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flac News

FREE LEGAL ADVICE CENTRES

The Challenge of Change

FLAC's call to politicians 2007

In light of the forthcoming general elections, FLAC is calling on politicians to examine a few key points that will help create a more just and equal Ireland.

In the run-up to the elections — as of time of writing, no date has been set but they are widely expected to take place in late May — FLAC has prepared a position paper on issues that the organisation believes are of crucial importance to Irish society. In particular, these issues are fundamental for those who have been marginalised and made extra vulnerable through the denial of access to justice. FLAC has been asking all the major opposition parties to consider including these issues in their policies and programmes for government.

The recommendations revolve around one central issue — access to justice for all people in Ireland — while focusing on a number of areas in particular. FLAC has asked politicians to promote the fundamental human right of access to justice and has pointed out inequality and discrimination in the law around civil legal aid, consumer debt and credit law and social welfare law that have a particularly damaging effect on vulnerable groups of people.

Recognition of the right of access to justice

While it is a fundamental and internationally recognised human right, enshrined in our own constitution and in EU law and policy, access to justice is not always well acknowledged or respected in Irish governmental planning — which is a short-sighted and, in the long-term, costly policy mistake. It can lead not only to societal injustice, but to greater social exclusion as law become more distanced from people who cannot afford to access it. Marginalised and disadvantaged communities historically do not or cannot access lawyers and legal mechanisms in the ways open to more privileged sectors of the community.

Improvement of Civil Legal Aid

FLAC also raised the continued inequalities in access to legal services. Civil Legal Aid, as opposed to criminal legal aid, is still not available for many who need it in order to vindicate their right of access to justice. The state body responsible, the Legal Aid Board, does not receive the funding it needs to provide the service that is required and many people do not know about the service that is — or should be — on offer. Some important areas of law are statutorily excluded from the state scheme while there is an overwhelming emphasis on family law almost to the exclusion of all other areas of civil law where there is substantial unmet legal need. It is unfair that a person can get legal services for some legal problems, but not others.

Reform of debt enforcement procedures

As well as warning that there are still gaps in the laws on consumer credit, FLAC is highlighting the deficits in legislation around debt enforcement. While it has widely been acknowledged that consumer debt is a growing national problem, underlined by the stark rise in the number, profile and amount of indebtedness of clients of the Money Advice and Budgeting Service (MABS) and calls to FLAC's telephone line and advice centres, the legal system in relation to debt enforcement remains unchanged — in the words of FLAC's senior policy researcher Paul Joyce on a recent RTE Prime Time programme, a 19th century debt enforcement procedure in a 21st century consumer credit market .

(continued on back page)

in this edition...

The Challenge of Change: FLAC s call to politicians 2007 1 & 16

KAL case - Supreme Court appeal lodged 2

FLAC takes pensioners case to Europe 3

New legal information leaflets available 3

Interculturalism - An Integration Approach 4

Restore Universal Child Benefit! 5

Athy women s network launch 5

One Family: Children invisible in Irish Family Law proceedings 6-7

Lydia Foy case starts again 8

Proposed new legal aid arrangements in childcare proceedings 9

Legal aid exclusions 9

TCD student seminar on Travellers and Public Interest Litigation 10

Remembering Dave Ellis 11

Dealing with vulnerable clients - law reform in sight? 12-13

Amicus curiae seminar 13

A letter from India 14-15

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Appeal to Supreme Court lodged for recognition of same-sex marriage

Photo © KAL Initiative

Drs Katherine Zappone (L) and Ann Louise Gilligan (R)

Drs Katherine Zappone and Ann Louise Gilligan lodged their Appeal to the Supreme Court on 22 February 2007 on the grounds that their High Court case for recognition of their Canadian marriage was wrongly decided.

They are hopeful that the Supreme Court case could be heard before the end of 2007.

We believe that it is in our interest and in the public interest to have this issue clarified in the highest court of the land, Drs Zappone and Gilligan stated.

In her High Court judgment on their case, Ms. Justice Elizabeth Dunne found that the Irish Constitution meant that marriage was to be confined to persons of the opposite sex. She also found that the refusal to permit same-sex couples to marry in Ireland did not breach the European Convention on Human Rights. During and following the High Court hearing, some of the main points made by the plaintiffs were:

- The constitution is a living document, which is interpreted in light of social change. Thus the constitution is open to new interpretation.
- Since the adoption of the Constitution there has been the recognition and scientific acknowledgment of the normalcy of homosexual identity. This is independent of any perceived need for a social consensus on the meaning of marriage.
- That the right to marry is a personal right which derives from Article 40.1.3 of the Constitution The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen as well as being derived from Article 41 (The Family).
- The institution of marriage should include same sex couples, because of the personal right to marry, and inherent nature of the institution of marriage itself. There is no identifiable harm to marriage if same sex couples are allowed to marry.

Writing in the Irish Times following the High Court Case, Ursula Kilkelly, Senior Lecturer in Law at University College Cork, stated that the judgment did not address the issues at the heart of the case. In particular, she said, it offered no clear evidence of what legitimate aim is being served by denying same-sex couples the right to marry, and moreover, whether excluding them from marriage is a proportionate way of achieving that aim in all circumstances.

Edel Hackett
KAL Initiative

FLAC takes pensioners case to Europe

FLAC and the International Federation of Human Rights (FIDH) have taken the first ever complaint against Ireland on an economic/social welfare issue under the Revised European Social Charter. The Charter is the economic and social equivalent of the European Convention on Human Rights and its implementation by member states is monitored by the European Committee on Social Rights.

The complaint is over the Government's refusal to extend the free travel scheme for people over 66 to Irish pension holders who are not resident in Ireland during their periodic visits to this country.

The free travel scheme was introduced in 1967 for all holders of Irish old age pensions. Over the years it was extended to cover other persons over 66 living in Ireland but it was always inextricably linked to the Irish old age pension and free travel passes were given automatically to recipients of the Irish old age pension on reaching 66. However, people who have paid pension contributions and are in receipt of Irish contributory pensions, but who live abroad, are excluded from the scheme when they return on holiday or for family visits etc. This is a significant grievance, especially for Irish pensioners who live in Britain, many of whom are in poor circumstances and cannot afford the cost of internal travel here on top of the fare to Ireland. It is Government policy to encourage emigrants and non-citizens who have lived in Ireland to return to visit family and friends and the 2002 Report of the Taskforce on Emigrants called as a matter of urgency for the free travel scheme to be extended to include them.

The Government has argued that if they extended the free travel scheme to Irish senior citizens living abroad, they would have to extend it to all senior citizens in the EU, which would be bankrupt the public transport system. However, an EU Commission spokesman said recently that if the scheme was extended to holders of Irish contributory pensions, regardless of nationality, that would not cause any problems.

The FLAC complaint was filed in February last. Complaints under the Social Charter must be lodged through a recognised international trade union or NGO, so the Paris-based FIDH joined with FLAC to lodge it and has provided FLAC with valuable assistance and advice about the process. The Committee on Social Rights will now seek a response from the Government, after which they will decide if the complaint is admissible and, if so, go on to consider its merits.

This is an exciting development as access to the Committee on Social Rights is relatively cheap and easy. There is no provision for costs orders, so there is no risk of incurring a massive bill for the state's costs if the complaint is unsuccessful. And there is no requirement to go through the domestic courts before lodging a complaint, so it is a lot quicker than applying to the European Court of Human Rights. Hopefully, other groups which want to pursue social or economic complaints will also make use of this new mechanism in the future.

Law for everyone - new legal information leaflets available

FLAC has produced a range of information leaflets on various areas of law. These cover basic information in each area, explaining how the law works and providing a step-by-step approach to the issues involved where appropriate.

"We believe the law should be for everyone - and this means everyone should be able to understand how it works," explains FLAC's Director General Noeline Blackwell.

The leaflets are funded by the Citizens Information Board and written in clear, accessible language. They cover areas such as Divorce and Wills as well as explaining how to change your name by Deed Poll or take out an enduring Power of Attorney.

"FLAC's aim is to open law up to people," says Blackwell, "and we are grateful to have had the chance to put these leaflets out there for the public - we hope that people will find them useful."

The leaflets are available to download from the FLAC website and in print format from Citizens Information Centres around the country and the FLAC office.

Photo © Printwell Co-operative

Interculturalism: An Integration Approach

Whether one looks at it through Irish binoculars or through European telescopes, we are already living in a multi-ethnic society. This large entity called Europe, with its 27 different nationalities, is by definition a multi-cultural, multi-faith, multi-lingual and multi-ethnic space. Now the issue is not to force people to embrace this diversity, but to acknowledge its existence.

Some would evidently welcome that diversity and some would certainly reject it, but the fact remains that ethnic diversity will be the feature of European and by extension Irish life in the years to come. The challenge is to find a way to live or work in this multi-cultural, multi-faith, multi-lingual and multi-ethnic space. Minority ethnic groups including Travellers have been asked time and again to integrate into Irish society. What do we mean by integration? Integration can mean different things to different people. Let s look at three main approaches to integration:

- Assimilation
- Multiculturalism
- Interculturalism.

Assimilation

For many people, the word integration means assimilation; to assimilate implies to become as similar as the majority ethnic group. When in Rome, do as the Romans is the popular phrase used in this context, or one size fits all! If they could just behave like us, the majority, then everything would work out fine for us and them. When one applies that logic to the other areas of diversity, such as disability, family status or skin colour, the shortcomings of this viewpoint become apparent.

In this approach, ethnic diversity is often seen as a problem or a cause of discomfort. It is expected that minority ethnic groups learn to become like the majority ethnic group; the idea is to make minority ethnic groups as invisible as possible. This view may appear disturbing to certain people because of the implication that the culture of the minority ethnic group has nothing to offer and that it should disappear to give way to the majority culture. If Travellers could just live in houses

Multiculturalism

Multiculturalism considers different cultures, ethnic and religious groups sharing the same territory as positive and seeks to make their lifestyle as visible as possible by recognising and celebrating cultural diversity and supporting their economic and social integration into society. Many European countries, such as United Kingdom or The Netherlands did adopt a multicultural; integration of minority ethnic groups was expected to happen almost naturally. Unfortunately, in many respects, it did not.

In a nutshell, this approach was focusing on cultural differences, but did not put emphasis on policies that promotes interaction and shared values. Sometimes separate and isolated communities emerge from that process.

Interculturalism

Interculturalism is about interaction. It appears to be a more thought out approach. It is about ensuring that cultural diversity is acknowledged and catered for. It is about inclusion for minority ethnic groups by design and planning, not as a default or an add on. The concept of Interculturalism underpins the Government s National Action Plan Against Racism (NPAR) and is also widely advocated by the European Commission in its policy statements and through specific programmes.

An intercultural approach recognises that people should have the freedom to keep alive, enhance and share their cultural heritage. Interculturalism suggests the acceptance not only of the principles of equality of rights, values and abilities but also the development of policies to promote interaction, collaboration and exchange with people of different cultures, ethnicity or religion living on the same territory. Furthermore Interculturalism is an approach that sees difference as something positive that can enrich a society and recognises racism as an issue that needs to be tackled in order to create a more inclusive society.

Conclusion

Interculturalism acknowledges that integration is a two way street and places responsibilities on both the majority ethnic group and minority ethnic groups to create the conditions for appropriate integration. Here is a framework to consider in relation to diversity:

- Recognise
- Negotiate
- Accommodate

Talking about Interculturalism means that policies and structures would be put in place to ensure that interaction is happening between the various ethnic groups occupying the same space, without glossing over the form of discrimination called racism. An intercultural approach implies tackling the barriers, personal or institutional, that are preventing certain groups to access the mainstream opportunities.

Let s consider the European Union. Which country represents the majority culture that others should imitate? Who should integrate into what? Is it not an example of different cultures, languages, ethnicities and nationalities sharing the same space?

If we were to apply the above mentioned framework to the European Union, we would find out that the diversity of nationalities, legislations, cultures and histories are:

- recognised,
- negotiated through the parliament and other structures
- accommodated through the adoption directives

Even the common currency retains features of cultural identities on the tail of the coins If integration can happen on a large scale at a European level, it can also happen on a small scale in Ireland.

Kensika Monshengwo
Training & Resource Officer, NCCRI

For more information on NCCRI and its work, see the website at

http://www.nccri.ie/

Photo © Derek Speirs

Restore universal Child Benefit

FLAC campaign continues

As part of FLAC s focus on the reform of social welfare law to benefit the lives of particularly vulnerable groups, FLAC launched a campaign to Restore Universal Child Benefit in November 2006. Since then the campaign has successfully obtained the support of many organisations, including the Migrant Rights Centre, Integrating Ireland, Immigrant Council of Ireland, Irish Refugee Council, Akidwa, SIPTU, ASTI, USI, INTO, Congress, Vincentian Refugee Centre, to name just a few.

Politicians have also echoed FLAC s campaign. Promoted by Councillor Mary Murphy (Labour), the Social Inclusion Measure Group of the Dublin City Council passed a motion to endorse the campaign to restore universal Child Benefit. Nationwide, there has been a very good response from the public and the media too. FLAC campaign co-ordinator Ms Marcela Rodriguez-Farrelly has been meeting with local groups to speak about the campaign in different counties, including Monaghan, Sligo, Cork and Kildare where the general public gave their support to end this discriminatory policy and to restore a situation where children are treated equally in respect of Child Benefit.

Child Benefit (also known as children s allowance) used to be a universal payment paid to every child living in Ireland, regardless of family income or immigration status. In response to the enlargement of the European Union, on 1 May 2004 the Government introduced the Habitual Residence Condition , ending the policy of universal Child Benefit payment to all children in the State.

This has created an inequality between children living in Ireland. It shows clearly that government immigration policy takes priority over children s rights. It goes against international human rights law and even the government s own stated policy on ending child poverty. FLAC has worked extensively with families seeking Child Benefit. This is what Monica, an asylum seeker told Ms Rodriguez-Farrelly: If we got Child Benefit, I would buy a pair of shoes for my daughter Marina. Her shoes broke three months ago, and I cannot buy a new pair yet. She goes to school with her broken shoes.

FLAC invites everyone to join its campaign and call upon the government to restore Child Benefit as universal payment for all children in the State. If you are interested in learning more about how to support FLAC campaign, please contact FLAC at campaigns@flac.ie and we ll be happy to send you the campaign material.

Women's network launched in Athy

Photo © Peter Kwasnik

On 22 March, FLAC s campaign co-ordinator Marcela Rodriguez Farrelly and interns Fiona Brady and Nnenne Ibezim, attended the launch of Women s Integrating Network in Athy, Kildare.

WIN, as it is more commonly known, is a local initiative set up by the community under the direction of Frances Sooney-Ituen. It aims to unite and celebrate the diversity of women in the area and create links and integration for immigrants within the local community. The day itself began with a panel of speakers including Anne Brennan from Integrating Ireland and Salome Mbugua from Akidwa, the African Women s Network. Marcela spoke about FLAC s campaign to restore universal Child Benefit.

Following this was an informal talk where members of the audience were invited to speak about their country of origin demonstrating the diversity of the network. This was followed by a fantastic lunch prepared by members of the organisation. In the afternoon, discussion groups were held on various issues affecting women in the area with FLAC chairing the group on health and welfare.

The day finished with both Irish and African music and dancing and was a fitting end to a celebration of modern multicultural Ireland in which FLAC was delighted to take part.

One Family conference: Children 'invisible'

Giving children a voice in family law proceedings was the theme of a recent seminar organised by One Family, the national organisation of one parent families.

Entitled Divorce and Children 10 Years On: Lessons to learn for the future and held on 24 March last, it brought together legal experts in the area of family law and children s legal issues.

T naiste and Minister for Justice, Equality and Law Reform Michael McDowell TD opened the conference. He said that separate representation for children in family court matters, while an attractive prospect, brings its own problems. He referred to the well established proposition that the best interests of the child should be the decisive factor in matters concerning them, with the rider that those interests may come into conflict with, and be overridden by the rights of a parent or other interested party. The Tanaiste s words provided a reminder of the limitations of the rights afforded by our Constitution where Courts apply a hierarchy of rights approach.

Dr Fergus Ryan, One Family Chairperson, spoke of the grave concerns held by his organisation, members of the legal profession, and others about the structure of Irish family law. He referred to the uncertainty involved in advising clients because of the wide discretion of judges and the fact that there are few guiding principles of family law. He said that the current courts system rewards mud-slinging and point-scoring over conciliatory resolution of disputes and co-operation in making provision for children.

Dr Ryan said that as well as law reform, we need further social and family supports to ensure justice. Even if a child, in principle, has a right to access with one of her parents, adequate facilities for that parent to entertain and interact with the child may not be available. He recommended that a programme set up in the UK to provide contact centres to facilitate access should be run here also. Dr Ryan added that Ireland is in breach of its international commitments in its failure to afford children and young people a voice in all proceedings concerning them.

The presentation by journalist Dr Carol Coulter, detailing her current Courts Services reporting project, seemed to support these concerns. The project facilitates the reporting of a number of court proceedings, without identifying the parties - providing a 'snap shot' of Irish family law. Dr Coulter told the seminar that in the majority of these cases which involved children and young people, judges refused to hear evidence disclosing their wishes. This was often the case even when the issue in dispute was custody, which has a fundamental impact on the child s life, and even if the young people involved were teenagers.

Inge Clissman SC, a specialist in family law matters, described the various ways in which the Irish legal system has tried to represent the interests of children, such as with the guardian ad litem scheme, which is used in public law matters where the state is involved as a party.

A Guardian Ad Litem is a person appointed by the Court to consult with the child, the family and other parties, and advise the Court on the best interests of the child. The scheme has not yet been brought into force in the private law area, despite existing legislation to allow it.

Ms Clissman explained that guardians ad litem are not true representatives of children, because they owe a duty to the Court to advance the legal solution which is in the best interests of the child. This may be distinct from the wishes of the child. In her view, a child should have full legal representation in guardianship, custody and access matters as a matter of course. In most cases Courts will refuse to direct this, unless it can be demonstrated that there has already been some form of abuse or damage to the child.

Existing legislation provides that children may be consulted directly when deciding issues of guardianship, custody or upbringing, if they are of sufficient age and maturity . However, echoing Dr Coulter, Ms Clissman said that these provisions are rarely invoked. There is no obligation or requirement on judges, in the form of legislation or Practice Directions, to elicit the views of children. As a consequence, most cases are settled without the child s voice being heard.

Article 40.3 of the Irish Constitution has been invoked to support a child s right to be heard in legal proceedings. An individual in respect of whom a decision is to be made has a personal right to have that decision made in accordance with principles of Constitutional justice. Although this principle has been identified by our Courts, Ms Clissman said that, with the exception of rare cases, it has not been followed.

Ireland also has similar obligations under the European Convention. The Courts are obliged to have regard to the Convention in statutory interpretation. The European Court of Human Rights, in the case of *Sahin v Germany*, has stated that the ascertaining of a child s views in proceedings concerning them was an indispensable prerequisite for any court in making a binding order. Ms Clissman concluded that our legal system, and our society generally, is failing children.

Geoffrey Shannon, solicitor and Government-appointed Special Rapporteur for Children, added a European perspective on Irish family law. He agreed with other speakers that in Ireland, children are excluded from the decision-making process and are largely invisible in family law proceedings. He referred to recent research on the impact of divorce on children and the new idea which has emerged — that children need to participate in the process if they are to cope with family separation.

The limitations of Irish laws have increasingly been placed in the spotlight by European Union law. The Brussels II Regulations provide that matters of parental responsibility, such as custody, access and guardianship, are cross-jurisdictionally enforceable.

However, judgements of a Court will only be recognised and enforced if the Court has complied with significant principles of procedure, as laid down in European law. One of these requirements is that the

in Irish family law proceedings

Photo © One Family

One Family Policy and Campaigns Manager Candy Murphy (L), Tánaiste and Minister for Justice Michael McDowell TD and One Family Director Karen Kiernan (R), pictured at the One Family conference on 24 March 2007

children are heard in the proceedings, if they are of sufficient age and maturity. This means that, for example, an Irish access decision would only be recognised in Belgium if the Irish judge had held a hearing with the child concerned, in person. At present, no procedures have been put in place to enable the Irish courts to comply with this procedural obligation.

Further complicating the matter, there are divergent views between states in relation to age based restrictions on children giving evidence. Shannon says that while the old psychology dictated that younger children (generally, those aged under 12 years) lacked sufficient maturity, it is now recognised that even very young children are able to articulate their feelings and should have the chance to be heard. Mr Shannon said that in the emerging globalisation of relationship breakdown , these issues must be urgently addressed by the Irish government.

Concluding the seminar, Rachael Kelsey, solicitor and family law expert from Scotland, gave an instructive perspective from her jurisdiction, which has seen many changes in recent years. In order to implement the UN Convention on the Rights of the Child, Scotland enacted legislation in 1995 providing that children must be given the opportunity to be heard in all proceedings affecting them. Scottish sheriffs and judges are obliged to ascertain whether a child wishes to express a view and then take account of that view.

In matters involving a child over the age of six, a special form written in child-friendly language is given to the child, explaining the issues in dispute and asking them to indicate whether they would like to express their opinions. They are also provided with the telephone number of the Scottish Child Law Centre Helpline. Ms Kelsey explained that children can apply to become parties to their parents legal proceedings, can engage a solicitor and apply for legal aid in their own right. While admitting there is still much to be done to ensure children s voices are heard in the Scottish Court system, Ms Kelsey hoped that the developments they have seen in the last ten years would stimulate discussion here.

The One Family seminar provided not just fodder for discussion but a reminder that although Irish family law has changed rapidly in the last ten years, further change is urgently needed. We must adapt our law, systems and processed to ensure that children s voices are heard and their views taken into account — to protect their universally recognised rights.

Papers from the event are available to view and download from One Family s website — see http://www.onefamily.ie

Lydia Foy case starts again

Ten years on from when she began her legal action in April 1997, transgendered woman Lydia Foy was back in the High Court on 17 April. She is seeking to have her gender change officially recognised by obtaining a new birth certificate showing her realigned gender. She is represented by FLAC.

Lydia s case was first heard in the High Court over 14 days in 2000 and judgment was given by Mr Justice McKechnie in July 2002. Medical experts gave evidence that she suffered from Gender Identity Disorder, a recognised medical condition where a person s psychological sex/gender is at odds with her/his physical characteristics and for which gender realignment surgery is often the only solution.

The Court found against Lydia, based on legal precedents that said gender must remain as identified at birth, and relying on chromosomes and anatomical indicators. But two days later, in a case called *Goodwin v. the United Kingdom*, the European Court of Human Rights found that the UK s refusal to officially recognise transgendered persons and give them new birth certificates was in breach of the European Convention on Human Rights (ECHR).

Since then things have moved pretty fast. Every state in the European Union except Ireland and every member of the Council of Europe except Albania, Andorra and Ireland now officially recognises gender change and provides new identity documents. And, following the *Goodwin* case, the UK introduced the Gender Recognition Act 2004 which allows post-operative transgendered persons to change their legal gender and get new birth certificates showing their amended gender. Australia, Canada, New Zealand, South Africa and almost every state in the United States also recognise gender change and it has been endorsed as well in Japan, Korea and Malaysia.

Even the Hollywood movie industry has accepted gender transition in the successful mainstream movie, *Transamerica*, starring Desperate Housewives actor Felicity Huffman.

Ireland is now seriously out of step with other liberal democratic states and the change in the UK has another significance for this state as well. The UK Gender Recognition Act also applies to Northern Ireland, raising the prospect of Irish citizens living in the North officially changing their gender and their birth certificates and then moving to the Republic. How would the authorities deal with them here?

There can be genuine difficulties about issuing new birth certificates to transgendered people, particularly where there are children and spouses, or former spouses, involved, as in this case. However, the UK legislation has dealt with this by providing that granting a new birth certificate in a different gender does not cancel out any previous marriage or family relationship or interfere with maintenance obligations or succession rights. The UK Act could provide a useful model for future legislation here.

Since the previous judgment in Lydia Foy s case, the European Convention on Human Rights Act, 2003 (the ECHR Act) has also come into force here, requiring all public authorities to act in accordance with the European Convention. Where Irish law does not allow an official to act in line with the ECHR, then the High Court can issue a declaration that the law in question is incompatible with the Convention and it is up to the Oireachtas to change it.

Lydia Foy made a new application for an amended birth certificate after the ECHR Act came into force. It was refused and that is the basis for the present proceedings. As a result, if the High Court finds it cannot grant her application under Irish law as it stands at present, it has the option of issuing a declaration of incompatibility with the ECHR. That would put the onus on the Oireachtas to come up with a solution that would ensure some dignity and respect for a small and vulnerable group

Photo © Irish Independent

Dr Lydia Foy

in our society. Ironically, that is what Mr Justice McKechnie called for as a matter of urgency at the conclusion of his judgment in Lydia s case five years ago. Sadly, the Oireachtas has done nothing at all in the meantime.

Note: A key decision case relied on in the 2002 High Court judgment in Lydia Foy s case was *Corbett v. Corbett*, decided in the English High Court in 1971. It concerned the marriage between April Ashley, a transgendered woman and *Vogue* model, and Arthur Corbett, the heir to a British title. When the marriage broke down Mr Corbett sought to have it declared null and void because, he claimed, and despite gender realignment surgery and being good enough for *Vogue* magazine, April Ashley was still legally a male. The Court duly obliged and for more than 30 years this case was cited in every Common Law jurisdiction to deny recognition to transgendered persons.

In 2005, April Ashley finally obtained a gender recognition certificate under the UK Gender Recognition Act and was officially declared female. That should make it a bit difficult for courts in Common Law countries to rely on Corbett again, now that the very person whom the High Court in that case declared to be a male has been officially recognised as a female.

Proposed new legal aid arrangements in childcare proceedings

Two cases involving the right of access to civil legal aid, due for hearing together in the High Court, were settled recently. As part of the settlement, the state funded Legal Aid Board announced that in some circumstances, it will pay for essential assistance to clients who require it for the effective conduct of their case. FLAC welcomes the announcement which will improve access to justice in Ireland.

The cases, *Legal Aid Board v District Judge Brady* and *In the matter of G*, concerned a mother's legal representation in child care proceedings affecting her child. The mother had a reduced capacity to give instructions to her lawyers.

In the course of the case, her legal team applied to Judge Brady to have an expert appointed to give assistance in taking her instructions. As there is no specific mechanism for this, District Judge Brady ordered the Legal Aid Board to seek sanction for the costs of the assistance and simultaneously referred a consultative case stated to the High Court for adjudication.

The Legal Aid Board then issued its own proceedings to challenge the District Judge's Order that the Board should take the action that he had ordered. The Attorney General and the Human Rights Commission had been joined in the proceedings.

As part of the settlement of the case on 28 March, the Legal Aid Board has announced that the Board will introduce arrangements from early summer 2007 for the payment of the fees/expenses of an appropriate person. That person will provide assistance to legally aided clients in child care proceedings where that client has impaired capacity and the appointment is considered essential for the effective conduct of the child care proceedings.

The role of the person appointed will be to provide support and assistance to the client throughout the proceedings in understanding the proceedings and partaking in them and to assist the client in his / her relationship with the solicitor.

The Legal Aid Board appears to envisage that the scheme will apply only to child care cases. However, FLAC hopes and expects that the Board will extend this progressive assistance measure to other instances where a third party's expertise is considered necessary to assist with the effective presentation of the legally aided person's case.

Legal aid exclusions

Dear Editor

Just to clarify a note on Legal aid exclusions that appeared in the December 2006 version of FLAC news. You made reference to persons who were threatened with eviction from local authority housing for alleged anti-social behaviour having been granted legal aid by the Legal Aid Board.

I should make it clear that the Board s position is that the eviction proceedings taken by the local authority constitute a dispute concerning rights and interests in or over land and are therefore excluded from the Board s remit on foot of the Civil Legal Aid Act 1995 (section 28(9)(a)(ii)) unless the particular case falls within one of the exemptions to the exclusion. Perhaps the most relevant exemption is contained at section 28(9)(c)(iii) of the 1995 Act which provides that legal aid may be granted:

where a subject matter of the dispute is the applicant s home (or what would be the applicant s home but for the dispute) and the Board considers that the applicant-

(I) suffers from an infirmity of mind or body due to old age or to other circumstances, or

(II) may have been subjected to duress, undue influence or fraud in the matter, and that a refusal to grant legal aid would cause hardship to the applicant;

John McDaid
Professional Liaison Officer
Legal Aid Board

FLAC welcomes readers views on articles that appear in FLAC News — don t hesitate to write!

TCD student seminar examines challenges of Public Interest Litigation for Travellers

A seminar on the topic of Travellers' Rights was organised by Trinity College FLAC Society on 22 January 2007. It featured three speakers with real insight into the issue who reviewed the triumphs and limitations experienced by Travellers in their use of litigation and emphasised the need for caution in the wake of the recent *Doherty* case.

Oran Doyle, barrister and law lecturer at TCD, outlined the case of *Doherty & anor v South Dublin Co. Co. & ors [2006] IESC 57* in detail for the assembled students, lawyers and activists. The plaintiffs were an elderly couple suffering from numerous serious health problems, living in a sub-standard, dilapidated caravan, which had been provided by way of a loan from the local council, on a temporary halting site. They sought more appropriate accommodation from the council, which did not respond until review proceedings were issued.

In the High Court decision, it was held that the local authority had no obligation to provide specific accommodation for Travellers, only bricks and mortar accommodation. As Mr Doyle soberly commented, this brings up some serious problems for the Traveller movement. Legally, the right to a halting site remains, but the *Doherty* decision seems to allow a housing authority to subject Travellers to sub-standard conditions on a halting site.

Mr Doyle said that an appeal of this decision has been considered on the grounds of the European Convention on Human Rights and Equal Status Acts. However, this would carry the danger of copperfastening an even worse situation. He said a possible benefit of the case may be that it has got people thinking about the plight of Travellers in this country.

Professor Gerry Whyte gave a historical outline of the use of Public Interest Law by Travellers. The question to be asked, he said, is not whether the use of Public Interest Litigation (PIL) is *legitimate* — it undoubtedly is — but whether it is *effective*. When viewed in the context of Travellers struggles for recognition of their rights over the past 50 years, he said, PIL has produced mixed results. Lawyers must careful consider the options before they go to Court on behalf of marginalised groups.

According to Professor Whyte, PIL may be used as a defence mechanism when parties are dragged into litigation by an oppressive state. In successful cases, the proceedings can be turned around, and used to gain an advantage for the defendant, such as in the 1956 case of *Limerick Corporation v Sheridan*. Professor Whyte said that PIL is more usually employed by plaintiffs to prompt a disinterested state to care for marginalised groups, for example, to provide appropriate accommodation, education and facilities for homeless children. An example of the successful application of this type of PIL is the 1980 Supreme Court decision in a case taken by Rosella McDonald (*McDonald v Feely & ors*), where the local authority attempted to move the plaintiff s family from their camp on a bypass road works site. Ms McDonald won a ruling that Travellers could not be evicted from local authority property without being offered a suitable alternative, under the Housing Act in force. However, that principle has been whittled away by subsequent legislation. This is one of the difficulties with Public Interest Litigation: even if victories are claimed, they often do not signify the end of the struggle.

Prof. Whyte also spoke of Travellers' rights to a halting site. In *O Reilly v Limerick Corporation* it was held that Travellers were constitutionally entitled to be provided with basic facilities. This was followed by a remarkable judgment in the case of *University of Limerick v Ryan*, which held that that local governments have a duty to provide halting sites in certain cases, even though the legislation uses the word may and not shall . This principle was followed in a number of subsequent proceedings, including *Ward v South Dublin Co. Co* and *Mongan v South Dublin Co. Co.*, where Travellers were able to build on this right. He went on to examine one of the main dangers of litigation — that is if a plaintiff loses, they copperfasten the issue they sought to challenge. Arguably, this is the result of the *Doherty* decision. The High Court held that the local authority had satisfied its obligations by offering the plaintiffs a dwelling and did not have to offer them a mobile home. Judge Charlton distinguished it from the previous cases, including *Ryan*, in that these dealt with rights to halting sites only. The Dohertys needed a new home — their existing one was entirely inappropriate for their needs.

Damien Peelo of the Irish Travellers Movement (ITM) also spoke about the role and limitations of PIL. In 2002, the ITM established a Legal Unit to test new legal approaches to Travellers issues. To put some perspective on these issues, he stated that one-third of the Traveller community live in substandard conditions and suffer ongoing health problems: The average life expectancy of Travellers is 10 to 12 years below their settled counterparts.

Mr Peelo explained that, in many cases, Travellers take legal action to deal with their immediate circumstances. For example, if someone is evicted, they may have no where else to go. But the test case approach he said, is limited. He said that Irish law does not take into account differences in culture. Travellers ethnicity is not factored in when laws are made. For example, provision is not made for the fact that Travellers do not need or want bricks and mortar housing. The situation for Travellers has worsened in recent years; they face assimilation by default, with their way of life being increasingly devalued.

He explained that strategic legal responses must be formed to fight back with the aim of promoting Travellers human and legal rights through the Courts and legislative framework. He said that an important part of this strategy will be to develop research tools to put forward law reform proposals. The ITM is currently seeking funding to continue work in this area.

In relation to *Doherty*, Mr Peelo said that Travellers will continue to pursue litigation in their struggle to achieve rights, albeit with caution. Other avenues have failed, and while there are times when litigation results in very big setbacks, this must be viewed in a broader context.

Trinity FLAC Society is to be commended for a very relevant seminar at this critical time for Irish Travellers. For further information, see their website at **http://societies.csc.tcd.ie/~flac/**

Remembering Dave Ellis

Dave Ellis, founder member and driving force behind Community Legal Resource (CLR) and formerly Community Law Officer with Coolock Community Law Centre (now Northside CLC) for over 20 years, died after a short illness on 2 February last.

Many tributes have been paid to Dave not least at his funeral service at the Unitarian Church on Stephen s Green and in an *Irish Times* obituary. In this edition of *FLAC News*, we would like to remember the tremendous contribution that Dave made to FLAC itself over many years, both during his time with the Law Centre and after he set up CLR.

Dave Ellis was a priceless resource to a succession of FLAC staff and council members who worked with him on various campaigns and issues during his time at Coolock. His genial personality allied with an unstinting commitment set him apart as an example of how to get work done. Whether lobbying politicians to improve the scope of the Civil Legal Aid Bill as it went through Select Committee, advising on the finer points of a Social Welfare appeal or composing sections of joint employment rights publications like the Maternity Rights Guide, Dave could always be relied upon to strike the right note.

Photo © Derek Speirs/Report (1979)

It was no surprise to many that after leaving the Community Law Centre in Coolock, Dave turned his community law experience to setting up an innovative project designed to deliver legal and social policy services in the not for profit sector, CLR. As was his style, Dave, with the help of his wife Sarah, established the project himself and then provided others with the opportunity to come aboard, gradually drawing in a variety of people with complementary expertise.

When FLAC came to select consultants to evaluate the future of Public Interest Law in Ireland as part of its current campaign, CLR was a natural choice. Dave had a vision for making the law accessible to disadvantaged people and a vision for co-ordinating and sharing information amongst interested parties. He also believed wholeheartedly that social change was possible and that that the law could be used to effect social change in Ireland. We believe that Dave pioneered much of the community and public interest law work now developing in Ireland.

He inspired so many of us that our task is to continue his work for access to justice and the further development of public interest law.

Dave Ellis carried his considerable wisdom lightly, he was impishly good humoured, he was deeply committed to his work and could be occasionally delightfully eccentric. We remember him as one of life s true gentlemen.

N bheidh a leithead ann ar s.

Pictured at SICCDA Eamon Leahy Memorial Conference June 2005, Dave with his partner Sarah Flynn and Donncha O Donnell, Dean of Law, NUI Galway

Photos © Derek Speirs

Dave participated actively in FLAC 2006 seminar series on Public Interest Law in Ireland; he is pictured here with his colleague Orlagh Farrell

Dealing with vulnerable clients – law reform

A seminar held in February by the Law Society focused on Acting for the Vulnerable Client and featured recommendations around mental capacity that have very important implications for many people.

Up to now, the only two existing formal legal mechanisms for managing the affairs of someone lacking mental capacity is to have that person made a **Ward of Court** or to create an **Enduring Power of Attorney.**

When a person is made a **Ward of Court**, the High Court is vested with jurisdiction over all matters relating to the person and estate of the ward. This means that as well as looking after the assets of the ward, the court also has jurisdiction over the personal care of the ward. However, it is normally when protection of the person s assets are at issue that a person is taken into wardship. Once a person has been made a Ward of Court, they lose the right to make any decisions about their person and property, e.g., the right to make a will.

There are procedures that must be followed when one is being made a Ward of Court, but these are considered archaic and complex by the Law Reform Commission (LRC), which has recommended instead the establishment of a statutory framework for the legal protection of vulnerable adults person and property. The LRC s recommendation is to maximise personal autonomy for vulnerable people as much as possible.

An **Enduring Power of Attorney**, on the other hand, is a Power of Attorney created by a person when they are in good mental health selecting a specific person to take over the handling of their affairs in the event that they become mentally incapacitated. Up to now there has been no legal definition of 'capacity'; thus, in establishing whether a person has capacity, three approaches have been used.

The Status Approach

This involves an across the board assessment of a person's capacity based on their disability. For example, a person who is on a long-stay psychiatric ward might be automatically denied capacity to make a will without having regard to their actual capabilities. The status approach is also evident where a person has been made a ward of court and where an enduring power of attorney has been registered.

The Outcome Approach

Under this approach, capacity is determined by the content of an individual s decision. For example if a person made a decision which did not conform to normal societal values, this might be taken to be evidence of incapacity.

The Functional Approach

This approach assesses capacity on an issue-specific and time-specific basis. This means that a decision on legal capacity in relation to one issue will not necessarily be decided in the same manner in relation to another issue. For example, in an English case from 1953 entitled *Park v Park*, a man of advanced years who married and executed a will on the same day was found to have had the capacity to marry but to have lacked the capacity to make a will.

In an effort to protect the elderly and those with decision-making difficulties, the LRC published two consultation papers, the first a *Consultation Paper on Law and the Elderly* and the second a *Consultation Paper on Vulnerable Adults and the Law: Capacity*. The LRC then went on to publish a *Report on Vulnerable Adults and the Law* in December 2006 which incorporated the issues discussed in both consultation papers. The report recommends that the law on capacity should reflect an emphasis on capacity rather than lack of capacity and should be enabling rather than restrictive in nature, thus ensuring that it complies with relevant constitutional and human rights standards.

The LRC goes on to recommend the functional approach in assessing capacity. The draft scheme set out in the LRC report has been introduced by Sen. Mary Henry as a Private Members Bill entitled Mental Capacity & Guardianship Bill 2007 . In this Bill, capacity is defined as the ability to understand the nature of a decision in the context of available choices at the time the decision is being made and where a decision requires the act of a third party in order to be implemented, a person is not to be treated as having capacity if he or she is not able to communicate by any means. This essentially means that when one makes a decision, s/he must be able to communicate that decision and if s/he cannot, incapacity is presumed.

The Bill also defines guiding principles which must always be taken into account when applying the Bill. These guiding principles set the tone of the Bill and are set out as follows:

- no intervention is to take place unless it is necessary having regard to the needs and individual circumstances of the person including whether the person is likely to increase or regain capacity;
- any intervention should be the least restrictive of the person s freedom;
- account must be taken of the person s past and present wishes where they are ascertainable;
- account must be taken of the person s relatives, primary carer and the person with whom he or she resides;
- due regard shall be given to the need to respect the person s dignity, bodily integrity, right to privacy and autonomy.

The Bill also provides for the establishment of a three-member Guardianship Board chaired by a High Court or Supreme Court judge. The Board will make decisions as to whether a person does or does not have capacity to make decisions for himself.

The Guardianship Board will have three functions:

in sight?

1 to make Guardianship Orders;
2 to appoint personal guardians pursuant to such Guardianship Orders;
3 to make Intervention Orders.

Where a *Guardianship Order* is made, a Personal Guardian can be appointed over the property, financial affairs and welfare of a person who lacks capacity either in a limited way or generally. An *Intervention Order* would be for a specific purpose where a Guardianship Order would not be required.

The Bill also provides for the establishment of an Office of the Public Guardian which would have a supervisory role over the Personal Guardian and also those acting under Enduring Powers of Attorney. The Public Guardian would also have the power to develop and publish codes of practice to assist people who are assessing whether a person has capacity in relation to any matter, to guide attorneys operating under Enduring Powers of Attorney. The Public Guardian would also have an educational role to raise awareness amongst the public and to work with other bodies such as the Health Service Executive.

Finally, the solicitor is usually the first point of contact for the vulnerable client and great emphasis must be placed on the importance of giving advice to the client. In a 1997 Supreme Court case entitled *Carroll v Carroll*, Judge Barron stated:

> a solicitor or other professional person does not fulfil his obligation to his client...by simply doing what he is instructed to do. He owes such a person a duty to exercise his professional skill and judgment and he does not fulfil that duty blithely following instructions without stopping to consider whether to do so is appropriate. Having done so, he must then give advice as to whether or not what is required of him is appropriate.

Forthcoming seminar on Amicus Curiae interventions

As evidenced by recent court cases, *amicus curiae* interventions can be a potentially powerful tool for the promotion of public interest law.

Amicus curiae briefs are filed in court proceedings by individuals or groups who are not party to a lawsuit, but who have a strong interest or expertise in the issues in the case, and who are invited by the court, or permitted by law, or who petition the court to make an intervention in the action. The "amicus" is considered to be a "friend of the court".

FLAC is hosting a seminar around the use and potential of *amicus curiae* interventions at the Park Inn Hotel, Smithfield, Dublin 7 on Monday 30 April from 2.30-5.30pm.

Speakers with experience of such interventions from England, Northern Ireland and Ireland will take part in the seminar. These include Mr Phil Shiner, Supervising Solicitor with Public Interest Lawyers, a UK-based organisation. He is a lawyer with an international and national reputation for his work on issues concerning international, environmental and human rights law. Phil has been practicing as a solicitor in the UK since 1981 and is a visiting professor at London Metropolitan University and a visiting fellow at the London School of Economics. He was made "Human Rights Lawyer of the Year" by the Joint Liberty and Justice Awards in 2004.

He will talk about his experience in public interest cases working with NGOs acting as *amici*. Currently Phil is working on a case involving Iraqi civilians killed or injured by British soldiers during the occupation in the case of *Al Skeini*, which will be heard at the House of Lords in late April 2007. He also acts for a British national who has been held without charge in a British detention centre in Basra since October 2004 in the case of *Al Jedda*, which is also proceeding to the House of Lords. He acts for the families of British soldiers who challenged the legality of the Iraq war. In 2003 he represented CND in a judicial review challenge to the Government's decision to go to war.

Also speaking will be Ms Eilis Barry, Senior Legal Adviser with the Equality Authority. Prior to joining the Equality Authority she practiced as a barrister for 15 years, specialising in employment and discrimination cases, appearing in many equality cases before the Irish Courts. She was a regular contributor on employment issues to the *Irish Law Times* and was Editor of the *Employment Law Reports* for a number of years. She was a Director of the Free Legal Advice Centres for 15 years. She is the co-editor of *Equality in Diversity, The new Equality Directives,* ICEL No 29.

Eilis will give a factual account of the experience of the Equality Authority in seeking to be appointed as *amicus*. She will review the implications of the Supreme Court judgment in the case of *Doherty & anor v South Dublin Co. Co.* for *amicus curiae* applications in Ireland.

The final speaker is Ms Karen Quinlivan, a practising Barrister in Northern Ireland. She has acted in a number of interventions on behalf of the Northern Ireland Human Rights Commission. In particular she will speak about the successful appeal the NIHRC took to the House of Lords to assert their right to intervene in cases. Karen will discuss the added value of interventions in public interest cases.

For participating solicitors and barristers, CPD points are available. To book your place please e-mail us at piln@flac.ie or phone us at 01-8745690.

For more information, see the various websites:

www.publicinterestlawyers.co.uk

www.equality.ie

www.nihrc.org

A letter from India: My

If you study law, lecturers might throw out the following scenario: there is a child drowning in a puddle on a busy street. The question is: should a passer-by go to the aid of the child? Does the passer-by owe a duty of care to that child on seeing the child in distress? If a passer-by knowingly fails to aid the child, should s/he be convicted of the drowning of that child because of failure of moral obligation? Yet who decides what is moral? Is it society, religious thought, the legislator? I found myself thrown into a state of unrest when I returned to India, more educated on paper but morally still ill equipped.

Indians will tell you they cannot save everyone, and if you were to stop every time a child begged then you would never get anything done. Indians will argue how can you keep a hospital clean, when 1 million people go through it weekly. India is socially, economically and culturally complex, but is this a justification for not trying to solve problems? That is what the Human Rights Legal Network (HRLN) - and many other NGOs in India - do: they try.

They may not be able to resolve the fact that over 700 million people live on the poverty line, stop over 6.7 million women having illegal abortions, or stamp out corruption within the police force. Nevertheless, by writing books, co-ordinating interested groups across India, seeking orders from the courts, filing and fighting Public Interest Litigation (PIL) cases and directing the government to implement laws, they achieve some good; the fact that the Indian government is constantly trying to shut down HRLN and organisations like it is all more the reason to keep trying.

I was called to the Irish Bar in October 2006. Till then, I had no real history of working in any charitable or humanitarian organisation, I felt I was about to embark on something of which up to now I had remained ignorant. Prior to December 2006, as a half Indian, I was confident I understood the country. My early years and later numerous visits had exposed me to all sorts of religions, castes, customs, languages, the sheer size, mass population, abject poverty, disease. However, did I really understand this country? Through a seminar organised by FLAC in mid-October, I heard a talk given by Colin Gonsalves, a Senior Advocate and founder of HLRN in India. Later when I spoke with Colin, I remained defensive. Was it pride or a sheltered upbringing of beliefs?

It took a cool, foggy morning, in early December 2006, down a little back road in Central Delhi to strip away my original perceptions. In the Delhi office of HRLN, it was extraordinary to find that every creed, religion and caste worked alongside each other as equals, which in India is almost unheard of.

I was sent up to the magazine department. HRLN publishes *Combat Law*, a bi-monthly publication. My first assignment: To research an important recent judgment on trafficking. Foolishly, I thought this was a straightforward issue. I only later began to realise the task was a mammoth one. All the existing legislation merely brushes with the concept of trafficking. It goes so far, but does not declare prostitution a crime *per se*.

I used to think that legislation, its implementation and enforcement, and having a right of access to the courts was straightforward. Green from the King's Inns, I was unprepared to discover how flawed legislation can be in dealing with a subject. The cries by international bodies and internal NGO bodies about trafficking in India have fallen on deaf ears - the reason being that politics in India is extremely corrupt.

From the outside, it is a fast-growing, evolving economy. Coming to India over the years, I thought this was true. There are fewer visible poor - over the years, I have seen fewer and fewer people living on the streets in made-up houses cut from cardboard or makeshift tents. With dismay, I find the government has merely implemented a policy to move all those on the city centre streets to the outer reaches of the city. The government wants foreigners to think India is booming and that poverty is a thing of the past; In fact the poor are just pushed out of sight. After all, India prides itself as the largest democracy in the world.

Often HRLN not only files on behalf of victims of crimes and various social injustices, but also has to file petitions seeking orders simply for states or relevant authorities to implement the existing legislation. In this instance, nothing is done in relation to rehabilitation or child-friendly methods implemented or acknowledged by the authorities. Crude attitudes, due to poor training and lack of political will, leave a mammoth task for NGOs working in the area to cope with the victims.

Ritika (front row, right) & HRLN members taking time off at Bagga, a seaside resort

Members of HRLN's New Delhi office who attended the Goa meeting

experience with HRLN

The legislation will often read that authorities should use NGOs, or a court will order a committee to draft up a policy which should include NGOs. The net impact is authorities cannot be held accountable for not working with NGOs. The problem with this is that authorities in India are not only corrupt, but often they lack the know-how, resources or political will to attempt to implement the legislation effectively. The NGOs pay the price, as they must fight for every inch of co-operation with the authorities.

Unlike Ireland, with a population of 4 million predominantly Catholic inhabitants, India has multiples of religions and is home to over a billion people. Each state is like a separate country with its own language, not to mention different dialects. Within each state, down to the village area, customs, tribes, histories, religions beliefs differ greatly. The fundamental problem with a lot of Indian law is it was merely adjusted from a legacy left by the British colonists. This has caused numerous problems in having a written law which does not take account of the needs and culture of the people it is trying to address.

In December HRLN invited me to their annual meeting in Goa. This consisted of a 4-day workshop with 70 lawyers and social workers from across India. The aim was to share discuss and understand how to move forward as one of the most active human rights networks in India. The topics included:

- Criminal Justice Initiatives and Prisoner Rights (judicial accountability and police reform)
- Child Rights initiatives
- HIV and the Law Initiative (needed understanding)
- Dalit Rights Initiative (major injustices)
- Housing Rights
- Disaster and Rights
- Refugee rights
- Right to Food
- Disability Rights (rights to equality)
- Labour law and rights
- Communalism and the law (hate and minority issues)
- Women's Justice
- Trafficking
- Environmental Justice
- Financial Position and Fund Raising
- Organisational issues

It is not possible to go into detail on each topic. However, as an example under Women's Justice, one issue was around acid attacks. Sheila, one of the HRLN lawyers, described a PIL case she had been involved in:

> A young girl (the victim) is working. She finds out her boss is in "love" with her and he tells her he wants to marry her. She declines and leaves to work for another person. She walks to her new job. One morning she is stopped by her old boss. He asks her to come back to her old job and marry him. She declines. He then throws sulphuric acid over her. Thinking she would not survive he runs off. The victim suffers optic nerve damage, her face destroyed. For the rest of her life as a woman she will never be "married off" (which in India is the main object when a girl is born; it is then her husbands' family who must look after her. However, when he dies she is cut off again. Most Indians would never consider not marrying as an option.) She will never be able to hold down a job because of her injury.

HRLN brought a case on her behalf. It took five years to decide the case! The Public Prosecution was harassing lawyers of HRLN and attempting to hamper the case, as too much publicity was being made of the case. HRLN had to make application to the High Court to overturn a decision given in a Lower Court stating the accused did not act deliberately or and the victim was not entitled to rehabilitation. The High Court released one Lak (100,000 rupees) but only upon photo evidence of victim! The impact of this case: all victims of acid attacks across India are now entitled to rehabilitation.

The lawyers at HRLN are brave, hard-working and full of humanity. They work long hours when others are asleep. Some work under constant threat to their lives. Asraf Mohammad, a lawyer working in Kashmir, knows of 15 people who have gone missing or been murdered in the last few years. These people were lawyers, doctors and social workers. All they did was actively help a rape victim, a murdered relative to find justice. But the system, steeped in power and corruption, is often too big for the individual fighting for some simple right.

HRLN currently have over 230 people working for them over 22 units across India. They now face tough times. By the end of 2007, their funding will have been cut by three-quarters. Most of this funding has until now come from foreign embassies. Why are they stopping? The HRLN believes it is political pressure in part. The Indian government says, "fund HRLN, but don't expect to trade or have access to the Indian market". Business interests have won the day - for now - while HRLN's very existence hangs in the balance.

At the Goa meeting I discovered that most of the lawyers work for less than a $100 a month. The Kashmir unit had been only paid 1500 rupees a month: about 25. Poor pay conditions and long emotional days have not stopped them fighting. The sense of good spirit is holding them united. It was a profound feeling to be among Muslims, Hindus, Sikhs, Christians, Parsis and Buddhists all singing together Bollywood songs, in perfect harmony, to pass the time huddled in a third class carriage, on the overnight train to Goa.

To be able to read this already makes you privileged. In India this year, over 300 million people (more than the total population of the USA) will not get that opportunity. That does not mean lawyers, judges arbitrators and law student cannot contribute; they can contribute their training experience, even old law books, journals and reports - or PCs and laptops - and most concretely, money.

Ritika Vaderaa BL

For more information on HRLN, see the websites at

http://www.hrln.org/
http://www.combatlaw.org/

The Challenge of Change

FLAC's call to politicians 2007

[*continued from front page*]

Significant numbers of people still face imprisonment by default principally because they have failed to engage with a legal system that is complicated, difficult to understand and insists on dealing with debt enforcement in public. The current system is not only archaic, but expensive on the public purse and highly inefficient. Even MABS, the state-funded service that has done so much to improve the situation of people in debt, has not yet been given the final statutory recognition it needs to maintain and further develop its vital work.

Reform of the laws on fines

Despite almost a decade of promises that legislation would be introduced on alternative methods to pay fines, there is still no instalment system in place. A person fined for a minor offence (e.g., non-payment of a bus fare) must therefore come up with the entire amount of the fine in a lump sum or face jail. Many of those who end up in jail have low incomes or are in receipt of social welfare.

The supreme irony is that if a prison sentence is served, the fine is purged. Thus, the State spends a vast amount of resources (Court staff, Garda time and the cost of the prison stay) and gets nothing in return. Rather than wasting resources, alternative means of sanction such as Community Service Programmes and Restorative Justice Schemes have proven to be effective in pilot programmes, and are worth further investigation.

The Fines Bill was introduced in the D il on 26 January, but it has not progressed at the time of writing beyond the first stage. It does provide in Section 11 for the payment of fines by instalment over a period of one year with the possibility of a further one year extension and this is welcome. However, it does not pursue any of the alternative means of sanction outlined above. With a general election imminent, there must also be concerns that the Bill will not be passed before the dissolution of the Dail, leaving the current unacceptable situation unchanged.

Restoration of Child Benefit as a universal payment

Ireland has long been proud of its human rights record on the international stage and has often been among the first to sign up to international treaties. However the state s respect for children s rights has recently been found wanting with the introduction of the Habitual Residence Condition in May 2004, which ended the universal payment of Child Benefit to all children in the country — a policy that respected Child Benefit as a major tool in ending child poverty and in meeting the State s human rights obligation not to discriminate between children.

Now, children of workers (some of whom have been exploited in Ireland), of asylum seekers and of those waiting for decisions on residence are denied the benefit.

Although it is contrary to government policy on child poverty, and to its aim to eliminate child poverty by 2010, and though it is contrary to anti-discrimination provisions in human rights law, it is in line with a strict immigration policy. Children are being forced to pay the cost of our migration policy and this will assuredly drive some children and their families into poverty.

By making these changes, the next government could set a sound basis for greater equality between people, more profound respect for human rights and higher standards of social inclusion and cohesion than any government that has gone before.

FLAC's recommendations:

1. Consider including explicit recognition that everyone is entitled to equal access to justice.
2. Parties might consider promoting access to justice in their plans to combat poverty.
3. Parties might explore how community law mechanisms can be used to advance the public interest.
4. To ensure full knowledge of its services, consider a separate budget allocation for promotion of the Legal Aid Board.
5. Commit to an annual parliamentary review of the means test for civil legal aid.
6. Review the arbitrary and punitive distinctions between different kinds of law in the allocation of civil legal aid.
7. Consider a Debt Rescheduling Tribunal to modernise the debt enforcement system.
8. Support the legislation which will establish MABS on a statutory footing and provide it with the necessary resources to carry out its remit.
9. Commit to continued exploration of alternative means of redress for those for whom fines are inappropriate, such as those without funds to pay them.
10. Consider amendments to the Consumer Credit legislation so that all lenders (domestic or European) proposing to charge a premium above market interest rates should have to apply for a licence with the Financial Regulator and justify such charges.
11. Consider mechanisms to allow borrowers to refer issues such as the fairness of the cost of credit, default interest charges and other relevant terms and conditions of housing loans, credit agreements or hire purchase agreements to the Ombudsman for Financial Services.
12. Seek to restore Child Benefit as a universal payment to every child in Ireland.