

PiIn Bulletin: 10 December 2008



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1. Human rights fighting for recognition in Ireland 60 years after universal declaration

On International Human Rights Day and the 60th Anniversary of the Universal Declaration of Human Rights, human rights organisations are still fighting to have human rights included as a charitable purpose under new Charities legislation. The following outlines the position of Amnesty International, Frontline FLAC and the Irish Council for Civil Liberties on the current draft of the Charities Bill 2007.

The long-awaited legislation to regulate charitable organisations in Ireland has been working its way through the houses of the Oireachtas. In its original form, the Charities Bill included “the advancement of human rights” as a charitable purpose, as recognised by the corresponding legislation in the UK and Northern Ireland. However, for reasoning which is at best inadequate, the advancement of human rights has been removed from the Bill as a charitable purpose. The Bill is shortly due to go through the report (and final) stage of the Seanad. We are strongly of the view that unless this original wording is reinstated, existing charitable organisations who work on a rights-based approach will come under threat.

We understand from discussions and the Oireachtas debates that the government has a number of arguments for removing “the advancement of human rights” as a charitable purpose:

1. There is a concern that the mechanism whereby tax exemptions can be awarded to charitable organisations may be abused or extended.
2. To ensure that non-human rights organisations including political groupings and in particular, terrorist type organisations don't use human rights as a front to obtain charitable status.
3. Existing human rights organisations with charitable status will retain it, so concern is unwarranted.

The Bill already contains wording which provides that even if the Charities Regulator recognises an organisation as a charity, the Revenue Commissioners have the discretion to refuse to grant the same organisation charitable status from a taxation perspective.

We understand that one of the primary purposes behind the establishment of the Charities Regulator will be to examine and vet prospective charities in order to be able to weed out those who may abuse charitable status. Further, there is sufficient protection already in the Bill to exclude offending organisations from the Register.

As pointed out by the Law Society, the Bill's current definition of a charitable purpose “could have a detrimental effect on the charitable status of existing charities”.⁴ The Bill currently provides that organisations that are registered charities at present will continue to be deemed to be registered. A significant number of charitable organisations now use or aspire to use a human rights perspective in their work. If the new legislation is enacted as it stands, it will leave such organisations open to challenge on their charitable status. Since there is provision under the Bill for a 5-year review of the Act, the advancement, protection and promotion of human rights should be included from the outset as a charitable purpose.

If the “advancement of human rights” is not reinstated into the Bill, the following may arise:

- Because it will not be a charitable objective, organisations engaging in the advancement of human rights will find it more difficult to access funding, as foundations and donors require absolute clarity regarding charitable status.

- As the advancement of human rights is a recognised charitable objective in the UK, including Northern Ireland, the current Bill will undermine the principle of equivalence in the Good Friday Agreement. UK organisations which advance human rights will be able to promote these aims in the Republic of Ireland (under EU freedom of movement of services) but Irish organisations working in this field will not be able to benefit from such promotion. Thus resources including funds and volunteers for human rights objectives or new organisations may be diverted to jurisdictions which recognize the advancement of human rights as a charitable purpose.
- Typically, existing organisations have a charitable exemption for education, religious or humanitarian work. If they now frame their work in human rights terms, the Charity Regulator may remove their charitable status. Irish nongovernmental organisations will be in the bizarre position of trying to deny to the Charities Regulator that their work includes the advancement of human rights to retain charitable status.
- Any non-governmental organisation would be open to malicious complaints to the Charity Regulator that it was working to advance human rights. Even if an organisation could prove that its work also carried out its registered charitable objective the very effort of trying to prove that the work was within the objectives that qualify it as a charity could tie up its resources to a very damaging extent, particularly for small or under-resourced organisations.

It is clear from the Seanad debate on 4 December that there are no legal constraints raised by the Attorney General on the inclusion of the advancement of human rights. In the context of reduced support for human rights and equality bodies in Ireland today generally, the deliberate exclusion of human rights as a recognised, valuable activity, beneficial to the community, appears to be an attempt to further muzzle criticism of government policy. Incongruously, the government continues to espouse human rights principles on the national and international scenes.

We have identified between 60 and 200 Irish charities working with very vulnerable people in Ireland today whose work may be seriously impacted by the exclusion of human rights as a charitable purpose. All future organisations or re-organisations of existing organisations will inevitably be left out.

2. Ireland: Challenge to Habitual Residence ruling

FLAC has asked the Chief Social Welfare Appeals Officer to review four decisions by an Appeals Officer that asylum seekers did not meet the Habitual Residence Condition (HRC) for social welfare benefits. The Appeals Officer held that asylum seekers could only satisfy the HRC where “an exceptional factor” was present such as “a very lengthy period of residency and the absence of official action to remove the person from the State”.

FLAC has argued that this is a new criterion that is not contained in the legislation. The Chief Appeals Officer is already reviewing four cases where Appeals Officers held that asylum seekers did satisfy the HRC but the Department of Social and Family Affairs has objected. The Department is refusing to pay benefits to the people concerned in the meantime.

3. Labour Party backs Equality and Human Rights bodies

The recent Labour Party conference in Kilkenny passed a motion opposing the Government's cutbacks in the budgets of the Equality Authority, Human Rights Commission and NCCRI and the closing down of the Combat Poverty Agency.

The motion reads: "Conference expresses its deep disappointment at the attempts by the present Government to undermine the effectiveness and independence of human and civil rights organisations by slashing their funding or incorporating them into Government Departments and calls on the Government to reverse these cutbacks immediately".

The Equality and Rights Alliance (ERA) has created an online petition to register support for the ERA campaign to protect Human Rights and Equality in Ireland. The petition will be presented to government today, International Human Rights Day, which this year marks the 60th Birthday of the Universal Declaration on Human Rights.

ERA is an alliance of over forty civil society groups in Ireland seeking to ensure the promotion and enhancement of human rights, equality and social justice. For further information see the campaign website at <http://eracampaign.org>

4. Government backs Human Rights Commissions at UN

Ireland is one of the sponsors of a resolution to be put to the forthcoming meeting of the UN General Assembly. The resolution "reaffirms the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights ..." It goes on to "encourage Member States to establish effective, independent and pluralistic national institutions, or where they already exist, to **strengthen** (*our emphasis*) them for the promotion and protection of human rights ..."

Can this be the same Government that has just drastically cut the budgets of the Irish Human Rights Commission and the Equality Authority?

5. Draft Bill of Rights for Northern Ireland

The Northern Ireland Human Rights Commission (NIHRC) has presented a draft Bill of Rights for the North to the Secretary of State for Northern Ireland. The Bill of Rights, which was provided for in the Good Friday/Belfast Agreement, sets out supplementary or additional rights to those contained in the Human Rights Act, 1998, which incorporated the European Convention on Human Rights into UK law.

The draft Bill contains provisions on rights to health, an adequate standard of living, accommodation, work, and environmental and social security rights. It also has provisions on the rights of victims of the conflict in the North and on language rights and the right to identity and culture. There are provisions as well for making the social and economic rights contained in the draft justiciable and enforceable by the courts.

Drawing up the draft Bill of Rights is a major achievement for the NIHRC in the difficult circumstances in Northern Ireland. The UK government will now hold a public consultation on the draft Bill before deciding how to proceed.

The text of the draft Bill of Rights is available at the NIHRC website, www.nihrc.org under "Latest Publications".

6. Dave Ellis Memorial Lecture on 1 December 2008

FLAC hosted its Second Annual Dave Ellis Memorial Lecture on 1 December 2008 at the Morrison Hotel in Dublin 1. Proceedings for the evening were chaired by Noeline Blackwell, Director-General of FLAC and an introduction was made by Peter Ward, Chair of FLAC Council. The lecture itself was delivered by Mr. Steve Shapiro, legal director of the American Civil Liberties Union (ACLU). Steve's lecture was an overview of his work and experience with the ACLU. He presented a picture of the erosion of human rights under the Bush administration, in particular in relation to Guantánamo Bay, and how the human rights landscape in the US may look under the Obama administration.

The lecture was very well attended with around 200 guests from whom a number of interesting questions were put to the speakers. The talk was followed by a wine reception. FLAC would like to thank all those who attended the event and who contributed to making it a memorable evening.

7. Law Centre Northern Ireland seeks contact with persons from Northern Ireland who have needed Home Office permission to marry

Law Centre (NI) is taking a "right to marry" case to the European Court of Human Rights. The applicants, who live in Derry, are: a dual Irish-British national; her partner, who is a Nigerian national; and their children. The Law Centre was recently informed by the European Court that notice of the application be given to the government of the UK. In view of the first applicant's nationality, the government of Ireland has also been invited by the Court to state whether they wish to submit written comments on the case.

The Law Centre complains that the Certificate of Approval (CoA) Scheme violates the applicants' rights under Articles 8, 9, 12, 13 and 14 of the European Convention on Human Rights. Under article 9, the complaint is that the couple's right to manifest their religious beliefs was violated by their being prevented from solemnising their marriage in the Catholic Church as their religion required. Under Article 14, in conjunction with Articles 8, 9 and 12, it complains that the CoA Scheme was discriminatory on the ground of the applicants' religion, as it would not apply to them if they were able or willing to marry in the Church of England according to Anglican rites. The Law Centre further contends that the applicants were discriminated against on account of the second applicant's nationality and their inability to pay the fee.

The House of Lords heard the English case of *Baiai* in relation to the Certificate of Approval Scheme earlier this year, but the Home Office has continued to maintain the Scheme after this judgement. Last year, the Law Centre (NI) called for members to lobby their MPs to sign up to Early Day Motion (EDM) 626, calling for the Home Office to rescind the Certificate of Approval scheme. The scheme requires most immigrants to obtain permission from the Secretary of State before they may marry in the UK.

This is also relevant for Ireland since the Immigration, Residence and Protection Bill, currently going through the Houses of the Oireachtas provides for a similar system under Section 123.

If you or someone known to you are/is from Northern Ireland and have had to seek permission to marry, with positive or negative experiences, particularly any difficulties in relation to payment of the required fee of £295, please contact: Anna Morvern, Law Centre (NI), Western Area Office. Email: anna.morvern@lawcentreni.org

8. USA: Florida Court clears way for lesbians and gay men to adopt

On 25 November 2008, a Florida circuit court struck down a state law that barred lesbians and gay men from adopting. Florida was the *only* state in the US that prohibited adoption by homosexuals. The decision came after, as recently reported in the *PILN Bulletin*, the Proposition 8 vote in California in early November which came as a blow to gay rights in the US. This vote led to the reversal of a previous decision that the ban on gay marriage in California was discriminatory.

The Florida court ruled that the ban violated the equal protection guarantees provided for in the state Constitution as it singles out different treatment for gay people and the children they raise without a rational reason. It further found that the ban denied children the right to permanency provided by federal and state law under the Adoption and Safe Families Act 1997.

The American Civil Liberties Union took the case and further information can be found on their website at <http://www.aclu.org/gill>

9. Over 100 countries sign global ban on cluster bombs

More than 100 countries including the UK and Germany signed an international convention banning the production of cluster bombs on 3 December 2008 in Oslo. Cluster bombs continue to have devastating effects for years after their dispersal as unexploded canisters kill and maim innocent civilians who cross areas where they have been scattered in over twenty countries. As a result, large tracts of land have been left unusable.

Notable absentees from the list of those signing up to the convention include the US, China, Russia, India and Pakistan, many of the world's major users, producers and stockpilers of cluster munitions. Israel, which dropped cluster bombs during the 2006 Lebanon conflict, has also failed to sign the pact. The International Committee of the Red Cross has identified more than 40.6 million square metres still contaminated by these bombs in the Lebanon. Cluster munitions have been blamed for causing more civilian casualties in Iraq in 2003 and in Kosovo in 1999 than any other weapon system.

The convention was negotiated and agreed in Dublin this summer. A major stumbling block to agreement at the conference was whether troops from countries who signed up to the convention would be criminally liable if engaged in joint operations with countries which had not signed up, such as the USA. The final text does not prohibit "military cooperation". When engaged in such cooperation, troops would be required to discourage states that have not signed the convention from using such weapons and not to stockpile them.

The text of the convention can be downloaded from the internet at:
http://www.clusterconvention.org/pages/pages_ii/ii_a_textenglish.html

10. Recruitment: Committee for the Administration of Justice seeking three new staff in Public Interest Litigation Support

Public Interest Litigation Support (PILS) is a new project established to finance a range of activities associated with using litigation as a tool for furthering the human rights agenda

and securing policy change in Northern Ireland. They are seeking a Project Manager, a Development Officer and a Finance and Administration Officer.

In relation to all posts, the closing date will be Friday 20 December 2008. Interviews will take place in January 2009. For an application form, job information and further details, please contact in writing (hard copy or e-mail):

Mike Ritchie, PILS Secretary, 45/47 Donegall Street, Belfast BT1 2BR, Phone 02890961122, Fax 02890246706, e-mail recruitment@caj.org.uk.

11.Event: Seminar on *Life and Debt* plus Tasc and NWCi publication *Where Are We Now?*, 11 December 2008

Following the publication of a collection of essays illuminating new feminist perspectives on women in contemporary Ireland, the National Women's Council of Ireland (NWCi) and tasc will hold a series of seminars on the issues which arise in the book.

The first seminar will be held from 10am-1pm on 11 December 2008 at the Academy Plaza Hotel, Findlater Street (off O'Connell Street). It will be entitled *Life and Debt* and will focus on women and financial exclusion.

As places are limited, please confirm attendance as soon as possible by contacting Tasc – A Think Tank on Action for Social Change at www.tascnet.ie or by post at 26 South Frederick Street, Dublin 2 or by phone at (01) 6169050.

12.Event: Safeguarding Trafficking Children in Northern Ireland, 11 December 2008

The Law Centre (Northern Ireland) is organising this half day seminar which will look at some of the key issues in identifying and safeguarding trafficked children. As well as identifying key practice issues, the seminar will focus on the need to develop a multi-agency strategic response using ECPAT UK's learning from work already undertaken in England, Scotland and Wales.

Key learning outcomes:

- An understanding of what child trafficking is and how it happens
- Indicators of child trafficking
- Responses at a practice and policy level

The seminar will take place from 9.30am - 1pm and the launch of the leaflet from 1-2pm. The events will take place at the Law Centre (NI) Training Room at 124 Donegall Street, Belfast, BT1 2GY. The Seminar will be presented by Emma Kelly, ECPAT, UK. Fees for the event are:

- Members voluntary	£45.00 (stg.)
- Non members voluntary	£65.00 (stg.)
- Members statutory/private	£65.00 (stg.)
- Non members statutory/private	£95.00 (stg.)

Application forms should be returned to Deborah Hill at Law Centre (NI), 124 Donegall Street, Belfast, BT1 2GY, Tel: (028) 9024 4401, Fax: (028) 9023 6340 or by email at deborah.hill@lawcentreni.org by Thursday 4 December 2008.

This course will count as 3 ½ hours towards Bar Council and Law Society Continuing Professional Development.

13.Exhibition: Human Rights Posters by Civil, Social and Political Education students, 16 December 2008

The Irish Human Rights Commission and the Law Society will open the exhibition which is entitled *Human Rights – Framed by Young People*, at 11.30am on Tuesday 16 December 2008. The event will involve the presentation of a series of posters by 12-16 year old students to celebrate the sixtieth anniversary of the Universal Declaration of Human Rights. It will take place at the President’s Hall of the Law Society of Ireland on Blackhall Place in Dublin 7.

To RSVP, please contact Anthea Moore, Law Society, tel: 01 672 4961 or email: a.moore@lawsociety.ie.

14.Conference: 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, Mrs. Justice Catherine McGuinness, President, Law Reform Commission and Mr. Bernard Allen, T.D., Public Accounts Committee.

The event will be of relevance to public officials involved in areas subject to review by the Courts. It will also be of direct relevance to legal advisors to State bodies and public authorities. It will take place in the Conrad Hotel, Dublin 2 from 9am to 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 this conference, please go online to <http://www.publicaffairsireland.com/> or call Deirdre Battye on 01 819 8514. You can also e-mail your details to conferences@publicaffairsireland.com

15.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 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. There will be a full day of speakers, workshops, discussion, and debate. 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 (What is the role of adult learning in improving the provision of public legal education? Mapping PLE to the adult national literacy and numeracy curriculum; basic skills and PLE...); Young people and marginalised groups (What are young people's needs for public legal education? Reporting on a qualitative research study measuring young people's legal capability; the needs of disadvantaged groups...) International PLE (What is going on in the international PLE movement?) The international clinical education movement (PLE in the development context...) Research and evaluation (How can we evaluate PLE effectively? Evaluation tools; research developments...) PLE and the media (How to get our message out via the media? Tabloids, media hooks, working with the TV and the press...)

Full conference flyer and online booking details will be available in mid December. For enquiries please contact Info@plenet.org.uk

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