

# flacNews

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## Law as a vehicle for social change

### *Martin O'Brien delivers 7<sup>th</sup> annual Dave Ellis Memorial Lecture*

**T**he Seventh Annual Dave Ellis Memorial Lecture took place on 5 December in the Pillar Room of the Rotunda Hospital, Dublin and was attended by over 160 people, made up of current and former FLAC volunteers, staff and interns, our colleagues in the legal profession and wider NGO sector, members of the judiciary and other supporters. We were particularly honoured this year that President Michael D. Higgins and his son Michael attended the event in a personal capacity. This year's speaker, Martin O'Brien, human rights campaigner and Senior Vice President for Programmes at the Atlantic Philanthropies, was invited to speak about access to justice. He placed a particular focus on public interest litigation and the law as a vehicle of social change.

Peter Ward SC, Chair of FLAC's National Council, introduced Martin O'Brien and provided some of the context for the lecture, noting the huge funding challenges faced by organisations in the fields of human rights and social justice at present and acknowledging the role of the Atlantic Philanthropies in supporting FLAC over the last number of years, in particular their commitment to moving beyond service delivery and funding law reform and campaign work, seeing these as essential components in effecting long-term and sustainable change.

Mr O'Brien began his lecture by paying tribute to the late Dave Ellis, a community activist who dedicated his career to working with community groups in areas including welfare rights, legal aid, legal education and legal entitlements generally, noting that Dave Ellis was one of the first



*L-R: Martin O'Brien, FLAC Director General Noeline Blackwell, President Michael D Higgins, CCLRP Director Carol Coulter, FLAC Senior Solicitor Michael Farrell. Photo by Derek Speirs*

people with whom Atlantic Philanthropies worked when they were considering the best approach to advancing law in the public interest in Ireland.

Although the law is meant to make the world a fairer and a more humane place, Mr O'Brien observed that it often falls short of that goal and is not equally accessible by all, commenting: "Those who need its protection most, are often least able to avail of it." He mentioned the work of FLAC and other independent law centres such as Northside Community Law & Mediation Centre in seeking to make up for this deficit.

Mr O'Brien focused on how law can be changed to create a fairer and accessible justice system, noting that while grant-makers such as the Atlantic Philanthropies can support organisations to have an impact in this regard, they are almost

insignificant in comparison to what Government could offer. He put it to attendees that government policy has great potential to bring about broader systematic change, with law central to how this can be achieved, as it "regulates our relationship with the state and with others and how we perceive ourselves and are perceived."

Noting that it is not always necessary to create new laws or to extinguish old law, but often just a question of fully and fairly implementing laws that already exist, Mr O'Brien highlighted that public interest litigation can play a key role here. He drew on the example of the "multi-decade and still ongoing" case of Dr Lydia Foy in pursuit of gender recognition for transgender people in this respect.

Mr O'Brien then looked further afield to South Africa, noting the effective use of

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FLAC NEWS is published quarterly by Free Legal Advice Centres Ltd., 13 Lower Dorset Street, D1.

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

ISSN 07914148

# De-bunking the myth of “Welfare Tourism”

‘Social Welfare Tourism’ is a term that has become commonplace in the media in recent times and which has gone relatively unchallenged until now. The European Commission published a report in October this year on the impact of non-active EU migrants on social welfare budgets. The main finding of the report highlighted that there is not a substantial burden on Member States’ social security systems from EU migrants that move between Member States. Non-active EU migrants mainly include jobseekers, pensioners, disabled persons, students and non-active single parents. In Ireland 3% of the population is categorised as non-active EU migrants, reflecting the high intra-EU migration to long standing EU Member States.

The study clearly showed that mobile EU citizens do not use social security systems more intensively than nationals of their host countries and that generally, economically non-active EU citizens in Member States account for an insignificant number of welfare beneficiaries. Thus the effect on social security budgets is relatively low. EU migrants were only accountable for 1% to 5% of EU-wide national social welfare budgets. Ireland’s figure of just over 5% was an estimate and did not disaggregate between applicants and beneficiaries for the purpose of this research; as such, this figure does not accurately reflect the numbers of EU migrants accessing social security in Ireland which would result in a lower figure than that supplied by the government.

The EU Commissioner for Employment, Social Affairs and Inclusion was quoted as saying that “...the majority of mobile EU citizens move to another Member State to work and [the study] put into perspective the dimensions of the so-called benefit tourism which is neither widespread nor systematic.” However, the Commissioner did state that he could understand how a sudden large influx of people from other EU countries could put a strain on certain geographical areas within a country, leading to problems with housing, education and infrastructure. He said he was prepared to engage with Member States and to help municipal authorities and others use the European Social Fund to its full extent.

The study also went on to find that mobile EU citizens appear to be employable more readily than the nationals of the host country in which they reside and that the number of mobile EU citizens employed in host countries has increased dramatically over the last seven years. Most mobile EU citizens had been employed previously in their country of origin prior to migrating and the number of inactive EU citizens in Member States is currently slightly less than 1%.

Finally, the study recognised that the costs associated with healthcare for non-active EU citizens in Member States are negligible relative to the size of total health spending and the size of the economy of the host country.

The report also exposes deficiencies in data collection in Member States, evidenced in the methodology section, in particular in Ireland in terms of the numbers of EU migrants in receipt of social security payments.

The issue of ‘welfare tourism’ has been similarly contentious in the UK, particularly in light of the newly proposed immigration bill whose main aim is to prevent illegal immigrants and to ensure that migrants are prevented from claiming benefits to which they have no entitlement. However, it was recently discovered that the British government has no records of the number of non-British EU citizens claiming welfare benefits.

With the publication of the report, EU Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding proposed a five-point plan to crack down on benefit abuse in EU states and proposed putting measures in place to make them more aware of the habitual residency guidelines so that member states will be better able to understand what the welfare entitlements of mobile EU migrants are in their host country. Finally, Commissioner Reding proposed a top-up of the European Social Fund and greater assistance for local authorities to help them to better understand EU free movement rules.

Download Report at: [bitly/1dQrMqi](http://bitly/1dQrMqi)

# Coroners' Juries selected by Garda: Time to reform system

**F**LAC has campaigned for a number of years against the exclusion of deaf persons from serving on juries in Irish courts. We have pointed out that deaf people serve successfully in US courts with the assistance of sign language interpreters. So when US law student Megan Crenshaw came to work with FLAC last summer, we asked her to explore the position about deaf people serving on juries at coroners' inquests. We thought that there might be less resistance to this than to deaf persons serving in criminal trials since no-one's liberty is at stake in the coroners' courts.

Megan found that the coroners' courts exclude deaf people but she also found out that coroners' juries are generally selected by Gardai and that there is no procedure to try to ensure that they represent a cross-section of the population, unlike the position in the criminal courts. As Megan wrote: throughout Ireland, coroners investigate the circumstances of sudden, unexplained or violent deaths and these state-appointed doctors and lawyers seek to establish whether a death was due to natural or unnatural causes. In cases in which the latter is suspected, coroners are required by law to hold an inquest, a public inquiry into the cause of death, and in

many cases they sit with a jury as a way of involving the man or woman in the street in this important process.

When it comes to selecting this jury, however, the only guidance available comes from the Coroners Act of 1962, which states that whenever a jury is required for an inquest, the coroner must inform a member of the Garda Síochána, who will then assemble a jury of six to twelve people. The statute fails to establish a particular manner in which to select a jury and as a result, neither the Garda nor the Coroner's Office have any clear procedure for doing so.

According to Dublin City Coroner Dr Brian Farrell, his office generally relies on the Garda to summon juries. A Garda member contacted by FLAC explained that upon receiving such requests to assemble coroner's juries, Gardai typically go to the nearest office block seeking volunteers.

The Coroner's Office sometimes empanels a jury itself, for example in cases involving police shootings or deaths in police custody, and when they do so, the office uses a variety of different techniques. According to Dr Farrell, these methods include using the electoral

register, referencing a database of people who have applied to be jurors, or simply putting out alerts to city councils.

Regardless of whether the Garda or the Coroner's Office conducts the empanelling process, the use of such arbitrary and inconsistent jury appointment processes creates a system lacking transparency and accountability. This contrasts with the method of selecting juries in criminal cases, where the Courts Service goes to considerable lengths to select names at random from the electoral register so as to obtain a representative cross-section of the population. The current system for coroners' juries tends to favour white collar workers who are in employment and excludes the unemployed, older persons and, of course, the deaf would-be jurors whom FLAC has been campaigning for.

A Coroners Bill that would improve the system, but would still not allow deaf persons to serve, was introduced in the Oireachtas in 2007 and re-introduced in 2011. It is high time it was properly discussed, amended to include deaf persons and other persons with disabilities or "impairments", and passed into law.

## Lights, camera, action: FLAC legal information videos launched

Ever wondered how Ireland's court system works? Are you visiting a court for the first time and are not sure what to do? Or have you ever received a letter and been a bit baffled by legal terminology?

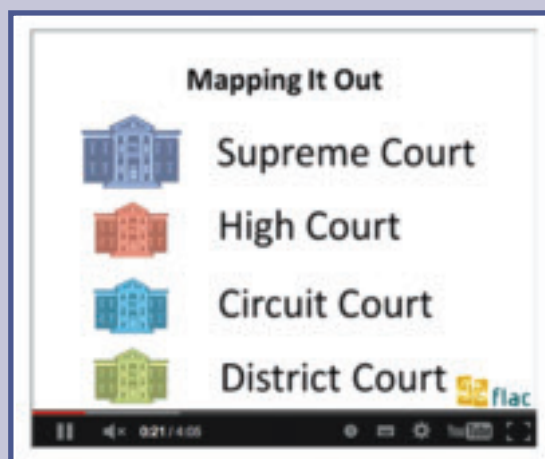
To help answer these questions, FLAC have prepared a series of short information videos to help shed some light on legal procedures and systems.

The videos were officially launched by Director General, Noeline Blackwell at FLAC's Dave Ellis Memorial Lecture and were planned, created (and even acted) by FLAC interns.

FLAC is very appreciative of the support it received from the

Ireland Funds Grant Round for this work. So far, the series includes:

- an introduction to the Irish court system;
- an introduction to appearing in court; and
- an introduction to court documents.



You can watch them on FLAC's YouTube channel at [youtube.com/flacireland](http://youtube.com/flacireland).

Alternatively, you can view them on our website. FLAC plans to add to this information series in 2014 – please keep an eye on our website for updates.

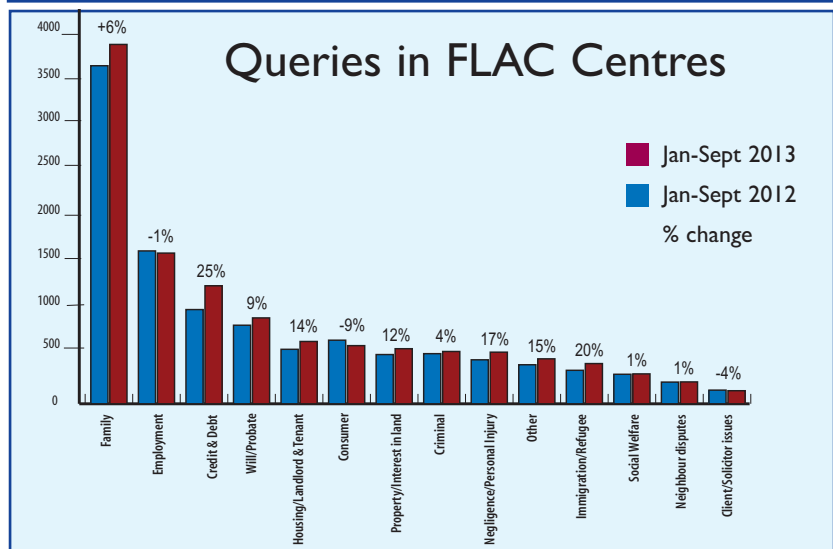
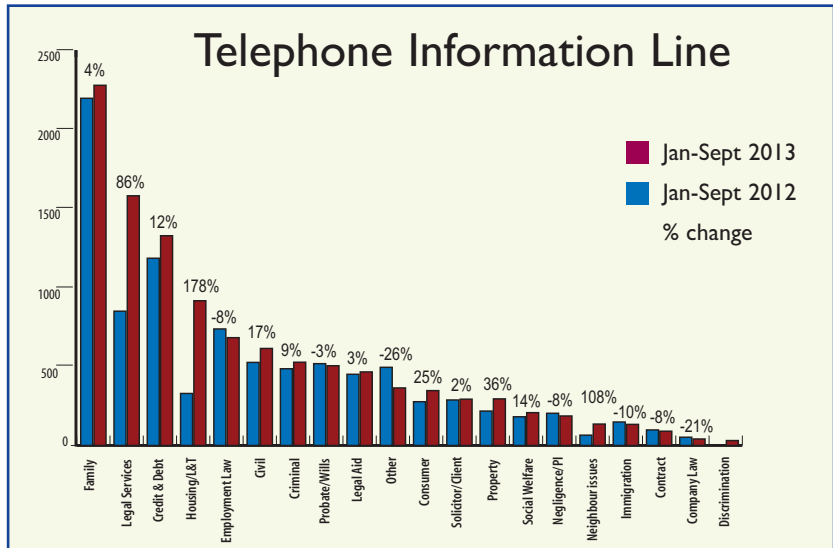
# Steady rise in calls to FLAC by Q3 of 2013

**C**alls to FLAC's telephone information and referral line rose by eighteen per cent during the first three quarters of 2013 compared with the same period last year. June, July and August were particularly busy this year compared with a quieter summer experienced last 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. Legal services have become the second most common area of enquiry, with more than eighty per cent of these callers looking for details of their nearest FLAC centre.

Compared with the first nine months of 2012, housing/landlord and tenant calls have seen the largest increase, rising almost two fold. Legal services calls rose by 86 per cent highlighting the growing demand for information about FLAC centres. In the centres, the total number of callers recorded is up six per cent compared with the same period last year. Seventy-one of the currently operating FLAC centres are returning data at present, which is roughly the same as last year.

Family law queries continue to rise in the centres, up over 6 per cent on 2012. Employment law queries, while down slightly, are the second most common query in the centres. This is followed by credit and debt-related queries which have shown the highest increase over last year, and then by immigration law queries.



## More bankruptcy law changes

**L**ong-awaited changes to Ireland's bankruptcy laws were finally brought into effect on 3 December 2013. Minister for Justice Alan Shatter's signature of the relevant commencement order reduces the bankruptcy time frame from 12 years to three. This means that indebted individuals now have the possibility of emerging from bankruptcy after only three years. The reduced time frame is not absolute, as FLAC have pointed out in the aftermath of the changes. It is true that bankrupted individuals can be discharged after three years; however income payments orders can mean that the same individual could be making payments to the Official Assignee for a period of up to five years. FLAC

summarised the main changes to the bankruptcy regime as follows:

- Discharge period will be down from 12 (or even 20) years to 3 years
- A person must be insolvent with debts exceeding assets of €20,000 or more
- A person will be able to apply for their own bankruptcy but only if they have first considered a personal insolvency arrangement or debt settlement arrangement
- Creditors will still be able to apply to bankrupt a person if the debt owed is over €20,000
- A feature of the new rules will allow

for an order to be made where a bankrupt person will have to pay income to creditors for 5 years. If this order is made at the end of the bankruptcy, the bankrupt may be paying creditors for up to 8 years

- Bankruptcy will still be a painful, messy affair with costs to meet

The Insolvency Service of Ireland has published a *Debtors Guide to Bankruptcy* and a set of hypothetical bankruptcy scenarios. Both of these documents are available to download from the ISI website at:

- [http://www.isi.gov.ie/en/ISI/Pages/New\\_Bankruptcy](http://www.isi.gov.ie/en/ISI/Pages/New_Bankruptcy)

# ‘A tax on the poor’: Changes to Legal Aid scheme damaging access to justice

The last issue of *FLAC News* looked at the recent legislative changes to the state civil legal aid scheme. Introduced by Minister for Justice, Equality and Defence Alan Shatter TD on 12 September, Statutory Instrument 346 of 2013, ‘Civil Legal Aid Regulations 2013’, made substantive changes to a qualifying person’s access to justice, including:

- a) an increase in the minimum financial contribution for legal advice from €10 to €30;
- b) an increase in the minimum financial contribution for legal aid (representation) from €50 to €130;
- c) a cut in the overall disposable capital threshold allowance for eligibility from €320,000 to €100,000.

These draconian changes must be considered from a human rights perspective. Is the State satisfying equally the unmet legal need of Irish citizens whose means preclude them from seeking private legal representation, as is its constitutional and internationally recognised obligation?

UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knauth makes two clear and cogent points in a 2013 report: firstly, that “legal aid is an essential element of a fair, humane and efficient system of administration of justice that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial and the right to an effective remedy, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the administration of justice.”<sup>(1)</sup>

It is no great revelation that the fundamental aim of a system of legal aid is to eliminate any barriers or obstacles impairing the individual’s access to justice and to an effective remedy.<sup>(2)</sup>

What is particularly noteworthy is the Special Rapporteur’s second point: “States bear the primary responsibility to develop and implement an effective and sustainable legal aid system that draws from international human rights standards and recognized good practices.”<sup>(3)</sup> The most



important principle to draw from this particular comment is the requirement that the system be both *effective* and *sustainable*.

While the Special Rapporteur delivered her comments in light of having visited Pakistan, El Salvador and Maldives, nonetheless this principle is one that applies to all States who are members of the UN, Ireland included.

To date, the Civil Legal Aid Act 1995 has been significantly altered and amended by way of regulatory changes, a practice not uncommon in Irish legislation. However, several of the changes introduced on 12 September by Minister Shatter are some of the most disproportionate to come to the civil legal aid system in Ireland.<sup>(4)</sup> Nor could they have been introduced at a more difficult time.

FLAC has welcomed the removal of the financial contribution for those defending proceedings issued by the HSE in relation to a child being taken into state care. However the hike in the minimum financial contribution offsets this advance.

It is a sad fact that any increase in contributions to be made to the Legal Aid Board, which is the state-funded body in charge of civil legal aid, will serve only to further exclude people who are already too poor to afford legal representation. FLAC Director General Noeline Blackwell

has referred to the increases as “a tax on the poor”.

Minister Shatter has said he believes the increase in contributions will net up to €700,000 for the Legal Aid Board, citing an increase in demand for services as the rationale for higher charges.<sup>(5)</sup> In reality, the purported financial benefit to the Board by this unprecedented increase in contributions is negated by the harsh reality that increased fees will create an insurmountable obstacle for those on the very lowest incomes who need civil legal aid in Ireland.

As the Legal Aid Board comes under increasing pressure, with more and more people finding themselves unable to afford private legal advice or representation, questions must be raised: is it supportable and defensible to introduce further measures which, in essence, prevent the poorest people in Irish society from practically enforcing their basic constitutional and international human rights? Is the civil legal aid system in Ireland effective and sustainable – making a real difference to people who need legal help – or is the right to civil legal aid in Ireland becoming more and more an abstract rather than a real remedy?

## Notes:

1. U.N. General Assembly, 23rd Session, Agenda Item 3. “Report of the Special Rapporteur on the Independence of Judges and Lawyers” 15 March 2013 (A/HRC/23/43).
2. See *Access to Justice: A right or a privilege? A Blueprint for Civil Legal Aid in Ireland*, FLAC, 2005
3. Also in *Access to Justice: A right or a privilege?*
4. Statutory Instrument No. 346 of 2013, ‘Civil Legal Aid Regulations 2013’.
5. See press release from the Department of Justice and Equality, “Minister for Justice Equality and Defence announces changes to Civil Legal Aid” available at <http://www.justice.ie/en/JELR/Pages/PR13000338> (accessed 11/10/2013).

## TRANS GENDER RIGHTS:

# Transgender Recognition Bill deeply flawed

**F**LAC has represented transgender woman Dr Lydia Foy since she commenced legal proceedings in 1997 seeking formal recognition in her preferred female gender. FLAC continues to represent her in new legal proceedings issued in January 2013 to enforce the ruling of the High Court given in her favour in October 2007. This landmark victory ruled that the Irish government was in breach of its obligations under the European Convention on Human Rights and must legislate for the recognition of transgender identity in Ireland. And since the Irish government withdrew its appeal in June 2010, Ireland has been under a clear legal obligation to provide legal recognition to transgender persons.

However 20 years after Lydia began her struggle, we still await a law. A draft Heads of Bill was issued by the Department of Social Protection in July and FLAC submitted its concerns around some of its provisions in September. In October, FLAC was invited along with several other groups to discuss these concerns before the Joint Oireachtas Committee on Education & Social Protection. These groups ranged from rights organisations like Transgender Equality Network Ireland (TENI) and parent support group TransparenCI to the Equality Authority and Amnesty International as well as medical and legal experts and the Department of Social Protection itself.

On 24 October 2013, the second of two days of debates, FLAC appeared before the Committee represented by Director General Noeline Blackwell and Communications Officer Yvonne Woods. FLAC welcomed elements of the proposed Scheme, such as the fact that it does not propose to require gender reassignment surgery or other specified medical treatment as recognition precondition. However the organisation outlined a number of serious concerns:

**a) Forced divorce:** Head 5 (d) of the Scheme of the Bill would require couples to divorce as a condition for recognising the transgender partner in her/his preferred gender, given that Ireland does not recognise same-sex marriage. A small number of transgender persons will have married in their originally assigned gender, and while in many cases the strains involved will have already led to the break-

up of the marriage, in other cases the couple wish to remain married. Thus the proposed law will effectively force these couples to end a marriage. This may contravene the legal requirements for divorce – that the couple be living apart for four of the previous five years and that the relationship be irretrievably broken down. Furthermore, other EU jurisdictions which do not have same-sex marriage have removed the divorce requirement for gender recognition and prominent European rights bodies have spoken against such provisions. FLAC argued that recognising the preferred gender of a person who is already married would not create a new marriage, simply that the same marriage would continue.

**b) Minimum age limit:** Under Head 5(d), certificates will only be issued to those aged at least 18 on date of application. Since FLAC's submission to the Gender Recognition Advisory Group in 2010, the organisation has learned that many young persons become conscious of their true gender identity during their teenage years or even younger. In this light, we suggested that the minimum age for full recognition should be 16, the age at which young persons can consent to medical treatment. FLAC also proposed the creation of a provisional or temporary Gender Recognition Certificate for people younger than 16 which could be renewed or converted into full Gender Recognition Certificates.

**c) Medical certification:** Head 6 suggests that the primary document required for the issue of a Gender Recognition Certificate would be a statutory declaration by the applicant.

FLAC welcomed this as a move away from the medical disorder model that bases gender recognition on medical evidence. However, Head 6(vi) requires a supporting statement from a treating physician, which appears to reintroduce an emphasis on medical treatment. FLAC suggested that if statements are required to support the statutory declaration of the applicant, these could be supplied by one or more of a number of persons with knowledge of the applicant's circumstances - medical practitioners, counsellors, social workers, teachers etc.

**d) Gender identity as equality ground:** Finally, FLAC suggested that the Bill should contain a provision amending the Equality Acts to include Gender Identity among the “discriminatory grounds” listed at Section 6 of the Employment Equality Act 1998 as amended and Section 3 of the Equal Status Act 2000, as amended. FLAC argued for the educational effect of prohibiting discrimination on a particular ground, as it helps to raise awareness around the particular vulnerability of minority groups.

While the Committee said that they had learned much from the various presentations, we now await their observations and recommendations to the Minister for Social Protection. For the sake of all transgender people in Ireland and their families, and after all the years they have waited for recognition and clarity, we hope that this will come soon and be as strong and inclusive as possible.

- Read a transcript of the hearing online at <http://bit.ly/JOzB4S>.
- You can read our submission at [http://bit.ly/FLAC\\_TGBill13](http://bit.ly/FLAC_TGBill13)

## Transgender group visits President Higgins



© Photo by Eric Luke of the Irish Times

Lydia Foy meets President Higgins with TENI Director Broden Giambrode (centre)

On 13 November, Lydia Foy and FLAC's Yvonne Woods joined transgender rights group TENI in visiting Aras an Uachtaráin at the invitation of President Michael D Higgins. With his wife Mrs Sabina Higgins, the President met the 10-person group and listened to concerns and well as expressing solidarity and support. TENI's Orlaith O'Sullivan presented him with their latest report and annual review after which the group had a tour of the Aras. We are so grateful to President Higgins for his generous invitation and for his encouragement.

## BREAKING NEWS:

# International body to intervene in Foy case

In a landmark move, the High Court has granted standing to the International Commission of Jurists (ICJ) to intervene as *amicus curiae* in Lydia Foy's new proceedings to secure recognition in her female gender.

Composed of 60 eminent judges and lawyers from all over world, the ICJ promotes and protects human rights through the Rule of Law, by using its legal expertise to develop and strengthen national and international justice systems.

Mr Justice Gilligan opened his judgment on 20 December by observing that the plaintiff Lydia Foy had previously issued proceedings in which a declaration of incompatibility with of the European Convention on Human Rights (ECHR) was issued. He noted that since then, she had filed new proceedings seeking recognition and to give effect to that declaration.

The judge noted that in its application, the ICJ had limited itself to discussing the need for an effective national remedy for breaches of the ECHR. He said the



jurisdiction to seek to intervene as an *amicus curiae* in such cases is not in doubt.

He referred to a previous case, in which the UNHCR had been allowed to intervene as an *amicus*, and went on to discuss another case where it was held that an applicant must have a *bona fide* interest in the issue at hand. He also stressed the importance of there being a public law dimension and that the applicant's interest must be a general one rather than a sectional interest.

The judge noted that the ICJ had stressed that they had a *bona fide* interest in the proceedings and had clearly shown that they have substantial experience in *amicus*

applications. He also observed that the ICJ have a public law dimension to their work.

Mr Justice Gilligan referred to another case where the court had ruled that the applicant was not capable of providing the court with a perspective on matters of principle or public importance which would not otherwise be available to it. He said this was not the situation in the ICJ's application. He was satisfied that the ICJ brought a certain perspective on matters of principle and public importance in relation to the main Foy proceedings. The judge therefore granted the application.

The ICJ's intervention shows the importance of this case, both in relation to the rights of Lydia Foy and other transgender persons and in testing the effectiveness of the ECHR Act 2003, which was intended to give direct effect to the ECHR in Irish law. Clearly the decision in Foy will be watched carefully in other EU countries and further afield. Judge Gilligan's decision also clarifies criteria to be met by other bodies seeking to intervene as *amicus curiae* in other cases.

## Child Care Law Reporting Project launches Interim Report

Following the launch of its dedicated website in April 2013 and on-going publication of case summaries (volume 4 went live in December), the Child Care Law Reporting Project launched its first Interim Report on 5 November 2013. The report provides analysis and statistical coverage of how cases where the state seeks to take children into care are dealt with in Irish courts.

The Interim Report was launched at the Ormond Meeting Rooms by Chief Justice, Mrs. Justice Susan Denham. Also in attendance were members of the Project's Oversight Board as well as Minister for Children and Youth Affairs, Frances Fitzgerald TD, Ombudsman for Children, Emily Logan and President of the District Court, Judge Rosemary Horgan.

Launching the report, Chief Justice Denham acknowledged that while it could only provide a snapshot in time, the CCLRP Interim Report still had "...direct relevance for those involved in the child care system and for policy makers". She also paid tribute to the work of Project Director, Dr Carol Coulter and her

tireless reporting team who visit courts all over the country to compile case reports.

The interim report provides an overview of 83 cases accessible on the Project's own website and detailed analysis of some 333 court cases attended by the CCLRP reporting team between December 2012 and July 2013.

Without the CCLRP, these 300 cases would have been unreported. Chief Justice Denham pointed out that the project "balances the *in camera* rule with sensitivity by protecting the privacy of children and their families who are part of this study and yet bringing the relevant information into the light".

The report suggests developing trends and provides statistics that supplement those currently available from the Courts Service. Chief Justice Denham pointed out the sobering fact that we do not live in a perfect, Utopian society and that "...the revelations of child neglect and abuse in Ireland should place child protection issues, including the reporting of such cases, high in our national debate". The cases detailed in the Interim Report



L-R: FLAC Director General Noeline Blackwell, CCLRP Director Carol Coulter & Chief Justice Susan Denham

support this sentiment. Neglect is the main reason for care orders being sought, comprising more than one in five cases cited.

The CCLRP was set up in November 2012 to report on child care proceedings taken by the HSE. It is an independent project with joint funding from Atlantic Philanthropies, the One Foundation and the Department of Children and Youth Affairs. It is supported by FLAC and the Children's Rights Alliance.

● Read more at [www.childlawproject.ie](http://www.childlawproject.ie)

## 7th Annual Dave Ellis Memorial Lecture:

**Continued from front page:**

public interest litigation by organisations supported by the Atlantic Philanthropies. This has resulted in 2 million people receiving anti-retroviral treatment for HIV and a significant reduction in the perinatal transmission of HIV/AIDS. This success amongst others in South Africa, he said, shows clearly the scale of what can be achieved through litigation.

He added the important caveat however, that “litigation on its own will often fail to deliver the desired change” and that it must be complemented by greater public awareness and information about people’s rights, by access to advice and supports for people in claiming their rights, and by broader social mobilisation around the issue at hand: “In short and perhaps most importantly rights have to be asserted both inside and outside the courts.”

Reflecting on an evaluation carried out in South Africa that identified eight factors essential to successful litigation, Mr O’Brien listed: proper organisation of clients, an overall long term strategy, co-ordination and Information sharing, amicus curiae interventions, good timing, good research, correct characterisation/framing of the legal issues involved, and effective follow-up.

He added that success requires dedicated and talented lawyers who have the tenacity, patience and resources to keep working on an issue, often for far longer than could ever have been originally anticipated. Here again, Mr O’Brien pointed to the Lydia Foy case referring to the Irish government’s “shameful failure” to align the law with the six-year-old decision in this case.

Concluding, Mr O’Brien referred to Bryan Stevenson, a death row and racial justice litigator in Alabama. He drew on some of Stevenson’s reflections, such as “the opposite of poverty is not wealth but rather justice”; that to secure justice in an imperfect justice system you must know and understand what it is that people are going through; and that we must be hopeful that change is possible. Martin O’Brien closed his speech by referring back to Dave Ellis as exemplifying each of these points and that they are seen to be at the heart of FLAC’s work and that of its colleagues in the public interest law community.

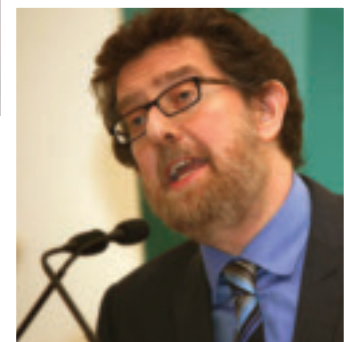
Since the first Dave Ellis memorial lecture in 2007, the annual event has gone from



*Top: Martin O'Brien addresses attendees at the Dave Ellis Memorial Lecture.*

*Above: President Higgins meets Brian Ellis and Robert Ellis, relatives of Dave Ellis.*

*Right: Martin O'Brien*



strength to strength and is an important fixture on the FLAC calendar. As well as the lecture itself, it is an opportunity to gather friends and supporters of FLAC to reflect on the year gone by and to look forward to the year ahead. Also at this year’s event, the Thomas Addis Emmet Fellowship 2013 was presented to Vanessa Lawlor of UCC, FLAC volunteers and members of PILA’s *pro bono* referral scheme were presented with awards for long service, and PILA’s latest Progress Report was launched.

Martin O’Brien is currently Senior Vice President for Programmes at the Atlantic Philanthropies. Before joining Atlantic in 2004, Martin spent 17 years coordinating the work of the Committee on the

Administration of Justice (CAJ), an organisation dedicated to securing the highest standards in the administration of justice in Northern Ireland. Martin has written, spoken and publically campaigned on a wide range of human rights and civil liberties issues and was particularly active in securing string human rights protections in the Good Friday Agreement. He is a past recipient of the Reebok Human Rights Award and his work in Northern Ireland has been honoured by Human Rights Watch and Human Rights First. In 2001, Martin O’Brien was profiled as one of 51 influential human rights activists around the world by Robert F. Kennedy Center for Justice and Human Rights.



## Social security schemes across Europe

**O**n Wednesday 2 October, FLAC's Yvonne O'Sullivan and Columb Fortune attended a trESS (Training and Reporting on European Social Security) seminar. The seminar focused on the coordination of social security in Europe in the context of the impact of economic crisis and increasing levels of unemployment. Magdalena Ciesielka and Albrecht Otting of the EU Commission discussed recent developments in the area of intra-European social security provisions, including Regulation 465/2012, Directive 2011/24 and recent jurisprudential developments from the European Court of Justice.

In discussing Regulation 465/2012, the Commission representatives outlined the significance of a new provision. Article 65(a) provides for a protection for formerly self-employed frontier workers who were covered in the Member State of last activity, but whose Member State of residence does not have an unemployment benefits scheme. This means that the Member State of last activity will pay the unemployment benefits, provided the person registers with the employment services in that Member State and is available for work there.

Regulation 465/2012 also introduced changes in the rules where a person is working in two or more Member States – the legislation of the Member State of residence applies only if a 'substantial part of activities' is pursued there.

Another topic raised at the seminar was the rather politically sensitive issue of 'Residence' and whether the habitual residence conditions (HRCs) as outlined in the Directive are being correctly and uniformly applied by individual Member States.

Prof. Dr Maximilian Fuchs, joint author of an analytical study on "Coordination of Unemployment Benefits", gave an in-depth summary of recent caselaw from the European Court of Justice on what rules or regulations can be applied in cross-border European social security provisions. Issues arose around students, pensioners and inactive mobile people, and whether any single rule applies to their situations.

trESS noted that the foundation upon which the coordination of unemploy-

ment benefits is founded, is the principle of free movement of workers, but that issues arise where certain member states continue to operate a protectionist approach to their own national workforce.

Overall trESS proposes that the exclusive competent state – that is, the state with the obligation to pay unemployment benefits – should be the state of last employment. trESS suggest that the burden to pay the benefit should rest on that State.

## ESC Rights for Convention?

**T**he Constitutional Convention has been tasked by the Oireachtas with considering twelve particular issues either that should be provided for in, amended or removed from the Constitution. The Convention is made up of a hundred members that are representative of Irish society including parliamentarians working within a timeframe of twelve months.

The Convention has been holding public meetings and debates on each of the issues put forward by the Oireachtas which are then voted on for recommendation to the Government for inclusion in the Constitution. To date twenty-four issues have been recommended with three issues successfully given approval for referendum by the government, these include legal provision for marriage for same-sex couples, lowering the voting age to sixteen and reducing the age for presidential candidates as well as citizens outside the State being involved in the nomination process.

In February 2014, the Convention will convene for the final time. Six issues have been finalised by the Convention for vote in mid-December, amongst these are environmental rights, economic, social and cultural rights, political and institutional reform, the church and state,

the family and issues of mortality and a bill of rights.

FLAC, as part of the Economic, Social and Cultural Rights Initiative, has campaigned with other not-for-profit organisations for recognition of economic, social and cultural rights in legislation through a range of different actions. A joint submission was forwarded to the Convention for their attention outlining the need to have such rights explicitly protected by the State. Ireland ratified the International Covenant on Economic, Social and Cultural Rights in 1989 committing the State to legal obligations to uphold economic, social and cultural rights. Currently the Constitution does not comprehensively provide for these rights and the Convention is the perfect opportunity to discuss the importance of having all human rights included on an equal legal footing in the law.

The Constitutional Convention's website has been open for submissions from individuals and organisations with each submission titled under a specific issue for the Convention to consider. The Convention has experienced great success to date and FLAC hopes that economic, social and cultural rights will be amongst the other issues for recommendation to the Government.

## FOCUS ON FLAC:

# Inside FLAC: FLAC Student Societies

**S**tudent FLAC societies in colleges and universities provide an ideal opportunity for third-level law students to step outside of the theoretical learning environment of the lecture hall. They allow them to gain a fresh perspective on the law from a practical standpoint by assisting in clinics with a qualified solicitor or barrister.

This year FLAC societies are thriving, with higher membership as well as a stronger presence on campuses, providing advice to students and college staff with legal questions and woes as well as running campaigns and awareness events. Many well established societies are faring incredibly well this term with a host of clinics, events and campaigns underway and other colleges are now in the process of setting up their own FLAC society.

**Trinity FLAC Society** has been very busy so far this year and seems to have no intention of slowing down. Membership numbers tripled in September and attendance at its legal advice clinics is up 500% due to increased presence on campus and Student Union advertising. Recently, Trinity FLAC has launched a legal information booklet aimed at college students entitled "Know Your Rights", which covers areas relevant to students such as landlord/tenant law, employment law, cyber law, the right to protest and Garda powers and rights on a night out.

Trinity FLAC has run numerous campaigns and events since the start of term, including a strong campaign on Prisoners' Rights which featured a debate in conjunction with the Philosophical Society on the motion that the death penalty has no place in the rule of law, a talk by the Irish Penal Reform Trust and a letter-writing campaign which garnered more than 300 signatures. It has also hosted a talk on Direct Provision with Honorary President of Trinity FLAC, the Hon. Mrs Justice Catherine McGuinness, and Sue Conlon, CEO of the Irish Refugee Council. This along with an event on the topic of Data Protection co-hosted with the DU Pirate Party. In December 2013, Trinity FLAC is planning a campaign around Homeless Rights, with speeches, a research project in conjunction with Dublin City Council and a sleep out with the VDP in order to raise awareness of

homelessness among students.

**NUI Maynooth FLAC** got off to a great start this year with membership reaching 126, a diverse range of students getting involved from 1st year to PhD levels. Currently Maynooth FLAC is in the process of setting up mock clinics to educate 1st and 2nd year students and give them some practical experience in volunteering in the clinics. This year the society has over 90 trained volunteers, which is a massive increase from 43 last year. With the assistance of solicitors Deirdre McGowan and Susan Webster and barrister Owen Donnelly, Maynooth FLAC runs clinics fortnightly, which have been very much in demand to date. For training purposes, it has also had speakers in to talk about relevant legal topics to students, the most recent being landlord and tenant law.

**Griffith College Dublin FLAC** is currently running fortnightly clinics for students and staff. There has been steady interest from the student body in the FLAC clinics this year and recently GCD FLAC has started to run a blog, which allows members submit articles on legal issues such as how to register to vote and landlord and tenant rights. As well as the blog, GCD FLAC has started an e-newsletter which provides information on

the recent referendum and FLAC updates. Currently the society is looking into a research project on youth justice and they had the IPRT's Fiona Ni Chinnéide come in to discuss aspects of their work in relation to youth justice. Though this research project is in its preliminary stages, GCD FLAC is looking to complete it by the end of next semester.

A group of dedicated students in **Carlow IT** is currently setting up their own FLAC society. They have just put together their Society's draft constitution and are now organising mock clinics and training lectures for students looking to get involved.

On 6 December, FLAC held one of its bi-annual national student society meetings which brought together FLAC society members from Griffith College Dublin, Trinity College, DCU, NUI Maynooth and Carlow IT in Dublin to discuss progress so far this year, plans for the future and possible joint projects. The societies plan to meet again in February 2014.

A large thank-you to Shauna Stanley, James Dooley, Sean Tynan, Jacinta Lynch and Emmy Marshall.

**FLAC soc members should check out our new FLAC Societies page on Facebook.**

## FLAC Volunteers honoured in ceremony



Some of volunteers honoured at the award ceremony on 5 December - read more on page 8. L-R: FLAC Chairperson Peter Ward SC, Angel Bello Cortez, Beatrice Cantalejo BL, Innocent Chukwuezi BL, Maria McDonald BL, Paula King, Katie Dawson BL, Barbara Sherry, Helen Moakley, Brian Connolly, Susan Webster, FLAC Volunteer Manager Zsé Varga.

## FOCUS ON FLAC:

# Yvonne O'Sullivan, Policy & Advocacy Officer

**W**ith a wealth of experience in the human rights sector, Yvonne O'Sullivan joined FLAC as Advocacy and Policy Officer in September 2013. Her involvement with FLAC began as a Legal Intern, where she provided legal information on FLAC's legal information and referral phoneline. She also worked on the organisation's legal aid campaign. During her internship, Yvonne undertook a course in welfare rights run by the Irish National Organisation of the Unemployed. Her interest in welfare rights stemmed from a previous internship with the Migrant Rights Centre Ireland as Legal Advocacy Intern. At the MRCI, Yvonne frequently met with clients who were experiencing destitution which motivated her to gain a deeper understanding of the intricacies of the Irish welfare system. Yvonne has always found direct client contact hugely rewarding as it allows her to realise the gaps, along with the shortcomings of the government's policies and practice: "Each and every system can, and needs to be, improved for the sake of civil society and vulnerable individuals."

Yvonne's advocacy role on behalf of undocumented migrants at the Migrant Rights Centre Ireland reinstilled this belief: "The experience shone a light on the huge portion of the population that exist in limbo but for whom no answers are given by the State. This group of people are afraid of being noticed, yet the only way for them to become legalised is to present themselves to the relevant authorities." The complexity of issues surrounding undocumented migrants made Yvonne realise that government bodies must be held accountable for their legal obligations, particularly as providers of public services and duty bearers of human rights. In the short term, Yvonne would like to see the Irish government stepping up and ensuring that human rights are at the centre of all state policy and decision-making.



Yvonne O'Sullivan

Originally from Kerry, Yvonne completed an undergraduate degree in Biology and Chemical Sciences BSc at University College Cork. After a year's travelling, Yvonne undertook a Masters degree in International Peace Studies at the Irish School of Ecumenics, Trinity College Dublin. Her thesis focused on a comparison of the motivations behind foreign aid policies in Ireland and the US. During this time, Yvonne managed to hold two volunteering positions; one with SUAS Reception Centres for Asylum Seekers, and another with the Irish Refugee Council as an Administrative and Research Assistant. Afterwards, Yvonne travelled to Bethlehem in the West Bank to volunteer in the Palestine Summer Encounter for three months. Whilst volunteering in a grassroots organisation, Yvonne quickly became immersed in the local culture and learned Arabic. This once-in-a-lifetime experience allowed Yvonne to witness first-hand the Israeli-Palestinian conflict and its toll on the lives of civilians.

On her return to Ireland, Yvonne wanted to deal more substantively with domestic human rights issues and worked as a Casework and Policy Intern with the Irish Refugee Council. Her role primarily focused on the direct provision system. After her time there, she participated in a voluntary programme which involved teaching English to Burmese migrants. Drawing upon her experience in the human rights field, Yvonne assisted a Burmese women's and children's human rights organisation in writing and editing publications on relevant human rights issues for the Burmese diaspora and international community.

In order to gain a deeper understanding of the ways in which rights are attained, Yvonne studied for a Masters of Laws in International Human Rights Law and Public Policy at University College Cork. Drawing on her experience with refugees at home and abroad, she wrote her dissertation on the topic of the European Union's compliance with its human rights law in returning third country nationals.

Yvonne's current role as Advocacy and Policy Officer allows her to apply her extensive knowledge of human rights law at a practical level. Her job includes assessing government policies on compliance with international human rights standards or creating strategies for specific FLAC campaigns. One of FLAC's current drives is aimed at reforming the social welfare appeals system.

For Yvonne, it is crucial to feel that she is making a positive impact in her work. She says the best thing about her role at FLAC is that she is now influencing change at a higher level, after experiencing human rights violations on the ground for several years, concluding "It is interesting to view the human rights sector from another perspective and to be in a position to address its shortcomings."

## Civil legal aid changes – FLAC legal resources update

In September 2013, Minister for Justice Alan Shatter announced several changes to the civil legal aid system. Among these was an increase in the minimum financial contribution for both legal advice (up from €10 to €30) and legal aid (up from €50 to €130). FLAC's legal information

factsheets (FLACsheets) on civil legal aid have been updated to reflect these increased contribution charges. Two versions of the Civil Legal Aid in Ireland FLACsheet are available - an in-depth version (covering eligibility and cost of civil legal aid, how to appeal decisions,

making a complaint, waiting times, and cross-border civil legal aid) as well as a shorter one summarising these main points.

**Both are free to download from FLAC's website: [www.flac.ie](http://www.flac.ie)**



## PUBLIC INTEREST LAW ALLIANCE UPDATE

# PILA Progress Report launched

**P**ILA's updated Progress Report was launched as part of the programme for the 2013 Dave Ellis Memorial Lecture on 5 December, during Human Rights Week (5-15 December). This Report builds on the 2012 edition and highlights the project's key achievements, as well as the spirit of public interest law and passion for pro bono work that led to PILA's establishment.

Here are some key facts and figures from the Report about the work of PILA and its stakeholders since 2009:

- Over 170 legal advice and litigation support referrals have been made through the Pro Bono Referral Scheme.
- 23 law reform working groups have been set up through the Referral Scheme.
- 39 legal education sessions have been set up through the Referral Scheme, attended by 769 non-governmental organisation staff.
- There are 220 individual lawyers and 14 law firms on the Pro Bono Register.
- There are over 1800 readers of the PILA Bulletin.

### Case Study

The Report also features a number of case studies of referrals, working groups and legal education sessions that PILA has facilitated through the Pro Bono Referral Scheme. One of these is a legal advice referral that PILA facilitated for TENI and FLAC, which draws in FLAC's ongoing work on behalf of Dr Lydia Foy.

**The issue:** Ireland is the only country in the EU that makes no provision for the legal recognition of transgender persons. On the foot of a successful case brought by Dr. Lydia Foy before the Irish courts, TENI and FLAC sought to address this inequality through the introduction of legislation.

**What PILA did:** PILA connected TENI and FLAC with David Dodd BL, a PILA Pro Bono Register barrister. They worked together to draft a private member's Bill on gender recognition, which was subsequently proposed in the Seanad by independent Senator Katherine Zappone.

**The result:** The Bill, together with the ongoing FLAC-supported Dr. Lydia Foy litigation, increased pressure on the Irish Government to publish an outline of potential gender recognition legislation. The referral was shortlisted for the 2013 PILnet European Partnership in the Public Interest Pro Bono Award. Dr Lydia Foy was also shortlisted for 'Campaigner of the Year' at the European Diversity Awards in London.

### Case Study

Another case study detailed in the Report, the ongoing collaboration between A&L Goodbody and the Irish Refugee Council Law Centre, was recently featured in the Irish Times

Rachel Power, PILA Coordinator says, "This Progress Report showcases the work that our stakeholders have undertaken through our Pro Bono Referral Scheme, and it illustrates the impact of our public interest law events, research and information services. PILA exists because it is needed, and we hope this Report will explain clearly to our stakeholders and other interested people that the project's ongoing presence is essential for the development of public interest law and structured pro bono in this jurisdiction."

Giving the keynote address at the Dave Ellis Memorial Lecture, Atlantic Philanthropies' Martin O'Brien said he was encouraged by the number of law firms and individual practitioners "doing their bit" through PILA, and congratulated them for their farsightedness. Aside from being the right thing to do, Mr O'Brien sees the work that PILA is doing as a rewarding and valuable experience for all involved, and also helps to rehabilitate the image of the lawyer in modern Ireland.

You can download a copy of the Progress Report at [www.pila.ie](http://www.pila.ie).

### Staff updates

PILA recently welcomed new Legal Officer Eithne Lynch to the team. Eithne is a solicitor who qualified with Matheson and worked in the Commercial Litigation and Dispute Resolution Department. Since leaving private practice in 2011 she has worked in three African jurisdictions. In Tanzania, Eithne assisted in the establishment of a telephone hotline service for a national NGO aimed at increasing legal representation for vulnerable women and children. She has lectured at the Law Society of Pretoria, South Africa on the Commercial Law Training Course with Irish Rule of Law International. Most recently she was a program lawyer with the Irish Rule of Law International "Access to Justice Programme" in Malawi. Her contribution to the program was recognised by the Irish Law Awards in 2013 where she was the joint recipient of the inaugural Bar Council of Ireland Human Rights Award.





## PUBLIC INTEREST LAW ALLIANCE UPDATE



Images from meetings of the PILA Progress Report Working group - many thanks to everyone!

### Putting Equality and Human Rights into Budgeting



In October 2013, PILA and the Equality Budgeting Campaign came together to help NGOs speak with one voice about the Irish Government's 2014 Budget. As noted in the last issue of *FLAC News*, PILA had facilitated a roundtable for NGOs in mid-2013 on equality and human rights budgeting issues. The October joint civil society response to the 2014 Budget called for reforms to the budgetary process including equality impact assessments and minimum living standards based on Ireland's international human rights obligations. This highly successful event involved 50 NGOs that represent Ireland's most vulnerable groups to come together and speak with one voice in calling for a fairer budget. PILA circulated a survey to participating NGOs ahead of Budget Day on 15 October. Following the announcement of budget details on the day of the Budget, the NGOs sent their

responses to PILA based on their assessment of the Budget's provisions. PILA and the Equality Budgeting Campaign collated these answers and on 17 October – the International Day for the Eradication of Poverty – the NGOs came together again in Dublin's Mansion House for a very successful discussion forum. The event's panel was chaired by Niall Crowley (Equality consultant/former CEO Equality Authority) and consisted of Dr Liam Thornton (UCD School of Law & FLAC Council), Louise Bayliss (Equality Budgeting Campaign & SPARK), David Perry BL (Member of PILA Pro Bono Referral Scheme), Stephen Donnelly TD (Independent) and PILA's Mairead Healy and Emma McCarron. Organisations in attendance represented groups right across the social spectrum; their interventions from the floor following the panel inputs charted the severe impact Budget 2014 will have on

people who are already struggling to get by. Most striking was the consensus among those gathered that a human rights and equality budgeting approach could mitigate the impact of budget decisions that disproportionately affect such groups. The results of the survey show:

- 95% of respondents supported equality proofing of all cuts and tax increases.
- 92% of respondents called for increased involvement of civil society in the budgetary process. •79% of respondents expressed support for incorporation of minimum human rights standards into the budget process.
- 97% of respondents felt the current approach is not conducive to optimal decision-making.

## Social Welfare and Pensions Bill 2013

**B**udget Day was pushed forward a month earlier than usual this year on 15 October so as to bring Ireland in line with the practice in other EU member states. FLAC had hoped this would mean more opportunities to publicly discuss the revision or removal of some of the introduced measures proposed by the Department of Social Protection. However, in his speech on the day Minister for Finance Michael Noonan TD shed very little light on the thinking behind and the predicted impact of many of the cuts and changes affecting the social welfare recipients.

It was only during the Department of Social Protection's Budget Forum on the day that the plethora of cuts were fully explained and debated by the invited organisations. FLAC was one of some twenty bodies representing such groups as carers, elderly people, children and unemployed people which had a chance to voice concerns on the likely impacts of budget measures on their constituencies. Although the Department said a social impact assessment will be published in due course, it would have been more useful to have carried out such an assessment before the budget measures have been finalised in terms of understanding how budget cuts would impact on different strata of society. Arguably, producing a social impact assessment after the budget defeats the purpose of carrying it out in the first place.

Ireland's budget process is flawed, as is clear from the lack of public knowledge and participation in the lead up to the budget. Human rights budgeting norms call for full pre-budget consultation with groups and individual affected by spending decisions so as to ensure that the most vulnerable in our society are protected and their rights to an adequate standard of living and a life of dignity ensured.

FLAC and the Northside Community Law & Mediation Centre were given very short notice that the Social Welfare and Pensions Bill 2013 would be guillotined (or rushed through without debate) by the government shortly after the budget. This very important bill was published on 23 October, and then hastily scheduled for debate in the Dáil on 24 and 25 October, to then be voted through. This limited timescale reflects poorly on the government's commitment to basic human rights principles of transparency and participation, particularly as befits a

member of the UN Human Rights Council.

Working intensively together to this extremely tight deadline, FLAC and Northside put together a joint submission which highlighted concerns about the current closed budgetary processes and lack of time to debate a piece of law with such significant and widespread impacts on people in Ireland. Deputy Maureen O'Sullivan referred to the joint submission picking up on this point in her address in the Dáil.

### Budget 2014 Changes

- ❑ Mortgage interest supplement discontinued from 2014 for new applicants, 4-year wind down for existing claimants
- ❑ Telephone Allowance discontinued from 2014 for all recipients
- ❑ Rent/Mortgage Interest Supplement contribution for couples increased by €5 to €40
- ❑ Jobseekers Allowance & Supplementary Welfare Allowance reduced to €100 for under 25s
- ❑ Jobseekers Allowance & Supplementary Welfare Allowance reduced to €144 for 25-year-olds
- ❑ Maternity Benefit set at €230 per week for new applicants from 2014
- ❑ Illness and Injury Benefit not paid for first 6 days of claim (up from 3 days) from 2014
- ❑ Invalidity Pension for age 65 will be discontinued at €230 to €193.50 per week those that reach 65 from January 2014
- ❑ Bereavement grant discontinued from 2014
- ❑ New recovery scheme of certain social welfare payments from insurance companies regarding personal injury claims

The Dáil debates that ensued focused mainly on cuts and discontinuance of certain schemes that had been well flagged in advance of Budget Day. Little attention was paid, for example, to the introduction of a new recovery scheme for people involved in personal injury claims. Only Deputy Aengus O'Snodaigh (Sinn Féin) was able to raise our concerns around the

new recovery system of specific benefits paid to those with a personal injury claim. Many TDs echoed our criticism on the winding-up of Mortgage Interest Supplement, on the lengthening of the period before a person can receive Injury and Illness Benefit from 3 to 6 days and on the discriminatory cuts to U-26s jobseekers allowance.

Our observance of the debate over the two days available is that there simply was not enough time to allow a comprehensive discussion of provisions in the bill, especially around brand new issues not related to cuts. This is where the political system is failing the public. The Ceann Comhairle struggled to keep order with the time limits imposed by the guillotine. Surely this indicates the need for a more mature and in-depth discussion about the issues the bill throws up?

In the Seanad also there was minimal time for debate at the committee and report stage over 5-7 November. Senators Mooney, Cullinane and Norris drew from the joint submission, mainly around the discontinuance of MIS and called the Minister up on provisions in the government's own Programme for Government 2011-2016, which stated that "better use" of MIS was needed rather than paying out on rent allowance to keep people in their family homes.

Debate in the Seanad did not reach the last two sections of the bill, which meant no discussion on the implications of the newly-proposed recovery system for personal injuries claims. The lack of an informed debate meant there was no clarity regarding the right to an appeal under this new system, the return of over-payments from the Department to the insurer with no reference to the social welfare recipient, and no address to the disregard for fair procedures in these sections. All these valid concerns were lost in the rush to get the Social Welfare and Pensions Bill 2013 through the Oireachtas.

There is undoubtedly much to gain from more participatory and transparent budgetary processes, such as fairer decisions in line with human rights and equality principles, mitigating budget impacts on the most vulnerable people in our society. The guillotine should not be a regular tool for passing social welfare legislation; these laws have implications for almost every citizen in the country and as such should be open to public scrutiny.

## Northside Community Law & Mediation Centre hosts social welfare roundtable

**N**orthside Community Law & Mediation Centre recently ran a Roundtable event to examine Section 13 of the Social Welfare and Pensions Act 2012, which allows the Department of Social Protection to reduce a basic payment by 15% without the person's consent in order to recover an overpayment. Alan Brady BL and Bernadette McMahon of the Vincentian Partnership spoke on different aspects of the topic.

Mr Brady gave a short presentation examining the legal basis of Section 13 and its compatibility with various human rights provisions. He outlined that an overpayment is defined as a debt owed in s.341 of the Social Welfare Consolidation Act 2005. An overpayment is owed and payable to the Department of Social Protection regardless of who is at fault, the claimant or the Department. Section 13 of inserted a legal provision whereby the Department can recover up to 15% of a person's payment without their consent.

Mr Brady highlighted some Constitutional cases that tested a person's ownership rights over a benefit paid and the limitation of the State responsibility in providing for socio-economic rights. In one, the Courts ruled that in situations of overpayment a person does not have a property right to a social welfare payment and it can be recouped by the State. Mr Brady made suggestions around challenging s. 341 of the Principal Act on constitutional grounds of a right to bodily integrity, to freedom from inhumane and degrading treatment and to personhood.

He then introduced the European human rights framework, looking at the possibility of taking a case in breach of article 3 (right to be free from inhumane or degrading treatment) or article 8 (respect for private life) of the European Convention of Human Rights. The EU Charter of Fundamental Rights is limited in that it only concerns the application of EU law, which would mean only a case involving a non-Irish European Union national could only be used here. Lastly, Mr Brady referred to



the Convention on the Rights of the Child, which has greater power as an advocacy tool than a complaint outlet due to having no legal recourse in Irish courts.

Sister Bernadette McMahon of the Vincentian Partnership for Social Justice (VPSJ) highlighted the social policy implications of Section 13 on those relying solely on social welfare payments. The VPSJ published a report on the minimum essential standard of living for six different households in 2006. This report found that there were shortfalls in all six households' income versus expenditure when in receipt of social welfare payments. The introduction of recovering overpayments of up to 15% by the Department of Social Protection will further reduce a person's minimum essential standard of living below the figures that VPSJ presented in their report. Sr McMahon said that a person faced with a reduction in their income will

naturally cut spending on food, which in turn may affect his or her health and wellbeing.

The roundtable ended with discussion around the table of advocate experiences of recovery of client overpayments. People talked about their approaches to ensuring that a client had an adequate income while at the same time repaying an affordable amount, although this was usually at a lower percentage of 2-5% of their social welfare payment. The group reflected the inconsistencies in the procedures applied throughout the country in recovering money owed to the DSP. The roundtable concluded that although Section 13 has to be fought on a case-by-case basis by advocates, it realised and recognised the need to challenge the provision on more substantive grounds to ensure a person's right to a life of dignity.

## 2014 Fellowship application process has begun



FLAC Thomas Addis Emmett Fellow 2013, Vanessa Lawlor, receives her certificate at the Dave Ellis Memorial Lecture 2013.

Pictured L-R: FLAC Director General Noeline Blackwell, Vanessa Lawlor, President Michael D Higgins & FLAC chair Peter Ward SC

FLAC is offering one law student or graduate the opportunity to gain first hand public interest law experience in the United States with the Thomas Addis Ellis Fellowship 2014. Applications are now being accepted from current law students (at undergraduate or postgraduate level) as well as those enrolled at King's Inns or the Law Society of Ireland. Those with an interest in social justice issues are particularly encouraged to apply, as the Fellowship focuses on the interaction of human rights and public interest law. The Fellowship is run by FLAC in conjunction with the University of Washington, Seattle and the award covers flights, accommodation, meals and a living allowance. Successful applicants will get

the chance to interact with American law students, attend law lectures given by experts in the public interest field and also get involved with casework. Previous Thomas Addis Emmet Fellows have worked with the non-profit Washington Applesseed Centre for Public Interest Law. Washington Applesseed seeks to promote social justice by engaging *pro bono* lawyers and campaigning for legal reform. The deadline for applications is 14 February 2014. To apply, please download and complete the application form available on FLAC's website at <http://bit.ly/TAE2014>. Completed forms and CV's should be sent to FLAC, 13 Lower Dorset Street, Dublin 1. Best of luck to all the applicants.

## Funding FLAC

We in FLAC are hugely grateful to all those who supported us with funding throughout 2013, allowing us to deliver on our mission of equal access to justice for all in Ireland. As an independent non-governmental body that provides all of its services free of charge to the public, grants from statutory bodies and foundations, donations from the public and contributions from the legal profession are crucial in ensuring that we have the resources to continue with our work, at a time of great demand and need. We thank all of our supporters for their commitment and assistance in 2013. FLAC works hard to ensure that all funding is put to best possible and most efficient use. If you are interested in supporting equal access to justice in 2014, there are a number of ways you can get involved:

- By sending a cheque to FLAC, 13 Lower Dorset Street, Dublin 1
- By using our secure online donation facility, log on to <http://www.flac.ie>
- By making a regular donation by standing order (Please contact [fundraising@flac.ie](mailto:fundraising@flac.ie) or phone (+353) 1 887 3600 to get the appropriate form)
- By organising an event: consider organising a table quiz, a sponsored walk or run, or any number of other possible events to support access to justice. We will be delighted to support and assist you through providing materials and promoting your event. Contact: [fundraising@flac.ie](mailto:fundraising@flac.ie) or phone (+353) 1 887 3600
- By getting your company involved: if your company or organisation wants to learn more about supporting equal access to justice, we would be delighted to talk to you about the various ways in which you can support FLAC's work.

Thank you!

## UN High Commissioner for Human Rights visits Dublin



FLAC was privileged to meet with Navi Pillay, the UN High Commissioner for Human Rights, during her recent brief visit to Dublin. Ms Pillay was receiving an award from a Trinity College Dublin society and arranged to meet some NGOs while here.

Along with nine other organisations, FLAC raised some human rights issues of pressing concern in Ireland. For FLAC, these included the continued lack of transgender recognition legislation, limitations on the right of equal access to justice for all, and human rights in administrative processes such as the right to an effective remedy and fair procedures for people appealing social welfare decisions.

In particular, FLAC called on the High Commission to support its proposal that that the Legal Services Regulation Bill incorporate the entire UN Basic Principles on the Role of Lawyers as a way to promote human rights standards among practising lawyers.

On the human right to shelter, FLAC raised concerns about the State's failure to adequately support people's housing needs, including people in mortgage debt who are at incipient risk of homelessness. FLAC noted inadequate social welfare supports to mortgage holders in distress as well as the lack of suitable and timely legal and financial advice, coupled with the absence of an appeals mechanism in both the process leading up to insolvency process and in the new personal insolvency scheme itself.

Ms Pillay was very gracious in listening to the long list of issues from all ten organisations and offered timely advice on joining forces for greater impact. She also looked forward to innovations in the UN system that would allow countries to apply more pressure between each other on the national level to effect positive change.