

flacNews

FREE LEGAL ADVICE CENTRES

**Proximity,
narrative,
hopefulness,
uncomfortable
things:**

**Bryan Stevenson gives
8th Dave Ellis
Memorial Lecture**

Photo by Derek Speirs

FLAC was honoured to have Bryan Stevenson give this year's Dave Ellis Memorial Lecture. Bryan is one of the foremost public interest lawyers in the United States and is the founder and Executive Director of the Equal Justice Initiative. Described by Archbishop Desmond Tutu as 'America's young Nelson

Mandela', he has garnered international acclaim for his role in challenging bias against poor people and people of colour in the US justice system.

In 1995 he founded and became executive director of the Equal Justice Initiative. Based in the historically resonant town of Mont-

gomery, Alabama, EJI is a non-profit organisation that provides legal representation to such groups as juvenile offenders, poor people denied effective representation or minority defendants whose trials are marked by racial bias.

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Legal protections for borrowers in focus at Oireachtas Committee

FLAC's work on highlighting the lack of legal protections for people using financial services and for borrowers in arrears has led to two appearances before the Joint Oireachtas Committee on Finance, Public Expenditure and Reform this quarter.

In November, FLAC Senior Policy Analyst Paul Joyce voiced concerns in relation to the proposed introduction of a Mortgage Insurance Scheme in Ireland. Mortgage Insurance (as distinct from Mortgage Protection Insurance) is taken out by the lender to protect against borrower default. The Central Bank has proposed that such a scheme could provide an exemption to the 80% Loan-to-Value limit it has recommended for residential mortgages. If the lender could secure mortgage insurance, this could cover some of the 20% deposit that would otherwise have to be paid in full by the borrower.

Paul, who was speaking alongside credit industry experts, voiced FLAC's concerns that the cost of mortgage insurance would inevitably be passed to the borrower, adding to the already considerable costs of servicing a mortgage.

He pointed out that a similar scheme in Canada has helped boost construction there but has also inflated house prices by allowing people to buy homes who could otherwise not afford them. He warned that the consequences in terms of house prices, potential over-indebtedness and arrears must be borne in mind when discussing such a scheme.

In FLAC's view a more holistic approach in terms of housing policy was needed generally. In relation to the proposed loan-to-value and loan-to-income limits on mortgages, Paul advised a cautious approach to ensure that borrowers who

are in a strong financial situation can access credit whilst also ensuring that people do not borrow beyond their means.

In December Paul and FLAC Director General Noeline Blackwell were invited to speak to the same committee on the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2014, which aims to ensure that consumers are protected when loan books are sold by lenders to unregulated entities.

Paul highlighted problems with the current consumer protection codes in relation to borrowers which FLAC had set out in its 'Redressing the Imbalance' report earlier this year. Even if unregulated entities were subject to the current consumer protection codes, he explained, this would not offer consumers a sufficient level of protection.

"What is required, therefore, is not only legally binding legislation on the status of credit acquisition companies, but also a regulatory regime and a Financial Services Ombudsman service that will vigilantly monitor the companies in question and deal with complaints in a decisive fashion," he explained.

Noeline cautioned that, under the proposed legislation, the original lender would be allowed to jettison any responsibility for the debt once a new entity has bought it or has been brought in to manage it. She questioned the logic of such a proposal, asking why the original owner of the debt could not be kept in the frame when it comes to redress for the consumer.

Paul added that it seemed extraordinary that an owner of an agreement could be allowed to discard its responsibilities under that agreement where a credit service has been engaged to service the loan. He suggested that both the original

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Under-resourcing of state Civil Legal Aid scheme a barrier to justice

According to its 2013 Annual Report, the Legal Aid Board has seen a 70% increase in applications since 2006. In 2013 alone there were 17,500 applications for civil legal aid, 708 of which were related to asylum cases. Yet funding only increased by around 35% in the same period, with no increase since 2008. Staffing levels also fell from 386 employees at the end of 2010 to 368 at the end of 2013.

Even as far back as 2004, the Legal Aid Board was found to be unable to cope with its workload due to lack of resources. In *O'Donoghue v Legal Aid Board*, the court held that the plaintiff's right to access to the courts had been infringed by having to wait 20 months for legal aid.

Many Legal Aid Board law centres have yet to reach the suggested average waiting period of 2-4 months for the first consultation with a law centre. As of September 2014, the waiting times for a first appointment were in excess of 4 months in 19 out of 35 law centres nationally. Waiting times for a first appointment can vary from 3 weeks in Nenagh, Tipperary, to 57 weeks in Cork South.

In 2012 the Legal Aid Board introduced a 'triage' system to reduce waiting times. This type of appointment is designed to allow people to address problems while waiting for legal aid by diverting them to other suitable services, such as an ombudsman or mediation. There has been a large uptake in mediation for family law disputes, with the Family Mediation Service mediating over 710 agreements in 2013 and saving the state an estimated €200,000. However, gains from mediation seem to have been offset in other areas, as the waiting times in September last year are similar to those this year, and were actually slightly higher.

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Legal Aid Board Numbers at a glance for 2013

- 22,300 – number of cases dealt with
- 17,500 – number of applications
- 17% - number of priority applications, relating to issues such as domestic violence
- 5,600 – number of cases taken through the Legal Aid Board's Private Practitioners Schemes
- 12% - increase in the number of childcare cases
- 96% - number of legal aid certificates issued related to family law
- €33.59m - funding in 2013

An overwhelming 96% of legal aid certificates issued in 2013 were related to family law, including areas like separation and divorce, access, custody and guardianship cases as well as other general family law matters. In FLAC, by contrast, only around a third of queries received in legal advice centres and via our information line in 2013 related to family issues.

Pressure on the Board is also up due to the rise in cases involving children being taken into care, with applications for civil legal aid in this area growing by 12% in 2013. Of the 486 childcare cases in 2013, almost 27% involved parents who were not legally represented. Of those with legal representation, almost 80% were from the Legal Aid Board.

In a recent report, Director of the Child Care Law Reporting Project Carol

Coulter suggested that while some parents do not know that they might be able to access legal aid, "there may be parts of the country where the Legal Aid Board is very under-resourced and it is quite difficult to get representation".

In September 2013, the Department of Justice decided to raise funding to the Legal Aid Board by increasing the minimum contribution rates for the public to €30 for legal advice and €130 for legal representation. As a result, around €1.8m of the Legal Aid Board's €33.59m funding in 2013 came from upfront contributions and the recovery of costs from legal aid clients who were awarded money or property as a result of their case. FLAC has accordingly encountered a number of individuals who say this contribution has deterred them from seeking civil legal aid.

While a person can apply for a waiver of the contribution, such waivers are not granted very often. The Legal Aid Board "takes into account the circumstances of all other applicants applying for civil legal aid", meaning that the applicant must be worse off than the average legal aid applicant, rather than looking at their individual level of hardship.

The Legal Aid Board Report for 2013 reflects a tremendous level of work done by a state body in the face of under-funding, under-staffing and higher demand. However, the increasing cost of civil legal aid, long waiting times and low awareness remain a barrier to accessing justice for many people who cannot afford private legal representation and cannot effectively represent themselves. FLAC will continue to campaign for the Board to be given the support and funding it requires so as to truly afford people in Ireland their right of access to justice as and when they need it.

lender and any credit servicer should be potentially the subject of any complaint to the Financial Services Ombudsman so that the borrower can obtain redress.

- ▼ FLAC's presentation on the sale of loan books to unregulated third parties is at <http://bit.ly/1wFCycx>
- ▼ FLAC's presentation on Mortgage Insurance is at <http://bit.ly/1wFEtOo>
- ▼ FLAC's submission on the Central Bank's proposed mortgage lending restrictions is at <http://bit.ly/1wFCIRI>

‘Lydia’s Law’ breaks the mould for Trans community:

Victory after 17-year legal battle

Victory was sweet for Lydia Foy when her 17-year legal battle ended in the High Court on 28th October last. Lydia had first applied for a birth certificate in her female gender 21 years ago in March 1993. Her struggle ended when counsel for the state announced in court that the Government undertook to publish a Gender Recognition Bill before the end of 2014, to introduce it in the Oireachtas by the end of January, and to get it enacted as soon as possible in 2015.

After her first legal case ended unsuccessfully in 2002, Lydia was badly treated by sections of the media and jeered at in the street. This time round, she was stopped and congratulated by passers-by and had an editorial welcoming her victory in the *Irish Examiner*.

But most importantly, Lydia has broken the mould and the legislation resulting from her case will end years of isolation, humiliation and fear for hundreds of transgender person in Ireland as well as herself. And it will influence other states as well. Thomas Hammarberg, former European Commissioner for Human Rights, commented: “[T]his has become a European-wide symbol case – and... it means much for similar struggles in other countries”.

FLAC has represented Lydia Foy since 1996 and issued the first legal proceedings on her behalf seeking a new birth certificate in April 1997. We have acted for her ever since and are not quite finished yet. Lydia’s case was not struck out when the settlement was announced in October. It was adjourned until 29 January 2015, with an option to resume the proceedings if sufficient progress has not been made by then.

We hope that will not be necessary.

Lydia Foy’s case has also had a wider significance for human rights in Ireland. It was the first case in which the High Court made a declaration under the European Convention on Human Rights (ECHR) Act, 2003 that a provision of Irish law was

incompatible with the Convention. That was the only remedy available when challenging a decision by a State body that was allowed by Irish law. But the declaration did not change the law. It simply left it up to the Oireachtas to do so.

This procedure was modelled on a provision in the UK Human Rights Act and the UK government had changed the law in almost every case where a declaration had been made. The Irish Government, by contrast, failed to change the law for seven years after the declaration had been made in Lydia’s case. It looked as if this new procedure was completely ineffective.

Lydia was forced to issue new proceedings in January 2013 to try to get the Government to act upon the declaration. It is those proceedings that were settled in October and so the declaration of incompatibility has led to change at last. And a second declaration, concerning the right to an independent appeal against local authority evictions for supposed anti-social behaviour, has just been implemented as well.

So the Foy case has shown that declarations of incompatibility can change the law. But it has also highlighted that the ECHR Act badly needs to be amended to create an obligation on government to respond to such declarations if they are to constitute an effective remedy for breaches of the Convention on Human Rights.

Lydia Foy’s case also tested another, related, section of the ECHR Act that had



Dr Lydia Foy with FLAC Senior Solicitor Michael Farrell

not been used before. Lydia applied for compensation for the violation of her rights under the ECHR. Nothing could adequately compensate her for the decades of pain and suffering she had endured but the award that was made to her was more substantial than the very small amounts the Strasbourg Court often awards.

The procedure for deciding on the appropriate amount of compensation under the Act was anything but open and transparent and is also badly in need of reform, but once again a hitherto unused section of the ECHR Act has been got to work at last while its inherent flaws have also been exposed.

Much remains to be done. There are real and serious concerns about the drafts of the Gender Recognition Bill that have been seen so far. They do not make adequate provision for young Trans persons and would require already married Trans persons to divorce as a pre-condition for the legal recognition of the Trans partner. And the ECHR Act needs major overhaul to make it fit for purpose. But Lydia Foy has shown the way.



Government publishes Gender Recognition Bill

Some seven years after the High Court held the failure to recognise transgender persons in Ireland was in breach of the European Convention on Human Rights (ECHR) and 21 years after Dr Lydia Foy had first requested a new birth certificate in her female gender, the Irish Government has finally published a Gender Recognition Bill.

FLAC, which acted for Ms Foy throughout her lengthy legal battle, now awaits the introduction of the Bill in the Oireachtas. Under the terms of the settlement of legal proceedings taken by Dr Lydia Foy, represented by FLAC, this must happen before the end of January 2015. The Government has committed to getting the Bill passed into law as soon as possible.

Commenting on the development, FLAC Senior Solicitor Michael Farrell, who represented Ms Foy in her case, said "This Bill is a hugely important step in ending the shame of the state's treatment of Trans persons for so many years. That shame has been all the greater since 2002, when the European Court of Human Rights stated very clearly that Trans persons had a right under the Convention to have their preferred gender legally recognised by the state."

Currently Ireland is the only state in the European Union with no provision at all for recognising Trans persons in their preferred gender. Dr Lydia Foy, whose 17-year legal case led to the Government's adoption of the Bill, said: "I am delighted that I and hundreds of other Trans persons will shortly be able to get birth certificates showing the gender that we live in every day.

"It has been a hard and lonely struggle and there were times when I felt near to despair", said Dr Foy. "But it will have been worth all the pain when this Bill is signed into law and Trans persons will be recognised just as persons like everyone else".

The publication of the Bill was also a long overdue move by the Government to respect and carry out its obligation to observe and implement the European Convention on Human Rights and its duty

to take action when the courts make a declaration that its policies or actions are in breach of the Convention. The failure to bring in gender recognition legislation following the High Court decision in the Foy case showed disrespect by successive governments for the ECHR and for the Irish legislation introduced ten years ago to incorporate the Convention into Irish law.

FLAC also noted that there were still problems with some sections of the proposed law. "We regret that the Bill is not as generous or inclusive as it might have been and that it will require Trans persons who are already married to divorce their spouses as a precondition to legal recognition. This is almost certain to give rise to a new legal challenge and will appear unnecessary if the referendum on same-sex marriage is passed early in 2015," added Mr Farrell.

The Bill also fails to make provision for young persons under 16, who are particularly vulnerable to bullying and

harassment at a very sensitive period in their lives. FLAC suggested that it should be amended to require respect and support for young Trans persons, especially those still at school.

Although the Bill will not require Trans persons to undergo surgery or other invasive treatment, it still places an undue emphasis on certification by medical practitioners for Trans persons who want to secure recognition in their preferred or true gender.

FLAC is hopeful that the Government will be able to draft or accept amendments about these issues as the Bill proceeds through the Oireachtas. "This is a major step out of the shadows for Trans people in Ireland. We would just urge the Government that having travelled a long way along the road to equality for Trans people, they should take the last few steps towards full inclusion of this vulnerable minority," concluded Mr Farrell.

CCLRP launch second Interim Report

The Child Care Law Reporting Project launched its second Interim Report on 28 October 2014. Launching the report, President of the District Court Judge Rosemary Horgan praised the ongoing work of the Project in throwing light on the issues involved in cases where children are taken into care. The report analyses statistics on 486 cases all over Ireland between September 2013 and July 2014. These involved 864 children, which represents just over 20 per cent of all children in court-ordered care. Project Director Dr Carol Coulter said the report underlines the need for early identification of and supports to families, as well as changes in how the courts handle child care matters. Read the full report at www.childlawproject.ie.



L-R: Judge Rosemary Horgan and CCLR Project Director, Dr Carol Coulter in discussion at the launch of the project's Second Interim Report.

Fairer Budget, Fairer Society:

Making the case for a Human Rights approach to budgeting

Over two days in the Dáil, on 25 and 26 November, Deputy Maureen O’Sullivan put forward a Private Members Motion proposing that the state adopt a human rights approach to budgeting. The proposals garnered substantial support for certain aspects of applying a human rights framework to national budgeting.

Deputy O’Sullivan acknowledged the work of a number of organisations as inspiring her championing of this approach, including FLAC. She had attended a seminar organised by FLAC on 16 October 2014, two days after the budget, along with a host of civil society organisations and other elected representatives.

The seminar was opened by FLAC Director General Noeline Blackwell who introduced the line-up of speakers on economic, social and cultural rights and expanded on the concept of a human rights approach to budgeting. Dr John Reynolds, Lecturer of Law at NUI Maynooth, then addressed the seminar highlighting the legal commitments binding on the State under the International Covenant on Economic, Social and Cultural Rights even in times of recession. He expanded on the principle of “progressive realisation” referring to the work of different human rights bodies in explaining what this term meant in practice. He drew a link between resource allocations and economic, social and cultural rights and the importance that budgeting plays in protecting basic human rights. Dr Reynolds also noted that in order for a State to roll back on progress made in terms of socio-economic rights, it must provide a detailed “burden of proof” to ensure that Covenant obligations are not undermined.

June Tinsley of children’s rights charity Barnardos spoke on how their pre-budget work relies on a human rights law

framework to ensure the rights of the child are considered in all policy changes flowing from the budget. Although Barnardos publicly welcomed Budget 2015 and the positive measures introduced that will benefit families with children there are still problems persisting in terms of child poverty. Families are at an ever increasing risk of homelessness due to the range of cuts imposed by the government in areas of social protection and housing. June highlighted how a human rights approach to budgeting could have prevented the severity of cuts and impacts experienced by the most vulnerable in our society due to the previous austerity budgets.

Róisín Hennessey, representing the Irish Human Rights and Equality Commission (IHREC), spoke about the role of the new

Commission in monitoring and providing expertise to public bodies on economic, social and cultural rights. Róisín explained that National Human Rights Institutions (NHRIs) have the remit to provide educational programmes and raise awareness of economic, social and cultural rights not just for the public but also the public service, judiciary and private sector. A new public sector duty is also now in place which means that all public bodies must have regard to human rights and equality. IHREC can provide human rights benchmarks which can be utilised by the government to monitor their progress on such rights. To date IHREC have voiced their concerns over previous austerity budgets and their impact on human rights.

The final presentation came from Michael



L-R: Speakers at the seminar Dr John Reynolds (NUI Maynooth), Noeline Blackwell (FLAC), June Tinsley (Barnardos), Róisín Hennessey (IHREC) and Michael Taft (Unite).

L-R: Deputies Maureen O’Sullivan and Thomas Pringle with Sr Bernadette McMahon of the Vincentian Partnership for Social Justice in the background.

Taft of Unite the Union. He focused on the direct link that exists between economic progress and social justice, such that one cannot be secured without the other. In his view, Budget 2015 was “regressive” in nature and did not do enough to tackle the societal challenges we face now regarding economic, social and cultural rights. Social re-distribution is necessary to achieve an equal society but it has been proven to also result in a higher economic output. The government must have a greater sense of social solidarity versus individualism to

address the inequalities that exist. Michael argued that economics does not have to be at odds with social justice and need not oppose the basic right to live in dignity, which is the cornerstone of human rights law.

As part of the event, participating organisations had been asked to complete a survey on their views of budgetary proposals shortly after Budget 2015 was published. Some thirty-eight organisations completed the survey, which was then

analysed and presented after the speakers concluded their presentations. The questions were focusing on how specific rights were accommodated in the budget, was it adequate enough to protect the most vulnerable in society and how the recession affected the lives of the people the organisations represented.

Two-thirds of organisations surveyed said that human rights were “downgraded” in the recession and the overall view on Budget 2015 was that proposals on child benefit and for low income families could not offset the introduction of water charges or reverse the huge problems that austerity budgets had created in terms of homelessness, lack of access to justice, backlogs and waiting lists for health services, social protection and legal aid for example.

The majority of organisations and elected representatives at the seminar supported the call for a human rights approach to budgeting, through comprehensive impact analysis across all government departments, greater consultation with the public, the voluntary sector and within the Oireachtas, and transparency within the work of the Economic Management Council. There were a plethora of interventions from the floor, voicing specific rights issues and concerns and putting forward suggestions to strengthen rights within the sector.

While Deputy O’Sullivan’s motion was ultimately defeated through government amendment, it was very encouraging to see human rights budgeting being debated in the Dáil with such passion on all sides of the House – with Government Deputies acknowledging the important of human rights and that there was a need for impact assessment. We hope this can build on the growing awareness of how this alternative approach can enhance the budgeting process and see positive change in 2015.

- ▼ You can read a report from this event at <http://bit.ly/HRbudget2015>
- ▼ The debate on Private Members Motion on human Rights Budgeting is online at <http://bit.ly/PMHrb14>



An appreciative audience at the pre-budget seminar applaud the speakers. Middle left: Dr Shari McDaid, of Mental Health Reform; and middle right: Jim Winters, of Inclusion Ireland.

Proximity, narrative, hopefulness, uncomfortable things

Continued from front page

While Stevenson is widely known for his landmark cases against capital punishment, particularly children on death row, his work as an anti-poverty advocate in the legal system is vitally important to him. Stevenson has said of his work with EJI that “all of the clients who are not people of colour are poor, and marginalized by poverty.” He regularly speaks about how poverty affects the way the people are treated within the judicial system, marginalising and alienating them from equal access to justice, famously stating that very often “the opposite of poverty is justice”.

“I tell people our system treats you better if you’re rich and guilty than if you’re poor and innocent, and we see that every day,” he has commented. Alabama remains one of the few states in America that does not have a state-wide public defender system. Recently Stevenson has also noted an increase in hostility towards the plight of economically disadvantaged people that threatens to undermine the equal administration of justice. He has said that, for him, “equal justice is about commitment and vigilance and engagement to ensure that fairness and equal treatment are manifest in the day-to-day lives of people.”

Bryan addressed a packed Pillar Room in the Rotunda on Monday night, 1 December. He gave an inspiring speech to an audience that included many lawyers who volunteer with FLAC and PILA as well as those active with other bodies promoting access to justice and colleagues, supporters and friends. In his lecture, which lasted just under an hour, Bryan focused on four pillars or dynamics that underpin using law for social change:

- ▼ proximity, or the need to work, to listen and to be close to sites of injustice and to the people who are suffering that injustice so as to more effectively tackle it;
- ▼ changing the narrative, so that in describing and addressing an issue the focus is shifted to a fairer perspective that does not blame or negatively target the disfavoured person but rather respects the rights of all;
- ▼ hopefulness, which is needed in order to keep going through the harder times when it seems like it’s not worth it. He argued that ‘injustice prevails where hopelessness persists’ and that remaining hopeful was a way



L-R: Noeline Blackwell (FLAC Director General), Peter Ward SC (FLAC Chair), Bryan Stevenson, Joanne Hyde (FLAC Council member)



FLAC staff, chair and interns with Bryan Stevenson



Bryan Stevenson received a standing ovation at the lecture

- to redraw positions and be an active witness;
- ▼ and finally, the need to do uncomfortable things – to take on issues and work that lie outside our ‘comfort zone’ and push us to new realisations and fresh action.

Bryan spoke of his pleasure at meeting FLAC and other community law activists

while in Dublin, and his talk was peppered with fascinating anecdotes from throughout his life, from a child growing up in a poor community in Delaware to his time as a law student to his experience working with incarcerated individuals, many of whom had intellectual disabilities or were extremely disadvantaged with addictions, poor education and traumatic family backgrounds. He talked about the

Proximity, narrative, hopefulness, uncomfortable things



Bryan Stevenson

history of the US as a society which has not fully addressed entrenched inequality and discrimination.

He also talked about Ireland as being the kind of place where we should have full equality and where we are tantalisingly close to that ideal. He encouraged people to realise that the difficult and often uncomfortable work in social justice meant that the activist working with 'broken' people also becomes 'broken' but that "there is something empowering in recognising our humanity which is rooted in our vulnerability: our brokenness." The bottom line was that we need to stand with those who are disfavoured and downtrodden and that it was not just a question of 'throwing money at the problem', but of truly addressing the structures that uphold society:

I am persuaded that the opposite of poverty is not wealth; I am persuaded that the opposite of poverty is justice and when people commit themselves to just relationships, just structures, just treatment, then and only then can we deconstruct the systems and reality of sustained poverty.

Bryan concluded the talk by thanking all those present for taking the time to listen

Dave Ellis Memorial Lecture

The late Dave Ellis was a community activist who dedicated his career to working with community groups on issues including welfare rights, legal aid, legal education and legal entitlements generally. He was Community Law Officer for more than 20 years at Coolock Community Law Centre (now CLM Northside), established by FLAC in 1975 as the first of its kind in Ireland. Dave subsequently established Community Legal Resource to provide information, training and support for the non-profit and community sector. He died in 2007.



Thomas Addis Emmett Fellow Eamonn Maguire (far L) with his family at the lecture



A section of the audience at the Dave Ellis Memorial Lecture

and with a template for assessing our society:

You judge a society and its commitment to a rule of law not by how it treats the affluent, but by how it treats the poor, the incarcerated,

the disfavoured. It's in that context that we find who we are and recognise what we must do to actually make justice live.

▼ For an interview with Bryan by Pat Kenny on Newstalk: bit.ly/1vIcJaa



Bryan Stevenson meets Sarah Flynn, partner of the late Dave Ellis, with Noeline Blackwell



Peter Ward SC, Judge Rosemary Horgan (President of the District Court), Bryan Stevenson, Bryan Kearney-Grievies (Atlantic Philanthropies) & Noeline Blackwell

“Our Voice, Our Rights” launched to highlight economic, social and cultural rights in Ireland

As reported in the last *FLAC News*, FLAC has coordinated a parallel report in response to Ireland’s Third Report under the International Covenant on Economic, Social and Cultural Rights (ICESCR), as part of the United Nations reporting process on economic, social and cultural rights. The report was submitted to the UN for the 1 October deadline.

FLAC formally launched *Our Voice, Our Rights*, on 19 November 2014 in Dublin’s Mansion House by kind permission of the Lord Mayor Christy Burke. The launch was chaired by Professor Gerry Whyte of Trinity College Dublin Law School, who also led the report’s advisory group of academic and civil society experts in the field of economic, social and cultural rights.

Ireland has not reported to the Committee on Economic, Social and Cultural Rights for 12 years, a time spanning the most recent economic high and low points in Ireland’s history. *Our Voice, Our Rights* reflects the experiences of people’s ability to enjoy their economic, social and cultural rights gathered through consultations with wider Irish civil society. More than 50 individuals and organisations all over Ireland contributed to the report with so far 25 endorsing it.

At the launch Senators, TDs, representatives of civil society bodies and trade unions voiced support for the report. On the platform, representatives from five leading Irish organisations which had contributed to the report spoke about the importance of using the Covenant as a way to promote economic, social and cultural rights, using case studies to illustrate their particular focus. Brid O’Brien, Head of Policy & Media, with the Irish National Organisation of the Unemployed spoke on article 6 of the Covenant, the right to work. Brid emphasised the two components of the right, the right to gain a



L-R: Report Project Team Lead Sairse Brady (Children’s Rights Alliance) with Alice-Mary Higgins (National Women’s Council)



L-R: Noeline Blackwell, Prof Gerry Whyte, Cliona Loughnane, Moya De Paor, Brid O’Brien, Mike Allen and Eleanor Philips



living by work and the right to training and education.

Moya de Paor, solicitor at Community Law & Mediation, spoke on article 9, the right to social security. She mentioned that one of the most worrying problems for people at the moment is the recovery of overpayments, whether they occurred due to a mistake on the part of the individual, the department, or due to fraud. Moya noted that the recovery of overpayments should not force people to live below the poverty line and should conform to fair procedures. As the Social Welfare Appeals Office is a tribunal, social welfare claimants are not entitled to civil legal aid. People are often then left unrepresented, defending themselves in a system they are unfamiliar with and without the legal knowledge necessary to challenge the decision of the Department of Social Protection.

Cliona Loughnane, Policy & Research Manager with the Irish Heart Foundation, provided insights on article 13, the right to

health, noting that the right specifies the ‘highest realisable’ standard of health. Cliona highlighted the current inadequacy of rehabilitation services in Ireland. For a person who has suffered a stroke, a lack of rehabilitation means severe disability and the possibility of having to go to a care home in the place of going home. A survey carried out by the Irish Heart Foundation found that 50% of people in Ireland could not get speech or language therapy and a third could not get physiotherapy. Whether a person can access rehabilitative services is determined by age restrictions and where a person lives. If you are in a care home you cannot access services. All this evidence indicates that Ireland is falling far short of the minimum standards for health protected under ICESCR.

Mike Allen, Director of Advocacy for Focus Ireland, expanded on article 11, the right to housing, in the homelessness context. He cited the lack of legal protection for the right to housing in domestic law and contrasted it with the constitutional right to property. The right to housing affects a range of housing issues including housing tenure, owner occupiers and social housing. As repossession numbers rise, so too Mike believes will homelessness. Inadequacy of housing supply and substandard quality of available stock are some of the obstacles facing families and others in need of accommodation in Ireland today. Where a rented house is taken into receivership, the receiver is paid the rent but does not have the obligations of a landlord, thus undermining a tenant’s rights. The shortcomings of rent supplement render dozens more families homeless, forty-five families became homeless in Dublin in October 2014.

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TRENDING AT FLAC

Landlord and Tenant calls continue to rise on FLAC info line

Calls to FLAC’s telephone information and referral line rose by almost two per cent during the first three quarters on 2014 compared with the first three quarters of the previous year. July and September were particularly busy months for calls this year.

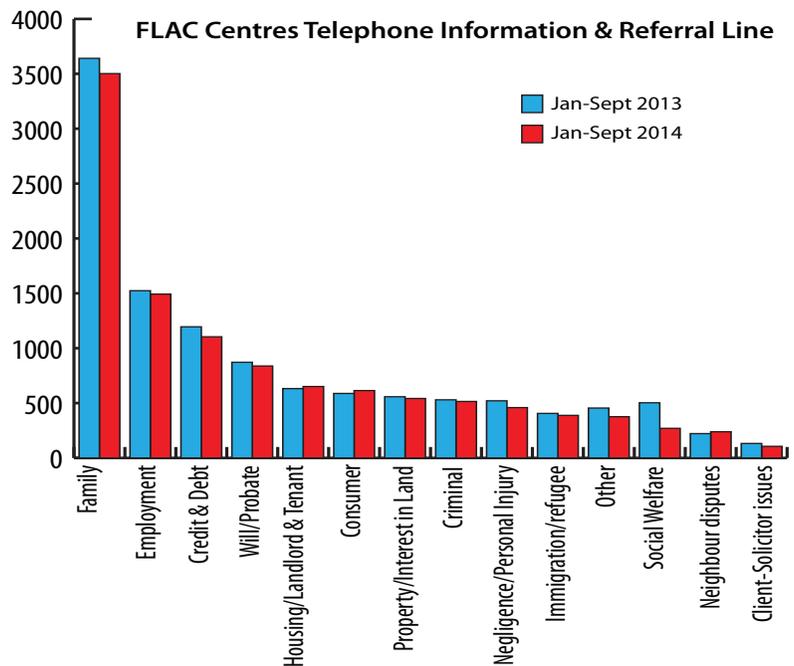
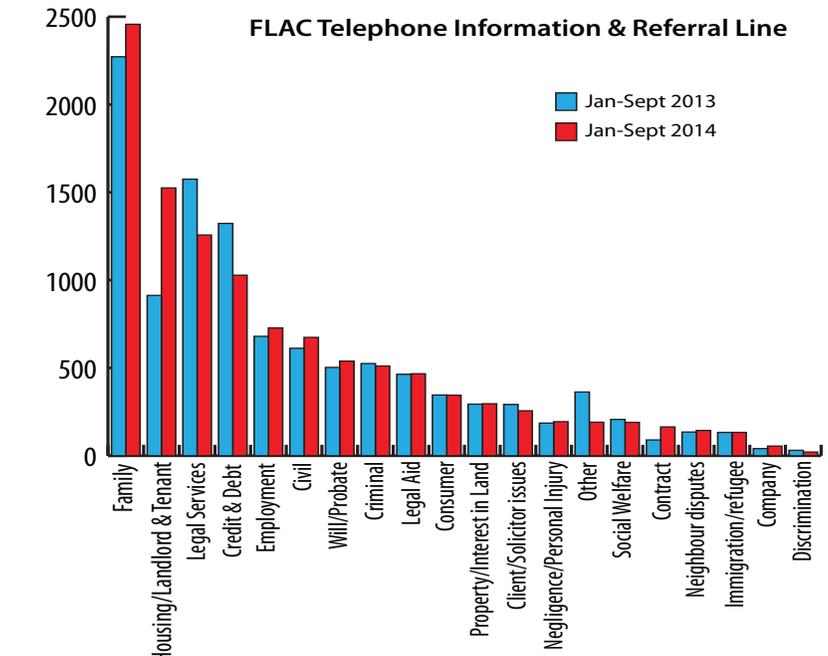
Family law queries remain the most common area of law discussed on the phone line, as well as in the centres, with divorce/separation the most frequent family law query. Housing/landlord and tenant calls have seen the large increase (by 67 per cent) and have now replaced debt related calls as the second most occurring call, with over two thirds of these callers looking for help with a landlord-tenant issue. Compared with the first three quarters of 2012. Credit and debt calls fell by almost a quarter in the same period.

The number of people reported as attending the FLAC centres is down slightly compared with the same period last year. As a result queries in most areas of law are down, but housing/landlord and tenant queries, consumer queries and neighbour dispute queries showed rising trends.

Family law queries continue to be the most common topic discussed in FLAC centres, with almost half (48.7 per cent) of these queries in relation to a divorce or separation. Employment law queries, while down slightly, are the second most common query in the centres, with almost one third of employment queries concerned with terms of contract. Credit and debt queries have also fallen in the centres, with the number of callers reporting mortgage arrears down by 9 per cent.

Continued from page 10

Finally, Eleanor Philips spoke on behalf of cultural rights organisation Blue Drum concerning article 15, the right to cultural life. Culture is a broad concept, Eleanor stated, which allows for different social groups to express themselves. As an example, she talked about the Dublin neighbourhoods of Rialto and Fatima which found their voices through the arts. Culture within communities needs to be resourced such that the community can directly express and enjoy its right to a cultural life, not mediated by someone else. Last year €250m was spent on arts



projects but there was a lack of access for the most disadvantaged people to enjoy the arts. The Parliamentary Oireachtas Committee also argued that disadvantaged groups do not take part in cultural life. Eleanor made the point that while governments in other EU countries and the US focus on social outreach, Ireland has chosen to continue to ignore this approach and overlook the cultural rights of our most marginalised communities.

Questions were raised from the floor around different areas in the report

including mental health and Direct Provision. FLAC’s Noeline Blackwell made the point that this report is only the start of the process which will come to a head in June 2015 when the Irish government will be examined by the U.N. Committee.

- ▼ You can download *Our Voice, Our Rights* from the FLAC website at <http://bit.ly/OVOr2014>
- ▼ See www.ourvoiceourrights.ie for more updates and resources.

pila

public interest law alliance
a project of FLAC

PUBLIC INTEREST LAW ALLIANCE UPDATE

PILA NGO Seminar: Fair Play for Whistleblowers?

On 30 October PILA hosted an NGO seminar entitled 'Fair Play For Whistleblowers?'. The seminar was delivered by Susheela Math, Legal Counsellor for Transparency International Ireland (TII), one of PILA's many partner NGOs. Transparency International Ireland is the Irish chapter of the worldwide movement against corruption (defined as the abuse of

entrusted power for private gain).

The seminar was attended by representatives of PILA partner NGOs working across a range of policy areas. It focused on the newly enacted Protected Disclosures Act 2014. The Act came into force in July of this year and for the first time provides protection for all workers in all sectors of the Irish economy.

Those in attendance were given an introduction to the main features of the Act including; a prohibition on the penalisation of workers who make a 'protected disclosure' of wrongdoing; a wide definition of worker; a broad range of 'wrongdoings' which may be reported; and a stepped disclosure system which encourages workers to report to employers in the first instance.

PILA Legal Education Session: Human Rights and Persons in Institutional Care

On 4 November, PILA held a legal education session on the topic of human rights and persons in institutional care. The session was attended by peer advocates from the Irish Advocacy Network (IAN). The IAN offers peer advocacy services to people in institutional settings throughout the island of Ireland. IAN peer advocates are people who have experienced mental health difficulties and having achieved a sufficient level of recovery, complete an accredited training course.

The legal education session was delivered by Teresa Blake SC. Teresa is a member

of the PILA pro bono register and has considerable experience in child protection and welfare law, asylum and immigration law, and mental health law. Teresa is also a Chairperson of the Mental Health tribunal.

Those in attendance were introduced to the legal parameters of human rights and persons in institutional care. This included the constitutional rights to bodily integrity; statutory rights and safeguards under Irish law and the duty of care owed to persons in institutional care. In what was an interactive session, those in attendance explored the Mental Health

Act, the Criminal Law Insanity Act and the long awaited Assisted Decision Making (Capacity) Bill.

Following the session, Una Kinane of the IAN remarked that the peer advocates had "enjoyed the session and derived much learning from it. It was lively and extremely engaging leaving us with much to ponder. We would hope that we could participate in similar events in the future."

In 2015 PILA hopes to facilitate and deliver more legal education sessions for our NGO partners.

PILA Pro Bono Roundtable

In October, PILA held a Pro Bono Roundtable bringing together its partner law firms to discuss how they are using pro bono work to promote public interest law and access to justice, and explore how a culture of pro bono can be developed into the future.

The roundtable was facilitated by Paul Newdick – former partner with Clyde & Co and Chairman of LawWorks, who has received a CBE and was appointed honorary Q.C. for his pro bono leadership in the UK – and hosted by Arthur Cox.



(L-R): Noreen Maguire (Maguire Muldoon), Rebecca Keatinge (Brophy Solicitors), Orla Hubbard (Brophy Solicitors), Matthew Kenny (Sheehan & Co), Diego Gallagher (Byrne Wallace), Geoff Moore (Arthur Cox), Niall Michel (Mason Hayes & Curran), Aine Flynn (KOD Lyons), Aisling Byrne (Eversheds), Adam Synnott (William Fry), Elaine Nerney (Hewlett-Packard), Paul Newdick (LawWorks), Eithne Lynch (PILA), Sinead Smith (A&L Goodbody), Eamonn Conlon (A&L Goodbody)

Social Justice, Inequality & Economy: Three perspectives

The past months featured a number of events in Dublin focusing on the consequences of inequality and possible actions.

In June, Associate Chair at the Paris School of Economics Thomas Piketty told delegates at a conference organised by TASC that a progressive wealth tax is needed in order to combat the growing economic divide within society. Piketty's book *Capital in the Twenty-First Century* is a detailed study of the history of wealth and income and highlights the rising rates of inequality around the world. He argues that in modern capitalist economic systems, where the return on capital outstrips economic growth, those who have capital to invest will inevitably get a greater return than those who simply earn an income. Thus the wealth of certain sections of society will grow more quickly than others and will continue to do so as this wealth is passed on through inheritance. His thesis - that inequality will continue to rise if unaddressed - echoes the arguments of many NGOs and social justice campaigners.

At the Dublin event, Piketty made some recommendations on tackling inequality, such as the establishment of a progressive wealth tax. Whilst also backing a tax on high incomes, Piketty believes a tax on capital would bridge the widening gap between wealth and income. Relating this to the Irish context, he said he felt it was unfair to have a property tax based solely on the property value without accounting for the financial position of the owner.

In September, veteran labour journalist and Associate Fellow at the Institute for Policy Studies Sam Pizzigati spoke at an event entitled 'A politically plausible maximum wage?' Organised by Claiming our Future, a national network of civil society groups, the conference looked at the growing problem of global inequality. Pizzigati gave a brief overview of wealth and income inequality in the United States and highlighted the negative consequences of inequality on society, from health to the environment, from social and economic issues to basic democracy.

He focused on the idea of a 'maximum wage' whereby the incomes of top earners in corporations and public institutions would be linked to the wages of lower income workers in the same bodies, such that the top wage could not exceed a specified multiple of the lowest earner. Pizzigati called for disclosure of wage ratios by companies and public institutions, support for institutions that have modest

wage gaps and restrictions on those which have excessive ones, giving several existing examples.

Taking up the theme, Dr Mary Murphy of NUI Maynooth and Claiming Our Future cited inequalities within Irish society. She echoed Pizzigati's calls for a maximum wage as something that could help reignite the social consensus against inequality and made a number of proposals, including a focus on progressive taxation.

In November Professors Richard Wilkinson and Kate Pickett, authors of *The Spirit Level: Why More Equal Societies Almost Always do Better*, delivered a lecture as part of the Trinity College Dublin and University College Dublin Public Lecture Series. Their research proposes that societies with greater levels of income inequality - such as the US and the UK - experience social problems more acutely than more equal societies, such as Japan and Sweden.

Wilkinson and Pickett explained that it is

the psycho-social effects of income inequality rather than the material effects which are important. Inequality creates a perception of superiority and inferiority amongst people and it is the psychological effect that this division has on the less well off in society which leads to social problems. When asked about possible solutions to inequality Wilkinson and Pickett welcomed the idea of a progressive tax system but emphasised that income inequalities must be tackled before the stage of taxation.

Professor Wilkinson endorsed the idea of changing control of industry workplace democracy through the creation of a democratic economy where worker participation and co-operative work structures can aid in the redistribution of capital and consequently help create more equal societies.

Read more at the sites below:

- ▼ <http://www.tasc.ie/>
- ▼ <http://www.claimingourfuture.ie/>,
- ▼ <http://toomuchonline.org/>
- ▼ <http://inequality.org/>
- ▼ <http://www.equalitytrust.org.uk/>

Report on austerity in Greece reveals multiple human rights violations

In January 2014, international human rights organisation, FIDH (International Federation of Human Rights) organised a fact-finding mission to Greece aiming to expose the negative impact of austerity policies on Greek society as well as human rights violations arising from it. FLAC's Noeline Blackwell is a Vice-President of the FIDH and took part in the mission along with Greek human rights body, the Hellenic League for Human Rights.

December 2014 saw the launch of the resultant report, *Downgrading rights: The cost of austerity in Greece*. Its findings reveal the adverse and disastrous impacts of stringent anti-crisis measures on human rights, with the labour and healthcare sectors most dramatically affected and fundamental freedoms curtailed.

The report provides a legal analysis of the assault on human rights and democratic standards in Greece and defines the responsibilities attributable to the relevant actors: Greece, the European Union (European Commission and European Central Bank), its Member States and the International financial institutions (particularly the International Monetary Fund).

According to FIDH, the EU member

states which set up the Troika and endorsed its proposals have breached their own obligations to assist Greece in fulfilling its human rights commitments.

However, the report's conclusions are valid far beyond the Greek case, and indeed apply to all countries that have been undergoing economic assistance in response to a severe economic recession.

"Unlike finances, human rights and fundamental freedoms cannot benefit from international bailouts," said Konstantinos Tsitselikis, Hellenic League for Human Rights President. "Economic and fiscal policies have blatantly disregarded their devastating social impacts and authorities have failed to provide the needed social support."

By outlining the challenges facing Greece and assessing them against international human rights standards, the report shows that what started as an economic and financial crisis has turned into an unprecedented assault on human rights and democratic standards in all countries sharing a similar fate.

Read the report:
▼ <http://bit.ly/1FL2Sbh>

FOCUS ON FLAC

FLAC Centre @ Wexford CIC

Wexford Citizens Information Centre, located on Henrietta Street in Wexford Town, provides free and confidential legal advice to the public on the first Thursday of every month from 7pm to 8:30pm. The centre is run by Development Manager Lorretta Harte.

Lorretta maintains that there is a high level of demand for the Wexford FLAC, saying “it gives access to legal information to people who would not otherwise have it.” She finds that the most effective way to publicise this kind of service is through word of mouth; people who attend the legal advice clinic pass on knowledge about the service to their social circles. Feedback on the FLAC centre in Wexford is positive, with some locals relying on it as their only source of legal information while trying to face challenging day-to-day circumstances.

The Wexford FLAC service is only possible thanks to the voluntary efforts of local lawyers, who give their own time to offer legal information and advice. Emma Murphy, who began volunteering with FLAC in 2005 and was a founding member of the Wexford centre, has seen a change in the profile of persons seeking legal advice. “There are more people who would have previously gone to their own solicitor,” she says. Emma has also seen an increase in family law queries on separation and divorce, as the recession and loss of disposable income has taken its toll on family life.

Another volunteer in Wexford who has been on board from day one is Nigel D



Pictured at the Volunteer Awards Ceremony in December, Peter Ward SC (FLAC Chair), Nigel D. Allen, Emma Murphy, Zse Varga (FLAC Volunteer & Centres Manager), Lorretta Harte (Wexford CIC Development Manager)

Allen. Nigel is also a local solicitor in Wexford Town who, like Emma, began volunteering in the FLAC Centre in 2005. He has also noticed a change in the profile of the persons visiting the centre: “The demographic has changed somewhat with perhaps more middle-aged and fewer young or senior citizens coming in. In addition there are now more people from other EU countries and beyond seeking advice.” Due to the economic climate in recent years the nature of the queries, while still predominantly related to family law, now present issues such as distressed assets or asset distribution together with trying to deal with financial institutions.

The volunteers clearly feel a duty to the public. Emma Murphy explains her reasons for volunteering: “I know there are people relying on me to be there, people who have

as big as it first seems.”

Volunteering time as a FLAC volunteer can be challenging but Emma says “it is worth it for the heart-lifting feeling when those people smile through their tears and sincerely thank you for the direction and guidance you have given them. It is a way of giving something back.” Nigel agrees with Emma’s motivations: “It is worth doing when people shake your hand at the end of the session with a smile and thank you sincerely for your help.”

Lorretta says the FLAC service is very important to the area. “From the perspective of Wexford Citizens Information Service, it is great to be able to offer a significant extra level of service in the form of Wexford FLAC, to people who are generally in challenging circumstances.” Due to the outstanding commitment of the Wexford Volunteers who have, as Lorretta explains, “each made a significant commitment and contribution to Wexford FLAC for a period of between five and nine years,” Wexford CIC nominated several volunteers to be recognised in the 2014 FLAC Volunteer Awards. These were Nigel Allen, Siobhan Dunne, Beatrice Ensor, Eadaoin Lawlor, Anne Leech, Emma Murphy and Sarah Breslin.

Tipper volunteers mark awards evening



Volunteers from Co. Tipperary FLAC Services at the Tipperary Citizens Information Services Award evening on 13 October 2014 in the Horse & Jockey, Thurles.

become disillusioned and despairing as the problems they face take over their lives, people... who have been waiting for weeks and months for this appointment. I turn up because I have the ability to give them a small chink of hope and make them realise that there is light at the end of the tunnel and the issue or problem they face is never

The Wexford FLAC operates on the first Thursday of every month between 7.00 to 8.30pm at 28 Henrietta Street, Wexford Town.

Appointments can be booked by calling 053 91 42012 or 076 107 6720.

FOCUS ON FLAC

Julie Herlihy, FLAC Council member

FLAC would like to extend our warmest welcome to Julie Herlihy who joined FLAC's National Council in November 2014. The Council (which acts as the organisation's Board) is made up of a diverse group of individuals, in addition to Julie. It includes Peter Ward SC as chairperson, solicitors Don Crewe and Joanne Hyde as well as another new member, Jo Kenny who works in the Pensions Board but was previously PILA's Legal Officer.

Julie is from Kilkenny originally. She studied Accounting and Finance in Dublin City University. After graduation Julie trained as a Chartered Accountant and a Chartered Tax Advisor AITI. She joined the the firm of Arthur Andersen, which subsequently merged with KPMG, leaving there to become a tax partner in Barr Pomeroy. In 2010, Julie joined Baker Tilly Ryan Glennon as tax partner where she specialised in private and international corporate work. Last year Julie set up her own firm of Herlihy Tax Consultancy Ltd.

Julie was Chairman of the Leinster Society of Chartered Accountants from 2008 to 2009. Her appointment to FLAC's Council came at just the right time for her, as she

was elected to the Council of Chartered Accountants Ireland in 2010 for a four-year term that has just ended.

During her tenure as Chairman on the Leinster Society, Julie and her committee saw the financial crisis affecting many people and recognised the need for a structure which could offer practical help to people in financial difficulty. Thus the idea of Chartered Accountants Voluntary Advice (CAVA) came about. Volunteer Chartered Accountants work with the Money Advice and Budgeting Service (MABS) to help people with bills and personal finance. CAVA operates similarly to FLAC in CICs and MABS offices nationwide.

Julie sees similarities between CAVA and FLAC, both of which use professional expertise in a volunteer capacity. She also has much praise for the high level policy work of FLAC.

Julie brings years of specialised experience to FLAC's Council which is of huge value especially now that funding is a growing concern. She says that she has been "bowled over" by the expertise of her fellow council members; she hopes to add



her understanding of corporate funding and financial knowledge to that pool of skills, particularly with a view to maintaining funding over the coming years.

Welcome on board Julie!

Chartered Accountants Voluntary Advice (CAVA)

Chartered Accountants Voluntary Advice (CAVA) was set up by Chartered Accountants Ireland Leinster Society in 2007. It is a free, confidential, independent national organisation that provides advice to business people who cannot afford to pay for an accountant, and draws upon a panel of almost 150 experienced chartered accountants. It is the only charity service of its kind in Ireland that puts business people, who are in severe distress, in contact with a network of leading business advisors in Chartered Accountants Ireland. CAVA operates without any external or Government funding. More information at <http://bit.ly/CAVAirl>

The CAVA service is being rolled out nationwide – it generally operates out of and with the support of the Citizens Information Centre network and MABS offices. People should check with their local MABS or CIC to check whether the service is available nearby or go online to citizensinformation.ie

Volunteer lawyers needed for advice centres!

FLAC is seeking solicitors and barristers who are qualified to practice in Ireland to volunteer as advisors in legal advice centres.

Volunteer advisors are asked to commit to dedicating two hours of their time a month to providing legal information and advice to members of the public who otherwise would not be able to access it.

The centres are chiefly open in the evenings. FLAC provides information resources and other supports to volunteers.

Centres needing new volunteers at the moment include: Swords, Blessington, Navan, Mullingar, Maynooth, Naas, Portlaoise, Tuam, Wicklow Town, Arklow, Stillorgan, Limerick and Letterkenny.



If you are interested in using your skills and time to become a FLAC volunteer or if you have any questions about volunteering with FLAC, please get in touch with Zsé Varga, Volunteer & Centres Manager by e-mail at volunteers@flac.ie or by phone at 01 887 3600.

New FLAC fundraising initiative launched

In the last issue of *FLAC News*, we announced plans for a new fundraising drive to help support our work to promote equal access to justice for all. We launched the 'Friends of FLAC' campaign on the special occasion of the 8th Dave Ellis Memorial Lecture (see main article for details) in the Pillar Room of Dublin's Rotunda Hospital on 1 December 2014.

We know that people need greater help with legal problems in recessionary times and that our work on legal research, advocacy and law reform is vital for marginalised and disadvantaged people.

We offer legal assistance to the public on all areas of law through our telephone information and referral line and, in cooperation with Citizens information Centres, through a network of legal advice centres throughout Ireland. We

also campaign in particular areas of law, such as access to civil legal aid, fairness in social welfare law, the use of law in the public interest and reform of personal debt and consumer credit law.



FLAC is incredibly lucky to have a large and supportive network of volunteers and friends who offer time and expertise in our information, advice and advocacy work, many of whom have been with us

for a very long time. However, securing sufficient funding to maintain and grow FLAC's impact is increasingly challenging.

The new 'Friends of FLAC' programme is reaching out to those supporters who can donate €21 per month, or €10 for those on lower incomes, on an ongoing basis. It's another way to help us maintain our current capacity as well as opening new paths of achieving of equal access to justice for all. We want to do more, but we need your help.

Read more about the 'Friends of FLAC' Programme at www.flac.ie/donate and consider becoming part of FLAC's future. You'll be helping deliver that goal of delivering basic human rights and access to justice for people in Ireland alongside other like-minded folk.

We can do it together with your help!

IWLA Woman Lawyer of the Year



Pictured L-R: Mary Rose Gearty SC (Bar Council), Emily O'Reilly, Noeline Blackwell, Maura Butler (IWLA Chair) and Attracta O'Regan (Law Society).

FLAC Director General Noeline Blackwell was recently presented with the Irish Women's Lawyer Association's award for 'Woman Lawyer of the Year'. She received this great honour at the IWLA's annual 'Women Celebrating Women Lawyers' Gala Dinner, held in collaboration with Law Society Skillnet and The Bar Council of Ireland, in the President's Hall, Law Society of Ireland on 1 November 2014.

The IWLA praised in particular Noeline's work in FLAC over the past decade: 'Noeline has been a powerful and effective advocate for those most marginalised as a consequence of the recent recession, being a force for change in advocating their rights and consistently campaigning for debt law reform, consumer credit reform and social justice.' A keynote address was given by EU Ombudsman Emily O'Reilly, who praised Noeline's work in promoting access to justice in Ireland. You can read more about the IWLA at www.iwla.ie.

Fellowship 2014



Peter Ward SC, Chairperson of FLAC, presenting Eamonn Maguire, recipient of the Thomas Addis Emmet Fellowship for 2014, with his certificate. A law student, Eamonn is also working at the Law Society of Ireland.

The Fellowship is a unique opportunity awarded each summer to an Irish law student interested in working on critical social justice issues and developing skills in public interest law practice. It is open to all current law students, including students that have studied law as part of their undergraduate degree, postgraduates in law, and students of the King's Inns or Law Society professional practice courses. Applications for next year's Fellowship are now being accepted – see www.flac.ie for more.