

PILN Bulletin, 14 January 2009

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1. “Human rights” excluded as a “charitable purpose” from new Charities legislation

On 11 December last, the Seanad voted down a proposed amendment to the Charities Bill 2007 to insert “the promotion of human rights” as a charitable purpose under the legislation. The result of the vote was 20 votes for the amendment with 26 votes against. FLAC, together with Amnesty International, Frontline and the ICCL, has expressed a number of concerns in this regard as outlined in our position paper (see PILN Bulletin of 10.12.08 at <http://www.flac.ie/publications/index/piln+bulletin/>).

During the Seanad debate, Senator David Norris (Ind) quoted from Dr. Oonagh Breen of UCD who said that “in the absence of an express charitable purpose in favour of human rights, human rights organisations may find no natural home for themselves in the statute other than the broad heading of organisations supportive of ‘political causes’. From a legal perspective, given the existence of so many human rights organisations that pursue charitable purposes, this default labelling — or even the potential for such default classification — is an altogether insufficient categorisation of the promotion of human rights in the context of charity law.” Senator Norris also referred to the briefing documents he received on the issue from FLAC and the other organisations.

Senator Dan Boyle (Green Party) said that he believes that the Charities Bill constitutes “good legislation which is flawed as a result of that [human rights] omission.” He went on to say “We should not have the validity of well recognised organisations being questioned and uncertainty over their future because of a Bill that is 90% excellent in what it proposes to achieve.” He stated that the Bill could now plausibly lead to a situation where “spurious challenges will be made against these organisations or bodies will be formed that will have their validity questioned in future.”

Senator Frances Fitzgerald (FG) stated that “organisations that promote human rights in Ireland have been attacked. This is clear from the reduced funding and budgetary changes in respect of the Irish Human Rights Commission, IHRC, which falls under the Good Friday Agreement, the Equality Authority and the abandonment of the Combat Poverty Agency. Given that people experiencing poverty is a human rights issue, any body that voices the concerns of the most vulnerable is a human rights organisation.”

The Sinn Féin Spokesperson on Justice, Equality and Human Rights, Aengus Ó Snodaigh, TD has published a draft Human Rights Commission (Amendment) Bill. This document is **attached**.

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2. House of Lords rebukes Northern Ireland Human Rights Commission for intervention in case relating to Holy Cross Primary School dispute

In a case before the House of Lords in November 13 2008, a law lord rebuked the Northern Ireland Human Rights Commission (NIHRC) over its intervention in the case. The case involved the loyalist blockading of the route to the Holy Cross primary school in north Belfast in autumn 2001. Though the court condemned the blockade, it rejected the challenge against the policing of the blockade.

The case was taken on behalf of one of the pupils of the school on the grounds that the police should have taken a tougher line with protesters. The criticism of the NIHRC was based on its involvement in the case as third party. Lord Hoffman stated that the

Commission's oral submissions merely repeated that which it had already heard from the applicant's council. "An intervention is, however, of no assistance if it merely repeats points which the appellant or respondent has already made...In future, I hope that interveners will avoid unnecessarily taking up the time of the House in this way."

The Commission was surprised and disappointed by the Law Lord's views but stated that it had been vindicated by the lead judgement of Lord Carswell who stated that the Court of Appeal applied the incorrect legal test on the Holy Cross case. The Commission said "it was the House of Lords itself who after considering the initial legal arguments made by the Commission, granted us leave to make submissions in this case."

The applicants in the case are now considering taking their case to the European Court of Human Rights.

3. Advice on Bill of Rights for Northern Ireland presented to Secretary of State in Northern Ireland

On International Human Rights Day, December 10 2008, the Northern Ireland Human Rights Commission presented its Advice on a Bill of Rights for Northern Ireland to the UK government through the Secretary of State for Northern Ireland.

The document aims to highlight areas of additional protection beyond those already reflected in legislation that are particular to the position of Northern Ireland and to meet the needs of that society. The document is based on the European Convention on Human Rights but also has its roots in the Good Friday Agreement and was needed in order to build trust within the communities of the north. At the launch, the Commission defended its advice stating that some might see their recommendations as an endorsement of additional rights for the citizens of Northern Ireland additional to those in other parts of the United Kingdom. Chief Commissioner Monica Williams stated that "because of our past and because of our particular circumstances, we need these extra protections to be as safe and as secure and to have as much trust in our government and with each other as the people of Liverpool or Glasgow, of Cardiff or of London."

To download a copy, please visit:
[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/71/A_Bill_of_Rights_for_Northern_Ireland_\(December_2008\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/71/A_Bill_of_Rights_for_Northern_Ireland_(December_2008).pdf)

4. Hammarberg backs transgender rights

Council of Europe Commissioner for Human Rights Thomas Hammarberg devoted his first weekly Viewpoint of 2009 to a call for legal recognition of transgendered people and an end to discrimination against them. Commissioner Hammarberg noted that there is still widespread ignorance and prejudice against transgender people in Europe and discrimination ranging from brutal attacks to obstruction and humiliation of transgender people by officialdom.

Commissioner Hammarberg mentioned Dr Lydia Foy's 10-year battle to get the High Court here to rule that the Irish Government's failure to recognise her gender identity was in breach of Article 8 of the European Convention on Human Rights. – *Unfortunately, that battle is not over yet as the Government has appealed the ruling to the Supreme Court.*

Commissioner Hammarberg concluded: "There is no excuse for not immediately granting this community their full and unconditional human rights. Council of Europe Member States should take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field".

5. International Bar Council passes *pro bono* declaration

The International Bar Council is the governing body of the International Bar Association (IBA). Part of its role is to pass resolutions on areas of importance to the Council and Association. In any of its declarations, it states that it aims to give "a fair hearing to all points of view from members representing small or developing bars countries as well as the larger ones so all organisations can find a voice on an international stage."

It has recently passed the "IBA Pro Bono Declaration" which launches an educational campaign that will be lead by the Pro Bono and Access to Justice Committee. The purpose of this will be to establish and raise awareness of *pro bono* culture across all areas of the legal profession. Among the issues raised in the Declaration is that law firms be encouraged to "specify a proportion of their time or resources which they will devote per lawyer to pro bono legal service each year." Governments, it says, should "assist and encourage pro bono legal service, through measures such as treating it as not being subject to tax, and where such service is presently taxed, such taxes should be rescinded."

The wording of the declaration can be found online at the following address: http://www.ibanet.org/About_the_IBA/IBA_council.aspx

6. Launch of international *pro bono* statement of principles and database

A set of core principles have been launched which promotes standards and provides guides for all groups involved in providing international *pro bono* legal work. The principles are a product of work by the UK Attorney General's International Pro Bono Committee and were launched on 3 November 2008. The principles and the statement have been endorsed by the International Bar Association. Also launched on that date was a database of international *pro bono* projects. The aim of the database is to provide an online directory listing project summaries and it will act as a useful tool for potential funders.

The statement is available to view at www.internationalprobono.com/resources/attachment.135310

7. International Bar Association Human Rights Institute amicus brief on *Suharto v. Time Magazine* case

The International Bar Association Human Rights Institute (IBAHRI) is a branch of the International Bar Association that works on the protection, promotion and enforcement of human rights through the rule of law. This body has contributed to an amicus brief on an application for judicial review in the Indonesian case of *Suharto v. Time Magazine*. Other organisations involved in the brief were Article 19 and Human Rights Watch.

The case involves an article in Time Magazine accusing the former Indonesian President Suharto of corruption. Suharto sued the magazine and lost in 2000 and later on appeal. In 2007, these decisions were reversed by the Supreme Court of Indonesia which awarded the

equivalent of approximately USD\$106million dollars in damages. Concerns were raised as to the impartiality of the panel of Supreme Court judges as they had all been appointed by the former president.

A copy of the brief can be accessed online at http://www.int-bar.org/images/downloads/hri/amicus_brief_in_English.pdf

8. South Africa Constitutional Court appoints first openly gay judge

A Supreme Court judge in South Africa, Edwin Cameron, has been appointed to that country's Constitutional Court. He is also the only South African judge to disclose that he is HIV-positive. Judge Cameron is a former Rhodes Scholar and human rights lawyer. He is also an author and has written a book on his experiences living with AIDS called *Witness to AIDS*.

In a country such as South Africa with its high AIDS rate and the stigma attached to the disease, Cameron decided to disclose that he is gay and suffers from the disease in 1999 after reading about the stoning to death of a South African woman by her neighbours after informing them that she was HIV-positive in 1998.

For information on the Constitutional Court of South Africa, see <http://www.constitutionalcourt.org.za/site/home.htm>

9. International: Rwandan genocide perpetrator jailed for life by UN tribunal

The International Criminal Court for Rwanda which sits in Arusha, Tanzania, has sentenced Theoneste Bagosora to life imprisonment in what has been deemed the most significant verdict of its kind since Nuremberg. Bagosora was the chief of staff in the Rwandan defence ministry in 1994. He was convicted of overseeing a complex and extensive conspiracy to commit genocide. This included the years of preparation by organising and arming the "Interahamwe" militia. Over 800,000 of the Tutsi minority were killed in Rwanda in 1994 over a 100 day period.

Two senior army officers, Aloys Ntabakuze and Anatole Nsengiyumva, were also given life sentences for genocide. A fourth defendant, a former chief of military operations was acquitted.

Bagosora was convicted of ordering the murder of individual politicians in April 1994 including the prime minister of Rwanda at the time, Agathe Uwilingiyimana. He also ordered the killing of ten Belgian peacekeepers in order to drive out the UN. He was then involved in mobilising the general Hutu population to support the Interahamwe and the army in the widespread killings of Tutsis.

10. Migrants and the Police Complaints Process in Ireland seminar, 16 January 2009

The Trinity Immigration Initiative seminar series presents a seminar by Ms Carmel Foley, Garda Siochana Ombudsman Commissioner, entitled "Are we so different? Migrants and the Police Complaints Process in Ireland". It will take place on Friday, 16th January, 2009 from 12.30-14.00 in the IIS Seminar Room C6.002, Arts Building, Trinity College Dublin.

All are welcome.

Further information is available at: <http://www.tcd.ie/immigration/seminars/index.php>

11. Forum on End of Life In Ireland, call for Submissions deadline: 20 January 2009

The Irish Hospice Foundation forum will run throughout 2009 and will identify what matters most to the public regarding end of life from a wide range of perspectives: social; health, economic; legislative; administrative; educational; cultural and religious. It will operate by means of formal sessions involving presentations to, and discussions with, a panel of public figures and through more informal meetings with groups and individuals. Having identified the challenges, and the implications for public policy, we will establish a National Coalition on end of life in 2010 to advance the agenda for action which is likely to emerge from this unique engagement by society with death and dying.

They are seeking submissions from individuals and families with suggestions as to how the experience of death and bereavement might be improved. Written submissions using the above perspectives as a guide can be posted to Paul Murray, Forum Coordinator, The Irish Hospice Foundation, 32 Nassau Street, Dublin 2 or e-mailed to submissions@endoflife.ie. Suggestions and enquiries can also be made by phoning 01-6755970. Further information on the Forum can be found on www.endoflife.ie.

12. National Service Users Executive Inaugural Conference, 24 January 2009

The Minister of State at the Department of Health and Children will deliver the opening address at the National Service Users Executive (NSUE) Inaugural Conference on 24 January 2009. The keynote speech, entitled "*The role of the Office for Disability and Mental Health*" is to be delivered by Bairbre Nic Aongusa, Director, Office of Mental Health and Disability, Department of Health and Children.

The conference will take place in Rochestown Park Hotel, Cork. To attend, contact the NSUE at 91 Leopardstown Avenue, Blackrock, Co. Dublin or conference@nsue.ie for a registration form.

13. Irish Penal Reform Trust seeks three new staff members, deadline for applications 23 January 2009

IPRT is pleased to announce three new full-time positions, which it will be recruiting immediately. The three posts are:

1. Research and Policy Officer
2. Campaigns and Communications Officer
3. Office Manager.

Details of all three posts are available on www.iprt.ie and in respect of all posts, applicants are asked to submit (i) a completed Application Form; and (ii) a cover letter of not more than three pages, by e-mail only to info@iprt.ie by 5pm on January 23rd. Any queries in relation to the posts should be directed to the IPRT Office at ph. +353-1-8741400; or e-mail info@iprt.ie

14. Conference on the State and the Law, 28 January 2009

Public Affairs Ireland will hold a half-day conference to discuss recent developments in litigation, dispute resolution and public law for the state and public authorities on 28 January 2009.

Key note speakers for the event are the Attorney-General, Mr. Paul Gallagher SC, President of the Law Reform Commission Mrs. Justice Catherine McGuinness, and member of the Public Accounts Committee Mr. Bernard Allen, T.D.

This conference will be of direct relevance to all public officials involved in areas that are subject to review by the Courts as well as to legal advisors to State bodies and public authorities. The event will take place in the Conrad Hotel, Dublin 2 from 9am-1pm. Registration fees (to include conference materials, tea/coffee and lunch): €295 plus VAT at 21.5% (single delegate) or €270 plus VAT at 21.5% (Public Affairs Ireland subscribers); Discounts available for multiple delegates from organisations. To register for the conference, register online at <http://www.publicaffairsireland.com/>, telephone Deirdre Battye on 01 819 8514, or e-mail your details to: conferences@publicaffairsireland.com

15. NI: Carers and their Rights: one-day training course, 18 February 2009

This course looks at the legal position of carers within the community care system. It focuses on the rights of carers to assessment and services and the impact of the Carers and Direct Payments Act (Northern Ireland) 2002. The course also explores the role of the carer where the person being cared for lack capacity to make decisions. The course will take place on 18 February from 10am to 4pm at Law Centre (NI) offices. Fees depend on membership and voluntary status (£75-180). Application forms should be returned to Deborah Hill at Law Centre (NI), 124 Donegall Street, Belfast, BT1 2GY either by Tel: (028) 9024 4401, Fax: (028) 9023 6340 or by email at: deborah.hill@lawcentreni.org by Friday 6 February 2009. This course will count as 5 hours towards Bar Council and Law Society Continuing Professional Development

16. UK Legal Empowerment conference: Public legal education: Improving lives, empowering communities, 23 February 2009

The Public Legal Education (PLE) Network invites delegates to attend their first annual day-long conference. This will take place at Dexter House, Tower Hill, London, EC3N 4QN on 23 February 2009. The target audience includes lawyers and advisers, researchers and academics, educators, community development workers, and policy makers from government and third sector.

Speakers include: Lord William Bach Parliamentary Under-Secretary of State for Justice and Professor Dame Hazel Genn, Dean of Faculty of Laws, University College London

Key topics will include: Adult education; Young people and marginalised groups; International PLE; Research and evaluation; PLE and the media.

For enquiries please contact: Info@plenet.org.uk

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**Public Interest Law Network Ireland - PILN
FLAC (Free Legal Advice Centres Ltd.)**

13 Lr Dorset Street, Dublin 1

Tel: 01-874 5690 Fax: 01-874 5320

LoCall: 1850-350 250 Web: <http://www.flac.ie>

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