scrutinise and review government policy from a human rights point of view across a very broad range of issues which are not covered by the other agencies suggested for merging. The Commission has developed experience and expertise in those areas. There is a danger that merging it with other bodies with different and more specialised mandates would blunt its impact in the wider areas.

It has taken the Commission some time to begin to develop expertise in a number of areas. A merger now would be likely to lead to confusion and lack of focus for several years as a new institution found its feet – and without any identifiable benefit in the protec-

tion of human rights at the end of the day.

The same arguments would apply to the other agencies as well, resulting in a loss of focus for them all for a period, while the new "super" agency worked out its priorities and allocation of resources.

### No significant savings

There were no consultations with the IHRC before this proposal was announced and no studies were commissioned about it. No case has been made as to how or what savings would result from a merger, other than vague references to payroll and communications savings.

The IHRC has operated on a very modest budget and with a quite small staff to date and the other agencies are the same. It is hard to see how a merger could lead to any significant savings that could not be effected by the individual agencies or by cooperation between them. On the contrary, a merger of a number of bodies with existing premises and staffing structures and with distinctive mandates seems more likely to cause confusion, reduce efficiency and, if anything, increase costs, at least in the short term.

There has been some reference to the fact that a new Equality and Human Rights Commission has recently been established for England and Wales as setting a possible example. On the other hand, both Northern Ireland and Scotland have the same system as here, i.e. Human Rights Commissions that are distinct from the equality and data protection bodies, and the establishment of the single Commission for England and Wales has been a slow and long drawn out process.

### The Equality Authority

Of the other agencies that have been suggested for merger, the one with which I and probably most IHRC members are most familiar is the Equality Authority.

## agencies the IHRC

When this issue was discussed by the IHRC, its members were united in the view that the Equality Authority had played a uniquely valuable role in raising awareness of issues of equality and discrimination and had developed great expertise in enabling and empowering vulnerable groups to combat discrimination.

It is essential that the Equality Authority's expertise, commitment and clarity of focus be fully preserved. There is a serious danger that the proposed merger would lessen the effectiveness of the Equality Authority as well as the IHRC.

### Conclusion

The reason given for proposing this merger was the difficult economic situation we find ourselves in at the moment. However, difficult economic circumstances can lead to increased tensions in society and a growth in prejudice and hostility towards vulnerable groups. In such times it is more than ever necessary to have strong human rights and anti-discrimination protections. This is not the time to weaken or undermine our existing human rights and equality institutions or to cause confusion or disruption by what appear to be rushed and poorly thought out proposals.

**See the back page for a further consideration of the proposed merger.**

**More than 40 NGOs have joined forces to oppose the suggested amalgamation, in the Equality and Rights Alliance.**

**You can download an information leaflet on the Alliance on the FLAC website or read more at**

<http://eracampaign.net>

## Responsible credit group calls for government action on credit crisis

In late June FLAC supported calls by the European Coalition for Responsible Credit (ECRC) in its 'Declaration on the Credit Crisis' for the European Union and national governments to restore confidence and stability in financial markets. Such a move would also offer some protection to consumers from the consequences of irresponsible lending, FLAC contends.

The Declaration, from a coalition of organisations in several countries including the UK and the USA, identified irresponsible lending as a major cause of the recent escalation in house prices that has created artificial temporary demand. It also states that deregulation of the credit and investment markets has engendered a lack of transparency that has exposed the worldwide community to unacceptable and uncontrollable levels of risk of financial instability.

FLAC, the only Irish member of the Coalition, commented specifically on the Irish situation, noting that the deteriorating economic climate will put even greater pressure on already hard-pressed low to middle income families.

"The recent cocktail of 100% mortgages, high cost personal loans and car finance agreements, maxed-out credit cards and less than rigorous credit checking provides a worrying backdrop to rising unemployment and increases in the price of food and services" according to Paul Joyce, FLAC's senior policy researcher.

"Having stood back while some consumers borrowed beyond their means, will the State now leave it to the courts to try to sort out the potential mess?" Joyce asked. "The legal system for dealing with debt and debt enforcement cases has remained substantially unchanged in over 50 years while the credit market has boomed and it is poorly adapted to deal with consumer debt cases."

FLAC argues that certain underlying structural problems need to be addressed to assess the extent of the

debt problem in Ireland. According to Joyce, "There is a general lack of statistical information. We should have data on issues such as the number of legal proceedings in relation to consumer debt in train, how many mortgages are in arrears, how serious those arrears are and how many cars have been repossessed in recent months. People in debt should be encouraged to access appropriate legal advice and money advice services at the earliest opportunity rather than waiting for a crisis to develop." In addition, the State should look at the possibility of setting up a Debt Rescheduling Service that would take debt enforcement cases out of the courts.

Endorsing the principle of responsible credit, FLAC believes that access to credit is essential for full participation in society, but should be transparent and fair, with vigilant regulation required to protect the interests of consumers.

**See the ECRC website at [www.responsible-credit.net](http://www.responsible-credit.net) for the text of the declaration and more details on the Coalition, its aims and a full list of members. It also includes the Principles of Responsible Credit.**

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# Merger of equality & human rights agencies would hurt society

**R**ecent news from the Department of Justice, Equality and Law Reform indicates a merger of five important state/state-funded agencies is proposed. The five bodies concerned – the Irish Human Rights Commission, the Equality Authority, the Equality Tribunal, the Data Protection Commissioner and the National Disability Authority – are all central to the country’s developing human rights and equality infrastructure. NGOs representing minority interests in particular but also larger interest groups have come together to oppose the plan..

FLAC has concerns about the way in which the possible merger has been floated and how government has since failed to explain its rationale for such a move, beyond an unelaborated ‘cost-cutting’ exercise and a reference to ‘delivery simplification’. It appears that the Department of Finance has told the Department of Justice, Equality and Law Reform to cut costs – a reasonable demand in more straitened times – but has also specified which agencies should be merged and how much should be saved in doing so. This is very unusual and it is a matter of concern that out of the large number of agencies that come under the umbrella of the Department of Justice, five bodies concerned with human rights and equality issues have been singled out.

The five agencies in the firing line are defenders of minority and wider human rights and have at times had harsh or unfavourable things to say about government policy. But this is the job of watchdogs. These things are not said lightly or for the sake of it; when such opinions are voiced, it is to question and proof how Irish society will develop and to try to ensure that all voices are heard, not just those in administratively powerful positions. In reality, government should be glad of the expertise offered by such bodies – it will likely save every one of us much time, money and effort further down the road if we can confront prejudice and ignorance at its earlier stages.

The agencies in question are quite differ-

ent in remit – from quasi-judicial organ to government advisory bureau, to public assistance and information unit, to legislative watchdog, to regulatory body. How they could be lumped together and retain a cohesive purpose is hard to see, but even in the most ideal, smoothest running scenario, their work would be severely curtailed while functions were re-arranged in a new super-structure.

What the five bodies do have in common is their dedication to the public interest. While FLAC and indeed all NGOs are in favour of clear, easily accessible public services and information, the kind of ‘delivery simplification’ suggested here would seem to defeat its very purpose. It would lead to less information and support for people in addressing the equality and human rights issues that affect them.

In terms of figures, the combined budget of these five agencies amounts to just 4 percent of the Department’s finances. In many cases, the bodies in question are already subject to extreme financial restrictions; for example, the Human Rights Commission has sub-let part of its offices and cut publishing and PR spending completely. The Data Protection Commissioner has already merged part of its administrative functions with the Department to save money.

The agencies are doing all they can to save on costs. But if they were all abolished in the morning, it would still not save the Department the €20m they are seeking in the Department of Finance letter; their total budgets only amount to €18m. It remains to be answered whence the Department of Finance drew this figure when drafting its letter to the Department of Justice. There are no more definite figures provided by the Departments and no other justification offered for merging the five bodies. Paradoxically, the decentralisation of agencies, which is a vastly expensive and administratively complicated measure, is set to go ahead, even on top of any proposed merger.

In addition, no-one in either Department seems to have consulted the agencies themselves about such plans; instead, the Boards of the agencies in question were summoned to a hasty meeting in early September and the CEOs asked to put forward their suggestions by a deadline that left very little time for serious consideration.

Another issue is that all these bodies are statutorily based, requiring changes to the law to alter their remit. In the case of the Human Rights Commission, it has its origins in an international treaty – the Good Friday Agreement, signed by Ireland and the UK and passed by popular referendum.

Ireland has received much kudos internationally for its commitment to human rights and equality and the progress the country has made in these arenas in such a short time. The agencies under threat today are regularly held up as shining examples worldwide; ironically, the Irish Human Rights Commission has just hosted a meeting of similar commissions from all over Europe on the need for greater independence and powers for national human rights institutions in every state in Europe. *FLAC’s Senior Solicitor Michael Farrell is also a Human Rights Commissioner – see his comment on page 14.*

FLAC is also deeply concerned at reports that the Combat Poverty Agency may be subsumed within the Department of Social and Family Affairs, which would compromise its very important work and valuable independence. In more difficult economic circumstances, it is inevitable that cuts in public spending will be necessary. But this should not happen at the expense of human rights and equality for people in Ireland, especially when we are finally beginning to address deep-rooted societal issues. We also know that the people most affected in a recession are those who are already marginalised. What will the future cost be if we fail to tackle discrimination and inequality now?