



Autumn 2007

# Rights News

## The Wedding Issue:

*Why Are We Still Waiting for  
Equality for All Families?*

### SPECIAL FEATURES:

#### JUSTICE MATTERS

**Ronan Keane Reviews Independence,  
Accountability and the Irish Judiciary**

#### VICTIMS DESERVE MORE

**Writes Thomas Hammerberg,  
Council of Europe  
Commissioner for Human Rights**



Irish Council for  
Civil Liberties



# About the ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland’s leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Ombudsman Commission, legalising the right to divorce, securing more effective protection of children’s rights, decriminalising homosexuality and the introduction of enhanced equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

## What we do

- Advocate for positive changes in the area of human rights.
- Monitor Government policy and legislation to make sure that it complies with international standards.
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police reform and judicial accountability

## Message from the Director

Some good news at last!

I am very pleased to record that the ICCL’s recent rights-based campaign against the “licence to kill” proposed in the Criminal Justice (Defence of Life and Property) Bill 2007 appears to have borne fruit. Very recently, the new Minister for Justice has indicated that the Government will not be proceeding with this legislation, which would have flown in the face of Ireland’s international human rights obligations and, by raising the stakes for burglars, placed householders at even greater risk. This is welcome evidence that well-informed rights-based work can make a genuine difference.

We will continue to campaign, from a human rights perspective, against some of the other misguided criminal justice proposals mooted during the final days of the last Dáil, notably as regards restrictions on the right to silence, and the possibility of admitting as evidence material obtained in violation of a person’s constitutional rights. The next steps in this campaign will include the publication of an

independent evaluation of the human rights implications of the Report of the Balance in the Criminal Law Review (the Hogan Report), and a companion volume looking at the important issue of the human rights of victims.

As part of the ICCL’s work to ensure that the human rights of victims are not ignored, this issue of Rights News also includes a guest essay on that subject by the Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg.

A busy Summer will draw to an end at the ICCL’s stall at this year’s Electric Picnic, which will showcase – in a fun way - our ongoing campaign for equality for all families. If you are one of the thousands of music lovers coming to Stradbally for the Picnic, please call in and show your support. If not, as ever, I hope to see you soon at one of our events.

**Mark Kelly**  
Director

- Run campaigns to raise public and political awareness of human rights, justice and equality issues.
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

## How you can help

You can help us to continue our work to monitor, train, conduct research, campaign and lobby for changes in legislation to ensure our rights are protected and promoted.

Please visit our website, [www.iccl.ie](http://www.iccl.ie), or phone us on 01 799 4504 to make a donation to the ICCL today.

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# Equality

## The Wedding Issue: Still Waiting for Equality

The ICCL will be bringing its campaign for Equality for All Families to the Electric Picnic, Ireland’s boutique music festival, from 31 August to 2 September 2007 in Stradbally Hall, Stradbally, Co. Laois.

This is our first outing to the Electric Picnic and ... we have a few questions:

- is there any good reason why it’s okay to discriminate against people just because they’re not married?
- is it fair to children that their rights depend upon whether or not their parents are married?
- if people want to make a special legal commitment to each other, should their

sex – or their sex lives – determine whether or not they can?

That would be NO, NO and NO, as far as the ICCL is concerned.



Recent years have seen a dramatic rise in the number of cohabiting couples and diverse families in Ireland. Unmarried cohabiting couples have increased from 77,600 in 2002 to 121,000 in 2006.

Yet, it’s still the case that only families based

on opposite sex marriage enjoy the protection of the Irish Constitution. This means that many families are denied protection under Irish law. Many cohabiting couples and diverse families want to share property, income, home life and to care and be cared for, yet they do not have the same protections as married couples.

As part of our Equality for All Families campaign, we are working to raise awareness that everyone should have the right to marry in Ireland, regardless of their sexual identity or orientation. We are also campaigning for new rights to protect cohabiting couples and to prioritise children’s rights.

Visit our stand – where a surprise awaits – and sign up to support our campaign.

## Preventing Ill-Treatment – Ireland and the OPCAT

As outlined in the last edition of Rights News, the ICCL seminar on the implications for Ireland of the Optional Protocol to the United Nations Convention Against Torture (OPCAT) will take place from 9.30 am to 12.30 pm on 7 September 2007 in the President’s Hall, Law Society of Ireland, Blackhall Place, Dublin 7.

Speakers include **Silvia Casale**, Chair of the United Nations Sub-Committee on the Prevention of Torture (UN-SPT), **Suzanne Egan**, Commissioner, Irish Human Rights Commission, **Mark Kelly**, Director of the ICCL, and member of the Roster of Experts to the UN-SPT and **Matthew Pringle**, Association for the Prevention of Torture, Geneva.

To register or for further information contact Joanne Garvey, Tel: 01-799 4504 or E-mail: [joanne.garvey@iccl.ie](mailto:joanne.garvey@iccl.ie)

### What is the OPCAT?

The Optional Protocol to the United Nations Convention Against Torture (OPCAT) was adopted by the General Assembly of the United Nations on 18 December 2002.

The purpose of the Protocol is to prevent ill-treatment by establishing a system of regular visits to places of detention, to be carried out by independent international and national bodies.

### What is the relevance of the OPCAT to Ireland?

The Protocol entered into force on 22 June 2006. The Irish Government is making plans to sign the Protocol, but has yet to complete this process. Once Ireland has signed the Protocol, Irish law will need to be changed, so that the Protocol can be “ratified”, and given full effect here.

### What changes will need to be made to Irish law before the OPCAT can apply here?

The OPCAT sets up a new international monitoring body, the United Nations “Sub-Committee for the Prevention of Torture” (UN-SPT), and requires States to designate or create effective “National Preventive Mechanisms” (NPMs).

The Government has recognised that Irish law will need to be changed in order formally to authorise the SPT and NPMs to carry out their work in an independent way, including by making unannounced visits to places of detention such as Garda stations, prisons, youth detention centres and closed units in psychiatric hospitals.

### What is the purpose of the ICCL’s Seminar on the OPCAT?

The purpose of the Seminar is to raise awareness about the implications of the OPCAT for those likely to be most directly affected by it.

### Who should attend?

The Seminar will be of special interest to senior officials responsible for places of detention (including within An Garda Síochána, the Irish Prison Service and Health Service Executive); representatives of bodies that may be designated as “National Preventive Mechanisms” (such as the Irish Human Rights Commission, the Inspectorate of Prisons and Places of Detention, the Garda Ombudsman Commission and the Inspectorate of Mental Hospitals); senior officials in operational ministries (including the Department of Justice, Equality and Law Reform and the Department of Health and Children) and legal practitioners who frequently represent people deprived of their liberty.







Ronan Keane, *former Chief Justice*, reviews the ICCL's new report, *JUSTICE MATTERS, Independence Accountability and the Irish Judiciary*

“A fair and public hearing by a competent, independent and impartial tribunal established by law.” That is the exacting standard required by the European Convention on Human Rights and Fundamental Freedoms for the trial of every case, criminal or civil. A new report published by the Irish Council for Civil Liberties under the title Justice Matters: Independence, Accountability and the Irish Judiciary, seeks to reach conclusions as to how well or badly Ireland meets that standard and indeed other international yardsticks for the performance of courts.

The author, Tanya Ward, has produced a report which is comprehensive, well researched and reasonably balanced. It also confirmed the impression I was left with after 25 years as a barrister and a similar period as a judge that we are fortunate in the standards maintained by our courts.

It is, of course, not sufficient to have written legal guarantees, as we do, of the independence of the judiciary, their security of tenure and remuneration. Independence, competence and impartiality also depend on the calibre of the men and women who are appointed to judicial office. Her research again confirms that we have, on the whole, been well served by the quality of our judges. I would, no doubt, be expected to say that but I think it is a view which the overwhelming majority of Irish people share.

At the outset, the author discusses the separation of powers in the Irish context. That doctrine, under which each of the three arms of government, parliament, the executive and the courts, is prohibited from trespassing on the others, is, of course, an essential feature of most democratic societies and is clearly recognised by our Constitution.

However, the author claims that, despite this doctrine, in recent decades the executive has been slowly "chipping away" at the judiciary's role in criminal matters. But some of the examples she gives of this suggested process are unconvincing, for example "long periods of detention for arrested persons".

If we leave out of account the power of internment (on the statute book since 1939, but hardly likely to be invoked today), the longest such period is seven days and it might have been helpful if she had indicated how this compares with similar powers in

other jurisdictions. In the United Kingdom, for example, there is power to detain for 28 days and the government is contemplating an extension. Moreover, it should have been pointed out that in recent times major protections of rights - including access to family members and legal advice - have been introduced for arrested persons in detention by both the legislature and decisions of the courts.

Nor does the granting of power to issue a search warrant to a chief superintendent amount to a serious invasion of judicial power. Although it is no doubt desirable that it be subjected to judicial control, as to some extent it is, such a power is essentially ministerial rather than judicial in nature.

“a valuable contribution to the debate as to how our judicial system can be modernised and improved”

The author is, of course, correct in pointing out that there are now a vast number of tribunals and other bodies, such as the Labour Court and the Equality Tribunal, which make decisions affecting people's rights over a huge area. Such a development is, however, expressly authorised by the Constitution, and provided such bodies are not entrusted with the administration of justice, the courts have no power to prevent their creation by the legislature.

What Irish courts have done to an increasing extent over the past four decades is to ensure as far as possible, by the use of the judicial review jurisdiction, that such bodies respect the rights of those affected by their decisions to fair procedures. It is surprising that this also finds no mention in the report.

The manner in which judges are appointed is naturally given detailed treatment. There has always been a tradition of appointing judges because of their political affiliations, but this tendency has been less marked since the 1970s. I have no doubt, moreover, that although indefensible in principle, the tradition did not result in the appointment of unfair or incompetent judges. That having been said, the establishment in 1995 of an independent Judicial Appointments Advisory Board (JAAB) empowered to recommend candidates for judicial office to the government was, as the author recognises, a welcome development.

It is the fact, however, that the Constitution provides that such appointments are to be made by the President on the advice of the government, and the framers of the legislation had to ensure that it conformed to this requirement.

The alternative - an amendment to the Constitution - would have been cumbersome and uncertain and it must in any event be doubtful whether such a change was justified: the preservation of the ultimate responsibility of the government for judicial appointments at least means that the appointing body is accountable to the people through the Oireachtas for those appointments.

However, the author, correctly in my view, identifies at least one serious flaw in the present system. The obligation on the JAAB to recommend at least seven candidates for each vacancy (rather than, say, three) is quite unnecessary and can only facilitate governments in making appointments on a political basis.

No system can, however, exclude the possibility of judicial misconduct sufficiently serious to require some form of sanction, although not necessarily the extreme step of removal from the bench. In 2000, the Committee on Judicial Conduct and Ethics recommended that a judicial council representing all the members of the judiciary be established to deal with judicial conduct and ethics, judicial studies and the working conditions of judges.

The committee made detailed proposals as to how instances of judicial misconduct should be dealt with and, while I admit an interest as the chairman of the committee which presented the report, I entirely agree with the author's view that legislation providing for the establishment of a judicial council should be introduced as a matter of urgency.

I have not left myself space to deal in detail with the author's concern that the predominantly male and middle-class Irish judiciary is seriously unrepresentative of society as a whole. I would confine myself to the obvious point that, while there is undoubtedly substance in that view, these limitations are simply aspects of far wider social problems, to which today must be added the presence in our midst of large ethnic minorities. I have serious doubts as to whether requiring the JAAB to take into account "diversity, racial and gender issues" is likely to have any real impact in this area.

This report, although not without its shortcomings, is a valuable contribution to the debate as to how our judicial system can be modernised and improved. I hope I am not being unduly complacent in saying that it is also a welcome reminder of the outstanding contribution the judicial arm of government has made since 1922 to a fair and ordered Irish society.

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The ICCL's new report, JUSTICE MATTERS; Independence, Accountability and the Irish Judiciary was launched at the Law Society of Ireland on 17 July 2007.

KEY RECOMMENDATIONS

- The establishment of a Judicial Council to deal with complaints against judges.
- Greater transparency around the judicial appointment process.
- Action to make the judiciary more reflective of the diverse nature of Irish society.
- Providing appropriate skills development activities for newly-appointed and serving judges.
- Increased resources for the District Courts including additional judges and digital recording of all proceedings.

The research included interviews with sixteen judges of the District, Circuit, High and Supreme Courts, fourteen of whom are currently on the Bench. Interviews and consultation meetings were also held with representatives from Government Departments and Statutory Agencies, legal and representative bodies, NGOs and academics. The research was guided by an Expert Advisory Group, including Senior Counsel, Aileen Donnelly (Chair), the Honourable Mr Justice Donal Barrington (a former member of the Supreme Court, and the first President of the Irish Human Rights Commission), experienced barristers and solicitors, and representatives from non-governmental organisations.

Summary of Report Findings

The report looks at the issue of judicial independence under four headings: (1) functional independence; (2) personal independence; (3) impartiality and (4) administrative independence.

1. Functional Independence

In broad terms, functional or structural independence means that the judiciary must be independent of other government branches, namely, the Executive and the Legislature.

The report considers the separation of powers and judicial review, and in particular, the system of ‘checks and balances’ which ensures that each branch of government restrains the other from abuse.

A major finding from the study is that the Legislature/Executive has been chipping away at the judiciary’s role in criminal matters by shifting more power to the Executive.

2. Personal Independence

Personal independence refers to individual protections in the form of constitutional and legislative provisions protecting judges from reprisals.

The report finds that personal independence of the Irish judiciary is very well protected, particularly in relation to conditions of service and tenure.

However, the report also found that the judicial appointments mechanism does not strike the right balance between democratic accountability and judicial independence.

The report calls for the establishment of a Judicial Council and a Committee on Ethics - which could deal with complaints against judges, and render them accountable while respecting their independence. This also emerged as a key concern of judges interviewed for this report.

3. Impartiality and the Irish Judiciary

Impartiality is essential for maintaining the rule of law and ensuring

that everyone is subject to the same general rules. The report finds that personal bias among the judiciary is rare but there have been circumstances where judges have made comments that might be construed as racist or sexist.

The report also recommends taking action to render the judiciary more reflective of the diverse nature of modern Ireland.

4. Administrative Independence

A key feature of administrative independence is ensuring that judges can manage their own administrative matters. The report finds that since the establishment of the Courts Service in 1999, its structures now provide sufficient independence from the Executive and this is a major strength of the Irish legal system.

The report also recommends increased resources for the District Courts to provide for additional judges and digital recording of all proceedings.

The report is available to download from the ICCL’s website, www.iccl.ie. Printed copies of the report (priced at €19.95, plus €2.85 post and packaging) are available from the ICCL’s offices.

AT THE LAUNCH

L to R: Tanya Ward, the report author, Philip Joyce, President, Law Society of Ireland, Justice Donal Barrington, Aileen Donnelly, SC and Professor Jochein Frowein, Vice President of the International Commission of Jurists (ICJ).

L to R: Paul Gallagher SC, Attorney General, Alan Shatter, TD, the Hon. Mr. Justice Frank Clarke, the Hon. Mr. Justice Michael Peart and Ken Murphy, Director General of the Law Society of Ireland.

L to R: The Hon. Mr. Justice Patrick McCarthy, The Hon. Mr. Justice Paul Carney and the Hon. Mr. Justice John Edwards.

L to R: The Hon Justice Michael Kirby, Justice of the High Court of Australia, Noeleen Blackwell, Director General of FLAC and Brian Ingoldsby, Principal Officer, Department of Justice, Equality & Law Reform.



# Supporter Profile

Dr.Ursula Kilkelly, Senior Lecturer in Law at University College Cork



Ursula Kilkelly began work at University College Cork in 1999. She has lectured and published widely on children's rights, the European Convention on Human Rights and youth justice and her books include The Child and the ECHR, 1999; ECHR and Irish Law, 2004 and Youth Justice in Ireland, 2006. Children’s Rights in Ireland will be published by Tottel later in 2007.

Ursula works closely with government agencies and human rights organisations in Ireland, north and south, Britain and Europe.

She is Chair of the Irish Penal Reform Trust, a co-founder of the Irish Youth Justice Alliance and a member of the Council of the Association for Criminal Justice Research and Development (formerly the Irish Association for the Study of Delinquency).

**(1) When did you first become a supporter of the ICCL, and what prompted your interest in our work? What has sustained your interest?**

I am a great admirer of the founders of ICCL – people like Mary Robinson – and so my interest in ICCL stemmed from this. I got actively involved when Donncha O’Connell was Director and that has been sustained through the great work he and his successors Aisling Reidy and Mark Kelly have done, raising the profile of ICCL and ensuring the organisation has a strong, rights-based footing going forward. My contribution now involves liaising with ICCL on matters of penal reform, youth justice and children’s rights.

**(2) You are known as a leading expert on children's rights. What did you make of the referendum Bill issued by the last Government? And of the role played by the ICCL in the public debate around the Bill?**

The Referendum Bill was designed to plug gaps in the law. It was not, as ICCL pointed out at the time, about children’s rights. From a children’s rights perspective, I was very disappointed by the failure of children’s organisations to understand the importance of and necessity for a rights-based approach to constitutional change. Thankfully, the ICCL was there to represent this position, but the Bill and the response to it together highlight how far Ireland has yet to go in genuinely accepting independent legal rights for children.

**(3) You are on the Executive Board of the Centre for Criminal Justice and Human Rights at University College Cork. Why is it so important to make connections between criminal justice and human rights? Do you think that the work of an NGO such as the ICCL can be complementary to that of academic institutions such as the Centre? If so, how?**

Synergies between criminal justice and human rights are reflected in our work at the Law Faculty and so the establishment of the Centre was an organic development. Both areas are defined by a set of fundamental values which are faced with the challenge of ill-conceived, political efforts to use ‘law and order’ and ‘public safety’ as trump cards in the event of conflict.

A constructive relationship between academia and both government and civil society is vital if research is to have practical effect, something we are committed to at the Centre. The connection between ICCL and the Centre is already established, including by Mark Kelly’s keynote speech at the postgraduate conference in May of this year, and the research and other activities of staff and postgraduate students in the Centre continue to complement ICCL work on law and policy and vice versa.

**(4) As Chair of the Irish Penal Reform Trust (IPRT), you understand the current issues facing human rights non-governmental organisations in Ireland. What do you see as the biggest challenges for this sector over the years ahead?**

In my view, the main challenge facing the human rights sector is Governments’ (Ireland is not alone here) weakening commitment to national and international human rights standards in areas like criminal justice, penal reform and asylum/immigration. It is vital that NGOs like the ICCL and IPRT respond effectively by taking a rights-based approach to activities such as raising public awareness, undertaking strategic legal advocacy and engaging constructively with government and society about these issues. Inevitably, this puts a strain on an organisation’s capacity (funding and membership) but that’s part of the challenge.

**(5) If you could change five things about the protection of human rights in Ireland, what would they be?**

What is needed, in my view, is a focus on the development of a solid, human rights infrastructure with measures including:

1. More meaningful government engagement with international law, including the incorporation of human rights treaties into Irish law and greater compliance with the recommendations of treaty monitoring bodies like the Committee on the Rights of the Child;
2. Human rights training for lawyers, judges, teachers, the police, health professionals and all those working in the front line;
3. An effective system of human rights-impact assessment for legislation, policy and budgets;
4. Accessible, properly resourced and empowered watchdogs like the Irish Human Rights Commission, the Equality Authority, the Ombudsman for Children, the Garda Ombudsman Commission and the Prison Inspectorate, and
5. Comprehensive human rights education in schools at all levels.

# Executive Profile

The ICCL is governed by an Executive Board of a minimum of eight persons, four of whom are elected at each Annual General Meeting (AGM) to serve for two years. The ICCL Executive Board for 2007 are: Malachy Murphy, Co-Chair, Judy Walsh, Co-Chair, Michael Finucane, John Gibson, John Kennedy, Mary Mclvor, Conor Power and Jean Tansey.



**Judy Walsh** has been Co-Chair of the ICCL since 2003, and a member of the Executive Board for the past five years; she also worked for the ICCL as Executive Secretary

and then as Assistant Director from 1998-1999. A qualified Barrister-at-Law, Judy teaches law at the Equality Studies Centre (School of Social Justice) in University College Dublin and has published widely in the field of equality and human rights.

*Each edition of Rights News profiles a different member of our Executive.*



Michael Finucane



John Gibson



John Kennedy



Conor Power



Jean Tansey



Malachy Murphy



Mary Mclvor

# Monitoring Human Rights

## International Outreach

### Visit by High-Level Turkish Human Rights Delegation



**Left to right:** Sean O’Boyle, International Programme Co-ordinator, Glencree Centre for Peace and Reconciliation; Prof. Hasan Fendoğlu, Head of the Human Rights Presidency, Office of the Prime Minister of Turkey; David Cupina, Human Rights Awareness and Co-operation Division, Council of Europe.

In July, sixteen representatives from the Turkish Human Rights Presidency and Human Rights Boards visited Ireland and Northern Ireland to study the way in which human rights are protected and promoted in these jurisdictions.

Facilitated by the ICCL and the Glencree Centre for Peace and Reconciliation, the visit enabled the delegation to examine the role of human rights and equality statutory bodies and non-governmental organisations, and to review a range of human rights issues. It was organised in response to a formal request to the ICCL by the Council of Europe and the European Commission.



### Making Global Justice Relevant in Local Contexts



**Left to right:** Mark Kelly, Director of the ICCL; Dr. Rosemary Byrne, Law School / IIIS, Trinity College Dublin; Dr. Nadia Bernaz, Irish Centre for Human Rights, National University of Ireland, Galway; Binta Mansaray, Outreach Coordinator (and Deputy Registrar Designate); Justice George Gelaga King, President of the Court; Stephen Rapp, Chief Prosecutor; Herman von Hebel, Registrar.

The Charles Taylor trial at the Special Court for Sierra Leone has captured the attention of the world’s media and marks an important milestone for global justice. In July, the ICCL and the Institute for International Integration Studies (IIIS), Trinity College Dublin, co-hosted a Roundtable at the IIIS to discuss the long-term significance of such international prosecutions and the challenges of making them relevant to local communities within Sierra Leone and beyond.

The Roundtable was addressed by the President of the Court, Justice George Gelaga King, its Chief Prosecutor, Stephen Rapp, Registrar Herman von Hebel and Outreach Coordinator (and Deputy Registrar Designate) Binta Mansaray and by Mark Kelly of the ICCL.

The discussion was chaired by Dr. Rosemary Byrne, Law School/IIIS, Trinity College Dublin and member of the Irish Human Rights Commission.



# Promoting Human Rights

## Guest Essay: Victims of Human Rights Violations Deserve More

Photo: Sandro Welin



By Thomas Hammarberg, Commissioner for Human Rights, Council of Europe\*

Torturers and others who violate human rights should be brought to account – at the same time, we should not forget the victims. What they have gone through tends in many cases to cause distressing trauma, disruption of everyday life and destruction of the future. Justice requires that redress is achieved for the victims.

The right to a remedy and reparation is indeed a basic human right. It is enshrined in numerous international human rights instruments and tribunals, including Article 13 of the European Convention on Human Rights. Victims of serious human rights abuses and humanitarian law have a right to redress for the suffering and harm caused to them.

Reparation is the last step in the achievement of full human rights protection. Firstly, violations of human rights should be prevented. Secondly, if a violation does take place, it must be investigated by the State authorities (promptly, thoroughly and impartially). Thirdly, victims should have access to justice. And finally, victims have the right to receive adequate reparation.

The fact that reparation is the last step in the achievement of human rights full protection might be one reason why so little focus has been put on this issue so far.

*“...we should not forget the victims. What they have gone through tends in many cases to cause distressing trauma, disruption of everyday life and destruction of the future. Justice requires that redress is achieved for the victims.”*

In 1993, Professor Theo van Boven, in a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, concluded that the question of reparation had received little attention and should be addressed more consistently and thoroughly both on a national and international level.

Still today, the question of reparation for victims fails to receive the attention it deserves. Not even in the cases of the many individuals who have been wrongfully detained and tortured during the “war on terror” have there been strong opinions about the need for just compensation. Governments have ducked the issue and left to the former prisoners themselves to fight for their rights in complicated court procedures.

What does reparation entail? Financial compensation is the most widespread form of reparation. Some damage can be easily estimated in monetary terms, for example loss of earnings, costs of assistance, while other forms cannot. Here I am thinking of physical, mental or moral damages.

However, financial compensation is not the only remedy which victims seek. Other forms of reparation include the following:

**Restitution** – restitution of the situation before the violation took place. This could mean the release of detainees, restitution of property confiscated, restoration of employment.

**Rehabilitation** – legal and social services, as well as mental and physical care;

**Satisfaction** – which could include verification of the facts, public disclosure of the truth and a public apology, and commemoration of the victim;

**Revelation of the truth** – this is a form of catharsis for the society in question, which helps to prevent the past from recurring.

Guarantees of non-repetition – amending laws or institutions to improve the rule of law.

Indeed, these various types of reparation were recently highlighted in the United Nations’ “Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law” adopted by the General Assembly on 21 March 2006.

By taking a victim-oriented approach, we affirm our human solidarity with victims of gross violations of human rights. We seek to compensate them for risks which the State could not prevent from turning into damage and harm.

Of course, reparation can never fully undo the damage that has been done. Gross violations of human rights are irreparable. But this must not impede us from fighting to achieve just redress for victims. The UN Basic Principles are a good starting point for implementing the various aspects of reparation, a key element to full human rights protection.

The UN Basic Principles on the Right to Remedy and Reparation for Victims can be downloaded from: [www.ohchr.org/english/law/remedy.htm](http://www.ohchr.org/english/law/remedy.htm)

The text of this essay is also available in electronic form on the Commissioner’s website at [www.commissioner.coe.int](http://www.commissioner.coe.int)

*\*Thomas Hammarberg will give the Irish Human Rights Commission’s Annual Human Rights Lecture, at the National Gallery at 6pm on 26 November 2007.*