

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

Keeping The Scales of Justice Balanced

on Thursday, 18 September 2003.

Peter McVerry SJ has worked with homeless young people for the last 30 years

Two critical elements of the Criminal Justice System have been in the news recently. The First Annual Report of the Inspector of Prisons(i) was published and the Minister for Justice announced the "most radical reform of the Gardai" since 1924, and promised new legislation giving the Gardai more powers.



1. Inspecting the Prisons

1.1 The struggle to inspect the prisons

A number of reports on the prisons in Ireland, as far back as the Whitaker Report in 1985, recommended the appointment of an independent Inspector of Prisons. The Council of Europe Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment of Prisoners (a title mercifully shortened to C.P.T.) visits each European country at regular intervals to report on the conditions in their prisons.

In 1993, the C.P.T., following a visit to Ireland, recommended the appointment of an independent body, such as Visiting Committees or a Judge with responsibility to carry out such inspections and with authority to receive and take action on prisoners' complaints. The Government, in its response to the C.P.T. recommendation, stated that it proposed the creation of an independent Inspectorate and promised that it would be in existence by 1999. However, it was 2002 before the Inspector of Prisons was finally appointed. (An Inspector of Prisons for England and Wales had been appointed in 1980 and in Scotland in 1981.)

In 2003, the C.P.T. again visited Ireland and this time the newly appointed Inspector of Prisons had a meeting with them.

"I explained to them that while they were promised (in 1993) that I would exist, that in fact I was 'a façade'. I was quite satisfied that neither the Department of Justice, Equality and Law Reform, or the Prison Service Senior Personnel in Headquarters welcomed my appointment although they undoubtedly paid 'lip service' to the idea."

Clearly, he did not exactly feel wanted!

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

1.2 An unwelcome appointment

The Inspector of Prisons began work in a borrowed office. Six months later, he was informed that he could take possession of his new offices. *"Although", he says, "this is correct, it must be stated that some of the office furniture had not been delivered and there was no equipment installed such as telephones, fax machines, PC's, email's, cleaners, etc."* The Inspector, nevertheless, continued to work and the office was operational in mid-March 2003, one year, almost, after his appointment.

However, things got worse!

"I was told that there was no funding provided in the budget for my office and no budgetary arrangements were set up for its existence. However money would be made available from "the huge budget" provided for the Irish Prison Service. Later I was told that I could not spend a penny piece or employ anyone without the consent of the Prison Authorities. I WAS APPALLED (his emphasis). The smarminess was replaced by ignorant arrogance."

This is not normally the language of a report by a Government appointee!

He continues: *"The Prison Service and the Department of Justice, Equality and Law Reform have been slow to provide any information to the Inspectorate. The fact that they wanted me to take six months off to read myself into the job and wanted me to go on a tour of Western Australia and possibly New Zealand shows their peculiar mindset. While many interpretations will be put on these offers, I took them as meaning that I was not to do any real work."*

He found it difficult to get any real information from the Prison Service. He was denied information *"which is available to the Public Press, the Irish Penal Reform Trust, the Prison Officers' Association and the Chaplains."* For example, he was concerned that we have a higher prison officer/prisoner ratio level than any other country in the world. *"The Department informed me (by telephone naturally) that they would not give me any information regarding overtime earnings by prison staff because it was not within my remit."*

And so he demands:

"As a matter of urgency, I request the Minister to establish as soon as possible the Inspectorate as a statutory and independent unit. ...I want the Act expedited and I want to be consulted regarding its contents. I want total independence to be guaranteed and that my report be published within a calendar month or another specified time of my delivering it to the Minister. It should be published as it is written. The only deletions should be with the consent of the Inspector and only on grounds of security. the Inspector should be able fully to monitor the Prison Service urgently, now that the ineffectual Visiting Committee is further emasculated."

1.3 A damning report

The Inspector of Prisons, at the end of his first year of office, issued a damning report on the state of Irish Prisons.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

On post-release support: He reports that 30 years ago, a delegation from the Visiting Committee in St. Patrick's went to see the Minister for Social Welfare. Their concern was that prisoners were being released with little money, not even enough to secure a bed in a hostel until their dole money came through. The Inspector raised this point with the Prison Authorities. He was informed that they have appointed a Deputy Director to investigate the whole matter and to bring up solutions.

"It is fantastic that after thirty years or more, the whole matter is now 'being investigated'....It is a scandal....The Department of Social Community and Family Affairs may well have been correct in saying it requires an Act of the Oireachtas. However, there is so much of a shambles in relation to the prisons that one would almost despair of an Act to cover all the problems....the fact is that we as a State are prepared to spend in the region of €1,300 a week to retain an offender in prison but are unwilling to offer any adequate financial support on release. The question to be asked is who really benefits from the 'huge annual budget' spent on our prisons each year? Some felt that the administration was top heavy with expensive excursions to foreign lands."

On the drug situation: *"the drug situation in the prison system needs to be adequately addressed. Some efforts were being made but there was no serious attempt to address the underlying causes. In fact, 'clean' prisoners are exposed to drugs and become addicts in prison."*

On sex offenders: *"As a group, sex offenders are amongst the most marginalised amongst the prison population. The number is increasing and yet there is no real attempt to help them address their problem."*

On corruption: *"Some of the Chaplains complain about the power of the Prison Officers' Association and the fact that the Governor does not have the power to govern. (This is also a matter of grave concern to the Inspector). There are also serious allegations of corruption but the Inspector has not had time to investigate these allegations but hopes to do so in the future."*

On homelessness: *"For some, homelessness is a reality to be faced after a long and painful prison sentence...it will be remembered that 11 women refused to leave prison for Christmas because they had 'nowhere to go'"*

On racism: *"There is undoubtedly racism in the Irish Prison Service but a lot of the management and staff are not fully aware of it."*

On fire safety, he found serious concerns and noted that some (at least) of the prisons would not pass a Fire Safety Inspection.

On prisoners with psychiatric problems, the Inspector found services wholly unacceptable. *"There are two prisons in the town of Portlaoise. There is also a county hospital and a psychiatric hospital in the same town. However, the psychiatric hospital will have nothing whatsoever to do with the prisoners. They are not normally resident in the Midland Health Board and therefore the psychiatric hospital will not care for them. If a Judge sitting in Portlaoise requires a psychiatric report on a prisoner, that person has to be taken by three prison officers to the Central Mental Hospital in Dundrum where he will be assessed. A psychiatrist there has to write out a report. The prisoner has to be brought back to his prison of origin. There is a large amount of overtime*

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

involved as a result of this bureaucratic nonsense. It is about time that these matters were looked at realistically. It is my strong recommendation that this obscene behaviour be eradicated... (prisoners with psychiatric problems) should certainly not be dumped by an uncaring society into a prison to cause further deterioration to an already inadequate system. There is no doubt that there is a great deal of disability in prison...I am concerned that in prison people's human rights are being denied by an uncaring society implemented by feuding Government Departments."

1.4 The value of independence

The need for an independent inspectorate of prisons is unquestionable in the light of both the tone and findings of this report. Since Ireland presides over one of the world's most expensive prison services it is imperative that entrenched interests are made accountable for the services they provide and that there is transparency in how they use the considerable resources at their disposal.

In appointing Mr. Justice Kinlen, the Government may have thought they had appointed someone who would be amenable to their suggestions. I suspect that they are not looking forward to the next four years of his term of office. However, I am awaiting with eager anticipation his next four reports - if they are published!

2. The Reform of the Gardai

2.1 New powers

The Minister recently announced that he was considering new legislation that would give the Gardai more powers to fight crime. While some of his proposals are uncontroversial, two in particular have been the focus of criticism by those who are concerned about the potential for abuse of human rights.

1. The possibility of setting up a DNA database to be used in the fight against crime and the new powers given to the Gardai to take samples of saliva without the consent of the suspect, using whatever force may be necessary to obtain it. While DNA sampling has proved enormously beneficial in the fight against crime and in proving the innocence of suspects in some cases, many are concerned about the potential for abuse if a DNA database is accessible to Gardai.

2. The Gardai are to be given the power to detain suspects for questioning for up to 24 hours. (At present, they can detain suspects for a maximum of 12 hours). Concerns have consistently been expressed about the lack of basic safeguards against abuse of police questioning powers. Those detained do not have a right to have a solicitor present (as in many other countries) and indeed the Gardai would generally refuse to allow a solicitor to be present during questioning even if the solicitor and the suspect both requested it. The videotaping of the questioning of a suspect, which has been promised for almost ten years now and which would appear to be a simple enough matter to implement, is not widely available. Many confessions allegedly made by suspects while in custody are subsequently contested in court and some - such as the confession of Dean Lyons to a murder he did not commit - were shown to be patently false. The cases of the Birmingham Six and

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

the Guildford Four in England, where innocent people were convicted and served long sentences on the basis of confessions that were false, led to the introduction of safeguards that do not exist here.

2.2 New accountability

However, to be fair, the Minister also recently announced "the most fundamental shake up" of the structures and accountability of the Gardai to have been considered since 1924. These new structures of accountability, he says, would ensure that the new powers the Gardai are being given would not be abused. He revealed his proposals in outline, saying that further consultation would be required before the details would be decided. However, even the little detail he provided left considerable concern that the "radical" reform of the structures would be anything but radical and that the new structures of accountability would be largely cosmetic, except in the most serious cases.

He announced six key reforms:

1. A redefinition of the relationship between the Gardai and the Government. The Garda Commissioner is to be accountable to the Dail for financial matters. On all other issues, the Minister remains accountable to the Dail.
2. The strengthening of Garda accountability.
3. Enhanced cooperation between the gardai and local authorities.
4. Greater capability to tackle crime by releasing gardai from static security duties at Government offices and other buildings.
5. The establishment of a Garda reserve force.
6. The setting up of a new independent inspectorate to investigate complaints against the gardai.

2.3 An independent inspectorate of the Gardai?

While the Minister states that the independent inspectorate will have all the powers of the Police Ombudsman in Northern Ireland, what he has announced to date shows that it will fall very far short of that target. The Police Ombudsman in Northern Ireland has won over 80% support from that community, across the whole political divide. It has achieved that for two reasons:

- (i) Firstly the transparency with which the appointment of Ombudsman was made. The post was advertised widely, both at home and abroad, candidates were interviewed at length and finally the person considered the most suitable was chosen.
- (ii) The independence of the Ombudsman is not in doubt. With a staff of 120 and over 40 trained investigators, every complaint, from the most trivial to the most serious, is investigated independently of the police service.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

It is clear from what the Minister has already said that both of these aspects of the proposed Inspectorate of the Gardai in the Republic will be a seriously watered down version of the Northern Ireland Police Ombudsman's office.

The three-person inspectorate will be a political appointment. Already the Minister has indicated that the chairperson is likely to be a sitting High Court Judge (though I presume they will screen the applicants carefully to ensure that a Justice Kinlen-type will be eliminated!) and that one of the other appointments is likely to be a former senior Garda. Already the independence of the inspectorate is being perceived as compromised. A former senior Garda, with perhaps forty years of experience of policing and presumably a strong loyalty to the force, comes to the position with views strongly influenced by his years of employment with the gardai. That is not to say that such a person may not be objective, and they may in fact be the best person for the job, but the perception - and maybe the reality - is that they will not be independent in their consideration of complaints against their former colleagues. The very fact that the three-person inspectorate will be political appointees will suggest that they have been chosen carefully (!) and may not be too keen to provoke the disapproval of those who have appointed them (particularly those who have been given a new lease of life in their retirement).

The Minister has already stated that the staff of the new office of inspectorate will be considerably less than the number of staff in the Ombudsman office in Northern Ireland (where the population is considerable smaller than in the Republic). They will not, therefore, be able to undertake an investigation into all complaints. Only the most serious complaints will be investigated independently. Less serious complaints (and we have yet to learn what is considered "less serious" and who makes that decision) will continue to be investigated by the gardai themselves, under the supervision of the inspectorate. Clearly "rudeness" on the part of a garda will be considered a minor complaint and clearly the conduct of gardai such as is alleged in Donegal will be considered a serious complaint. But the assault of young people in custody or the ill-treatment of suspects during interrogation are not yet defined as either minor or serious. My own view is that this attempt at reform is primarily about control of costs rather than a serious attempt to make the gardai accountable.

This view is furthered strengthened by the proposal for a Garda Reserve Force (getting extra resources on the cheap) and by the fact that the Garda Commissioner is only accountable to the Dail for financial matters. If this view is correct (and we must wait and see the detail), then only complaints that are serious enough to warrant a tribunal, if not dealt with summarily and adequately, will be investigated independently. The garda inspectorate may be more about saving money on tribunals than reforming the structures of the Gardai.

The details of all these reforms have still to be worked out. No doubt the views of the gardai themselves will be extremely significant when it comes to details. The fact that none of the garda representative associations have come out fighting against these proposed reforms (something they have never been slow to do in the past when they feel that their power or autonomy have been criticised) seriously worries me.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

2.4 The absence of a culture of change

Recently a new report by consultants Deloitte and Touche into Garda Management Structures has been leaked into the public domain(ii). The Garda Síochána declined to publish the report - as is their normal practice - which may itself say volumes about their openness to scrutiny and criticism. The "Garda Síochána Structures Review Project", was set up to see how well the Force was managed, and it found that it wasn't. *"The organisation is administered rather than managed"*, it states. It noted a lack of specialist skills in areas of planning, change management, human resources, management accounting and communication. The structure at head office, it says, is not sufficiently responsive to the needs of the public. There was very little performance evaluation. For example, it found that *"in comparing the 2000 and 2001 annual policing plans, it is difficult to ascertain to what extent the 2000 measures were achieved, or on what basis the 2001 measures were determined."*

But while management structures were scrutinised and recommendations made, it is their findings on the absence of any culture of change within the Gardai, which are perhaps the most worrying.

"The recommendations put forward," it says, "will require considerable change in the mindset firstly of management and subsequently among all garda ranks...However, we found no real evidence that there is a change imperative across the organisation."

3. A Concluding Thought

The prisons and the Gardai perform essential functions for Irish society. They are given considerable power and resources. Therefore it is both reasonable and fair that these bodies are made accountable for how they exercise these powers and utilise public resources.

The extracts from the Inspector of Prisons amply demonstrated the value of having an independent body reviewing the prisons. In the context of the McBrearty and Abbeylara Tribunals, the conduct of Gardai during the "Reclaim the Streets" march and during the subsequent investigation, and the revelation that € 6 million has been paid in the last five years in compensation to some 70 victims of Garda assault and wrongful arrest, it is reasonable to question giving further powers to the Gardai, without a major reform of the structures of accountability. I am left to wonder what might be contained in a report by a truly independent inspectorate of the Gardai.

Notes:

i All quotes from the Inspector of Prisons Report which was published by the Minister for Justice, Equality and Law Reform on 2 July 2003. The full report is available on www.justice.ie.

ii Partly sourced from articles in the Sunday Business Post and Sunday Tribune 31 August 2003.

Working Notes Issue 46:

The Prisons and the Gardai: A Case for Independent Review

A European Exchange: People in Poverty - Partners in Europe

on Tuesday, 23 September 2003.

Stuart Williams joined ATD Fourth World in 1971. He and his wife Isabelle have been present in Ireland for four years.

"People like that need our help..."

It's nothing new, to hear a sentiment like this expressed about people in poverty. Yet it was the speaker and the person about whom this was said that made this recent comment so striking. The speaker, a Traveller living in a temporary site in Dublin, was referring to an Irish Member of the European Parliament she had just met and who she felt needed support from people like her in his efforts to campaign against poverty and social exclusion in Europe.

This meeting had taken place during a European Exchange gathering in Dublin in June 2003 that brought together people facing poverty, social exclusion and homelessness in Belgium, Scotland and Ireland, and people who support them. Organised by ATD Fourth World(i), together with a dozen other community and voluntary groups, the three-day event in June saw people who suffer poverty and disadvantage positioned centre stage in a discussion on the future of Europe. They came together as actors in the fight against poverty: actors whose experience, daily efforts and thinking make them privileged witnesses to what still needs to be done to provide each person and each family with the means to live a life of security and dignity.

Some people in Ireland have done very well out of the Celtic Tiger, but there are a lot of people who have been left out. You go down to the 'dining house' in Church Street and you see hundreds going in there. You go around the streets of Dublin and you see people sleeping rough, you see kids sleeping rough and you see families in bed-and-breakfast walking the streets in the day time with their young children.

I should like to outline the background to and preparation of this European Exchange and what I believe emerged that can inspire and guide all our efforts in working for the eradication of poverty and for justice and peace in the world.

Background

Since its founding in a shanty town in the outskirts of Paris, by the late Fr. Joseph Wresinski(ii) in the 1950s, ATD Fourth World has brought together people experiencing poverty around the world with people from other backgrounds. This enables people in poverty to express the unacceptable impact of poverty and social exclusion on their lives but also to draw out their understanding of

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

how people's fundamental rights can be better protected and promoted. Joseph Wresinski believed that the only way to a just and peaceful society was in enlisting the intelligence and experience of the poorest in our midst.

On a European level, in conjunction with the Social and Economic Committee of the European Union, ATD Fourth World has organised bi-annual encounters since 1989 between Europeans living in poverty and people with responsibilities for determining the European Union's structures and programmes. The involvement of Irish community groups in these meetings over the years has helped bring experiences here to the notice of a European audience and has helped further links between people in poverty here in Ireland and elsewhere in Europe.

Several encounters between community groups in Ireland and members of the homeless group at the Central Station in Brussels over the past two years have been the catalyst for the recent European Exchange in Dublin. This brought together 60 people over three days, of whom 35 were from vulnerable and marginalised groups in Ireland, Belgium and Scotland. The Irish participants included people from the inner city housing estates in Dublin, members of the Traveller community in West Cork, the Midlands and the Dublin area, and members of the homeless community in Dublin. As well as the delegation from Brussels, we welcomed to Dublin three members of the Glasgow-Braendam Link group, a self-help and support group of families living in poverty in central Scotland who have the common experience of a respite stay at the Braendam Family House in Stirling.

The Aims of the Exchange

This European Exchange was one of a number of European meetings proposed by ATD Fourth World over the summer, in Luxembourg, the Netherlands, Poland and Ireland, each one seeking to create or further links across Europe between people in poverty, and those who support them.

The first aim of the Dublin meeting was to provide an opportunity and a further space for a number of people living in poverty in different European countries to meet and share their experiences of combating poverty on a day-to-day basis, to offer participants a collective experience of thinking together with people who are not in poverty but who have a long-term commitment to people and communities who are.

Secondly, by holding the meeting here, we wished to provide people with an opportunity to discover at first hand some of the efforts being made to improve conditions in some of the Dublin communities where people and families have a long history of disadvantage and struggle.

Thirdly, we hoped the event would make a small contribution to the current debate on the future of Europe and to the on-going consultation process on the next phase of the European strategy to fight poverty and social exclusion, to which many community and voluntary groups in Ireland are very committed.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

The Preparation

Several guidelines helped focus the preparations over several months that preceded the meeting: that for each group or delegation, the preparation would be a collective one and that the delegates would include people who have little or no experience of such an encounter; that people would come to the meeting prepared to convey not only the suffering and injustices of their and other people's daily lives but also the efforts they are making individually and collectively to try and change things. In our experience, this explicit recognition that people in extreme poverty and exclusion are doing all they can, daily, to change their situation, meet their needs, and to have recognised their right to be treated with respect is a key to the participation in a meeting of people living in very difficult and often humiliating situations.

Throughout the months of preparation, several other imperatives emerged. People constantly sought reassurance that they would be respected by the others and that their experiences and contribution valued. The question being asked by members of the Belgian group was: "Will people listen to me?" Many of the participants would be speaking in front of other people for the first time; they demanded that we create a listening atmosphere in which people's confidence and sense of self-worth could be collectively supported and sustained.

Ever present also was the challenge for us all to ensure the full participation of people with reading and writing skills. During the preparation and during the meeting itself, we could not assume that people could exchange information through the written word. Telephone conversations, face-to-face exchanges, photographs, videos, picture collages, and music and singing all became part of the currency of communication. Each group was encouraged to write what they most wanted to say, but also to bring with them as much material as possible to support what they wanted to communicate. We had arranged to welcome much of this material onto the walls of the main meeting room.

A member of the homeless community in Dublin offered us a beautiful example of this. Together with other members of the homeless hostel, and with the help of his daughter who could write, the names of all the shelters, hostels and bed-and-breakfast addresses that had been part of their family history were written out on a large colourful scroll. During the meeting, standing in front of the scroll, he was able to bring coherently and vividly to life some of the other residents and some of the incidents that had particularly marked their lives.

The programme of visits to community groups was included in the programme at an early stage as a response to people's thirst to learn from other people's experiences, and to go out to look and discover "on the ground". For many of the participants, going and meeting people in these communities, being part of their environment, recognising common features and elements in people's situations was to provide stimulating and memorable opportunity for them to meet, look, talk and learn.

The greatest challenge in the preparation of this meeting was, understandably, the involvement of people who face the greatest difficulties in life. An illustration of this was the preparation with the

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

homeless community in Dublin. The lack of a place to get together, and even the lack of private space for people to reflect on their own, made it very difficult for people to collect their thoughts. The presence and participation during the three days of the European Exchange, of a determined homeless couple was a significant victory.

What emerged during this European Exchange?

What issues, questions and imperatives emerged from this preparation and from the meeting itself? I touch here on some of them, knowing that many of the experiences, concerns and aspirations expressed by participants would need to be communicated with far more nuance, and much more insistence, than is possible here.

Firstly, throughout the three days we spoke in terms of Human Rights. During the preparation meetings, the participants with the most difficult lives said repeatedly that people have a right to be treated with dignity: *"We are human beings!"* They were thinking about the way some of their homeless friends had died in the street. Their input gave a particular tone to the meeting, one very much focussed on the right of everybody, whoever they are and whatever their situation, to be treated with respect both in life and in death. The Belgian delegation spoke about the right to contribute to society: *"Tell them begging is not what we want, we want work"* one of the homeless group had yelled at one of the participants before he left for Dublin. And people spoke at length about the right of children to have their family protected and respected.

The group as a whole stressed how unacceptable it is that people's fundamental rights are still not respected in Europe. We were reminded that this question of respect for the human person should be the foundation stone of all our laws and programmes, and all our campaigns to eradicate poverty and social exclusion. *"It's not just rights we have to defend, it's the human being who are denied them!"*

The protection of the family and the vital role of the family unit in fighting poverty was one of the main issues to emerge from the various conversations, discussions and visits. The role of the family as a basis of security and a continuity against the insecurity and discontinuity imposed by poverty and homelessness was brought into stark focus by a young woman who had spent several years as a child in temporary accommodation.

"I know more about family than about being homeless. We were in B&B with all my family, but my Da couldn't stay with us. We had to leave the place everyday at 9 o'clock, whether it was raining or snowing. We see Da in the park and he'd build a fire for us in the park. I like to keep my family together because in the end that's all you have in life. I think a family should be able to stay together. As a family you are strong and if you do get separated, you try to keep the contact going."

Someone currently living in hostel accommodation in Dublin added:

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

"Families come to a stage when they need help now, right now, but they are kept waiting for help or for housing for years and years. When the help comes, it's too late. They have been evicted and the children are put into care. It's much harder then to get things going again".

In different ways, parents at the meeting, and several younger people too, said that what parents struggle to do, often with so little support, and the humiliations they bear in the face of people who so often do not recognise these efforts, are all in the name of their children's future: that the children's future remains the touchstone and driving force in their lives. Several participants stressed that we have to better understand the powerlessness of parents in situations of extreme poverty, and bring acknowledgement of and support for parents' aspirations and efforts to bring up their children, often against enormous odds.

The vital role in their lives of proper education and training opportunities was drawn out by the younger participants. Several whose experience of school had been marked by discrimination and early exclusion from the education system appealed for a serious commitment to be made towards the most vulnerable children and young people. One of the young people, a youth worker with young Travellers on the western outskirts of Dublin, explained:

"So many [young people] drop out of school after their confirmation, like I did. That's because of discrimination and because they're not given the right opportunities and encouragement. They end up with no education. When you can't read or write, it affects every bit of your life. I'm trying to encourage the young people I'm with to get back to education".

A young woman, from a very rundown and marginalised community in the centre of Ireland, was powerful in voicing her commitment to the children and youth of her area, and her struggle to help them have what she called *"the chances I never had."*

Parents from a community in Dublin spoke of their concerns for so many children excluded from school, and the lack of dialogue with and understanding by the school authorities. They described their efforts to build a community that would sustain the most vulnerable among the young people and to engage in a real partnership with the school and education authorities.

During the preparation of this European Exchange, people referred time and again to the difficulty of making contact with those in their communities who are the most vulnerable and who are the hardest to reach. At the meeting, people were invited to share how people attempt this. The commitment and inventiveness needed was illustrated by the following example from Brussels.

"You need someone who can be a link," Marc explained. *"After one of the meetings in the Central Station, Michel came to me wanting me to help him trace a friend of his, a homeless man. So I went with him. He was able to show me a world I would never have imagined: all the underground parking places where people sleep rough. Michel provided the link to a world I would never ever have realised was there."*

In his evaluation, one participant summed it up in these words: *"The main thing I pick up from this [meeting] is outreach, to go out and meet people where they are and to continue to do that, never to give up."*

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

Other Outcomes

Probably the most evident fruit of this encounter proved to be the strength, hope and sense of a commitment renewed that participants from different regions and countries gained from coming together.

"It's good to see other people and to know they are going through the same as you are. It gives you a bit of hope; it makes you a little happier. You're not just on your own, there is always someone somewhere going through the same or even worse than you are."

One of the participants learned during the meeting that a homeless person in Poland had been permanently housed, after a wait of fifteen years, *"God, I'm going back to the hostel taking with me a lot of hope after hearing about that woman in Poland getting a place at last."*

The three days of conversations and exchanges were constantly punctuated with appeals for people in poverty to be respected, listened to and understood, to be valued as partners in discussions and decisions concerning themselves, their families and communities and the wider society.

In different ways, people highlighted the importance of being taken seriously by others, and of being able to share their experiences and understanding:

"Here people listen to you, so you have the confidence to speak up."

"When you walked into the room, it was like walking into your own living room, into your own family, and that was remarkable because of the people we were from different countries and counties. Yet everyone was more or less the same as one big family because we have the same problems and we also have the same fight and same battle."

A member of the delegation that was welcomed at the European Parliament building said: *"Politicians on their own do not have the solutions. People like that need our help. In fact we need each other to find the way forward"*.

"What we have inside us is a lifetime of experience. We understand poverty because we live it. But we never get consulted. When the politicians and professionals get it wrong, the most vulnerable are the worst affected and that pushes us even further away. We want those who decide and make the laws to come down a level to us and we should move up a level to them. This way, we'll meet in the middle."

In adopting a common strategy at the European summit in Nice in 2000, one of the principal objectives agreed on was the participation of the populations most concerned by poverty and social exclusion in establishing, monitoring and evaluating national and European programmes and policies. The participants at this Exchange rightfully call into question the credibility of this European strategy and its effectiveness in involving people not just in poverty but also in extreme poverty, and the organisations representing them. To date little progress has been made in establishing how the conditions necessary for this participation are to be developed.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

Together with other organisations representing people in long-term "consistent" poverty, this three-day meeting reminded us that the process of consultation and participation has to be taken much further, but that this cannot happen by magic. People living in poverty ask that their aspirations to be real partners be believed. They ask for understanding of and support for their concern to include people even worse off than themselves. And they need places and spaces to be created where they can feel secure and respected and can engage in a dialogue with people from other backgrounds and with responsibilities in the wider community.

This challenge was put simply by one of the Scottish representatives. *"Who is willing to really listen to us and take account of what we say and live and think?"*

Pushing open the Door to Partnership

For almost 15 years, community and voluntary groups in Ireland and in a number of other European countries have remained committed to the gaining of a seat around the national and European discussion table for people and communities faced with poverty and social exclusion. There have been considerable successes and not a small number of setbacks. With these voluntary and community organisations, with other interested groups and with the appropriate national and European bodies, ATD Fourth World will continue doing what it can to contribute to this process of partnership with people in poverty, particularly those in extreme poverty.

Father Joseph Wresinski put it succinctly: *"With urgency, we have to introduce into society people in the greatest poverty ... their thinking about contemporary life, about democracy and about Human Rights."*

At a European level, this will be our aim in preparing with the European Economic and Social Committee, and with community and voluntary groups around Europe, the eighth bi-annual encounter between Europeans living in poverty and representatives of the principal European bodies. During the year of enlargement of the European Union, this will take place in Warsaw in February 2004, and will include people in poverty and organisations that support them from Western, Central and Oriental Europe.

Other opportunities are there too. In June 2004, the third European meeting of people experiencing poverty, launched initially by the Belgian Government, will take place under the Irish presidency of the European Union. It is a chance for Irish community and voluntary groups to work with the Irish government in developing the conditions that will allow people in poverty and extreme poverty to contribute their experience, intelligence and know-how towards shaping the social, economic and cultural priorities and programmes here in Ireland and across Europe.

A member of the Belgian groups concluded the European Exchange by addressing this appeal to people living in poverty in Europe. *"We've got to go and meet others who are going through the same situations as ourselves. Even if we don't speak the same language, we can still see that we live the same life. It's not just about talking; it's what you experience together. When we go and meet others elsewhere and talk to them, we feel much stronger when we get back to our own countries. We can support others better, we can talk about going to Ireland and meeting some Irish*

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

people and learning from them, and how good that was. We can see poverty is not just about the homeless in the Central Station. It's it much broader. People working together can change things. If we all struggle together, things will change."

And a representative of the Combat Poverty Agency in Ireland underlined the challenge: *"In my work, our remit is to influence policy and include people in a vision of Europe. The way to do that is by having places like this where we can dialogue and we can meet each other as people, and we take back what we learn to our different worlds, whether it is in our family or in our work, or our community centres or whatever. I will take back that if we're really going to do that in Europe, then we must continue to support a space for this kind of dialogue. That is not just about 'Oh I just want to get this for my community!' We want to get this for all people, in Europe and beyond in the world."*

Notes:

(i) ATD stands for Aide à Toute Détresse (literally "Help in Total distress"), the original name chosen by the community in the emergency housing camp in France where the Movement started. The same community added "Fourth World" when they learned of the existence of the "Fourth Estate" at the time of the French revolution.

(ii) Father Joseph Wresinski (1917-1988) grew up in poverty in Anger in France. He started life as an apprentice baker and became involved in workers' movements. He was ordained a priest in 1946 and joined the worker-priest movements. In 1956 he was sent by his bishop to camp for homeless families in Noisy-le-Grand near Paris. There, with families living in almost total deprivation, he founded the International Movement ATD Fourth World. He was joined by men and women from a variety of spiritual, social and cultural backgrounds who struggled side by side with the families of the camp and who formed ATD Fourth World's voluntariat, or volunteer core. He authored the report Grande pauvreté et précarité économique et sociale (Chronic Poverty and Lack of Basic Security) which was commissioned and adopted by the Economic and Social Council of France, of which he was a member. This report paved the way for substantial work undertaken by the UN Commission for Human rights, the European Union and the Council of Europe. It also led to the law against social exclusion that was adopted by France in July 1988. In 1987, Fr. Wresinski launched the International Day for the Eradication of poverty (17th October), later recognised by the UN General Assembly. He wrote widely and his books include "The Poor are the Church" and "Blessed are you the Poor" which are available through ATD Fourth World in Dublin.

**Working Notes Issue 46:
The Prisons and the Gardai: A Case for Independent Review**

The Residential Tenancies Bill 2003: A Tentative First Step

on Tuesday, 23 September 2003.

Seamus Murphy SJ is a lecturer at the Milltown Institute

After many decades of neglect, the government is proposing a major reform of the law governing landlord-tenant relations in residential premises. The proposals are contained in the Residential Tenancies Bill 2003 (hereafter referred to as 'the bill')(i). As is well known in informed circles, but less so to the general public, the Irish tenant's lack of rights and legal protection is embarrassing to the point of being shameful when compared to such tenants' status in other EU jurisdictions. The government's bill comes not a moment too soon.

The government's decision to reform landlord-tenant law goes back to the end of the 1990s, when it established a commission to investigate and make recommendations on the private rented sector(ii). The bill adopts many of the commission's recommendations.

It is interesting to speculate on the reasons for the government's decision to reform the private rented sector. Prior to the 1990s, the sector had undergone a long decline since at least the 1940s, but in the 1990s it suddenly and unexpectedly began to grow. Remarkably, in a period of enormous expansion of house-building, the private rented stock increased, not merely in real numbers, but also as a proportion of the housing stock (from about 8% to about 13%). Given that tenants in the private rented sector are a politically powerless group, often not even registered to vote (since they are rarely living long enough in the one place), it seems that the shift in government thinking has resulted, not so much from political pressure, as from a growing awareness that the private rented sector is becoming important to Irish housing.

Problems in the private rented sector affect several groups in Irish society. When some of us think of tenants in private rented accommodation, students are the primary group that comes to mind. While the number of students seeking accommodation has grown, they are by no means the most vulnerable and there is a case to be made for encouraging and subsidizing third-level institutes so that they provide special student accommodation. There are also asylum seekers who, on this score at least, are less vulnerable than others using private rented accommodation since the Health Boards pay top rents. The 'Celtic tiger' years brought more single people to Dublin and the bigger urban areas as their work-place, and typically they would look to rent. In addition, (single) people in transition from prison or residential mental care would find themselves seeking private rented accommodation(iii). Overall, there are a growing number of people, many of them poor,

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

vulnerable and on the margins of society who, because the public housing sector is not expanding, are almost entirely dependent on the private rented sector.

The bill has positive aspects; on balance, it is to be welcomed. However, it is a limited, tentative step, and further reforms will be needed in the future. It also has weaknesses. In this article, we set the bill in context, reviewing the situation which it seeks to address, evaluating its strengths and offering proposals for amendments.

Why Security of Tenure Matters

At the 'top' expensive end of the market for private rented accommodation, leases are normal. Such leases usually ensure balance between landlord's interests and tenant's interests. In particular, a lease provides security of tenure for the duration of the lease. Security of tenure is precisely what has been lacking in the rest of the private rented sector, and the bill is an attempt to provide such security of tenure for a (renewable) 4-year period for tenants with six-months' continuous tenancy..

Those with no experience of the private rented sector often have little grasp of how all-important security of tenure is. If a landlord can get rid of a tenant more or less at will, it follows that a tenant is in no position to resist demands for rent-increases. It is idle to decry high rents, as long as tenants have no bargaining power with respect to the landlord's demands.

If a landlord can get rid of a tenant for any or no reason, then the tenant's other legal rights are largely irrelevant because the absence of security of tenure renders them ineffectual. For example, a tenant has legal rights to a rent book, to have the structure and outside of the premises maintained by the landlord, and to certain minimum standards as regards sanitation, cooking and the like. But the landlord can (and many do) make it clear to the tenant that any attempt to enforce such rights will be met with a notice to quit(iv). While a notice to quit does not of itself legally compel the tenant to vacate the premises, a landlord who goes to court to get the tenant out will invariably succeed in acquiring a court order for eviction by the sheriff. Knowing that this is so, the tenant cannot really fight for the above-mentioned rights, since doing so might lead to loss of the tenancy, which would be self-defeating.

Some people would say that the state or local authority should employ sufficient inspectors to ensure that the tenant's rights are protected. Perhaps, but practically speaking this is rather unrealistic at present. For a start, the cost to the public authority would be exorbitant. Furthermore, if a local authority inspector asks a tenant about the conditions in the dwelling, the tenant's telling the truth about sub-standard conditions or that she received no rent book, and its leading to action against the landlord may lead to vindictive notice to quit. The harsh reality is that it is often not in the interest of the tenant to cooperate with the local authority, even when the local authority is trying to protect the tenant' rights.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

In today's Ireland, approximately 82% of Irish dwellings are owner-occupied. As a result, there is often only limited understanding of the plight of tenants in private rented accommodation. As owner-occupiers, we tend to identify having a home with owning a house or apartment, and that perspective alienates us from the tenant's perspective. Irish society tends to a possessor-culture or ethic, as opposed to a performance-culture(v). Given this fact, it cannot be said often enough: a tenant who lacks some reasonable measure of security of tenure is vulnerable to various forms of illegal exploitation by the landlord, and without security of tenure the tenant cannot fight it, and if the tenant will not fight, the state really cannot make up for that.

The state cannot fight the tenant's corner. It isn't feasible, nor is it in accord with human dignity that adults should be so without effective rights that they cannot fight for themselves. The solution lies in an appropriate balance of rights and duties between landlord and tenant to ensure fairness. There will always be some unscrupulous landlords and some irresponsible tenants: no law can guarantee that there won't be conflicts. But what can be pursued is a reasonable legal provision whereby a tenant is able to hold her own against an unscrupulous landlord, and a landlord has effective redress against an irresponsible tenant.

What exactly an 'appropriate balance of rights' or a 'reasonable legal provision' is has to be worked out and negotiated. Getting it right is not easy. However, it should not be too hard to avoid the two extremes: where the landlord holds all the cards (as at present) so that the tenant is in effect a 'grace-and-favour' tenant, or where the law is so stacked against the landlord that no reasonable profit can be made from letting, thus leading to disinvestment and the decline of the private rented sector.

At present, Irish law is very close to the first extreme, and the bill is a welcome attempt to rectify that imbalance. However, there is still considerable political resistance to doing so. It is important then that politicians, civil servants and shapers of public policy and public opinion be aware of the reasons in favour of security of tenure.

1. A tenant has a right to a home: A person who has no security of tenure for some reasonable period of time is not much better off than a person staying in a homeless shelter, since she is always on the verge of homelessness. This is particularly hard if the tenant has dependent children. The bill goes some way to meeting this.

2. A tenant should be able to exercise her rights. It is in the interest of good government that both landlords and tenants be able to vindicate their rights. It is bad policy to assign legal rights to a category of person – and then fail to ensure that exercise of those rights does not (more or less automatically) lead to loss of that very interest upon which the rights in question are grounded. The obvious solution: legal provision to ensure that no tenant may be evicted where a court finds, on balance of probabilities, that the landlord's seeking possession arises from a desire for revenge against a tenant for demanding their rights or for drawing the local authority's attention to the fact that the landlord (perhaps for tax-evasion purposes) had failed to register the premises, thereby breaking the law. *The Report of the Commission on the Private Rented Sector* proposed doing just that(vi). But the bill does not make provision for it.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

3. Following from the second, **it is bad policy to make ineffectual laws**: it brings the law into disrepute. Previous governments made regulations for dwelling standards (roofs, toilets, etc), for provision of rent books, for registration of the letting, and so forth. The fact that actions by tenants which draw the public authority's attention to violation of such regulations are likely to lead to the eviction of the tenant, the ultimate sanction by the landlord, coupled with the fact that the government does nothing about it, undermines those legal regulations. It is not only unjust to the tenant, it also undermines the law. The harsh reality of life for many tenants is that those regulations might just as well not exist.

4. **Exorbitant, rapid and arbitrary rent increases should be curtailed**. This doesn't mean rents shouldn't increase; but they should do so in a reasonable manner. Some measure of security of tenure, lasting a few years, is necessary if this goal is to be achieved. Whatever about the initial rent agreed upon between a landlord and a new tenant, security of tenure would give the tenant some leverage, some ability to negotiate with respect to demands for future rent-increases. Fairness (which is the relevant ethical category here) between landlord and tenant requires that it be not impossible for landlords to obtain rent increases, and not impossible for tenants to limit the increase or even have a reduction. Provision of security of tenure will not ensure low rents, nor will it lead to rent-freeze or any significant rent-control. But it should help to check unrestricted, inflationary rises in rent.

The Bill's Positive Elements

Among the positive proposals put forward are, listing them in order of importance:

1. Tenants in continuous possession of the premises for 6 months without receiving notice to quit will be entitled to a further 3.5 years security of tenure, making 4 years in all, and renewable for further periods of 4 years (sects. 25-46, especially sect. 28)(vii).
2. The Private Residential Tenancies Board (hereafter referred to as 'the Board') will be established, with powers for resolving disputes between landlords and tenants (sects. 74-123). The Board will be able to set up Tenancy Tribunals, with power to summon witnesses, hear evidence, and determine cases (sects.101-107). It is to replace the district court and small claims court in dealing with landlord-tenant disputes.
3. (a) Rents shall not be set, whether at the beginning of the tenancy or in subsequent revision, at higher than market rent. (b) Rent reviews shall not occur more than once a year (sects. 19-20).

These are progressive steps. However, no. 3's effectiveness will depend on the effectiveness of the Board (no. 2), and the Board in turn would have little to offer tenants if no security of tenure were being provided (no. 1).

As regards no. 3, the concept of 'market rent' is somewhat vague. However, the kind of specialist powers the Board will give it some effectiveness. In general, the establishment of the Board is sensible, since landlord-tenant disputes are better handled by specialist boards than by the district court(viii). So far so good. No. 1 is the controversial issue.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

The awarding of 4-year security of tenure is the main change in the rights of tenants (sects. 28-30). The bill provides for subsequent 4-year periods of tenure under the same conditions. Although a minor benefit to the tenant by the standards of countries such as Germany or Sweden, it is almost revolutionary in the Irish context. Not surprisingly, it has drawn howls of outrage from the Irish Property Owners' Association (IPOA)(ix).

Yet what is offered to the tenant is modest. First, a landlord can ensure that no tenant ever qualifies for such a period of tenure by giving notice to quit before the tenant has completed 6 months' tenancy. He can also get rid of the tenant at the end of the 4-year period in the same way. Second, the tenant's rights under this kind of security of tenure are less than those provided by a lease (prescinding, for the moment, from the fact that most leases are for 1 year). The landlord can still recover possession, not only if the tenant defaults on any obligation, but also if the landlord needs the dwelling for his own or a member of his family's use, or wishes to sell it, substantially renovate it, or use it for a different purpose for which he has planning permission. All that has changed is that the landlord now must have a reason to get the tenant out within the 4-year period.

Only time and experience will tell if the government's scheme will work. Accordingly, it would be foolish to think that one piece of legislation will reform the private rented sector, once and for all. What is provided here is a cautious, limited reform. If, after the bill becomes law, a large number of landlords start clearing out tenants close to being in residence for 6 months, with the result that, on balance, the tenure situation for tenants is worsened and not improved, then the government will have to provide amending legislation.

While such an outcome might look like a victory for landlords, it might be a Pyrrhic victory. The IPOA might prefer the current unregulated system to continue, but that is becoming politically unacceptable, not just morally objectionable. With the rise in the proportion of the population availing of private rented accommodation, and the enormous rise in the cost of owner-occupation, the private rented sector has become important and must perform adequately. While responsible legislators would want to encourage investment in order to increase the available stock and alleviate the housing shortage, landlords (or rather the IPOA) have to realize that there is a limit to what can be tolerated for the sake of maintaining supply. Even leaving aside consideration of housing as a basic human right, and thinking instead of it as a commercial product or service provided for interested consumers able to pay, sooner or later it has to be accepted by landlords that, just as most forms of commerce are regulated by law, providing private rented accommodation also has to be regulated. In other areas of commerce, consumers have statutory rights, there are legal standards for product-quality, price-increases are sometimes limited, and profits are taxed. Refusal to accept this on the part of landlords and their representatives could ultimately lead to more radical policies less palatable to landlords.

Needed Amendments to the Bill

The bill has shortcomings, some of which have been highlighted by Threshold(x). While recognizing that there is a certain prudence in the government's proceeding cautiously, it would be

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

appropriate to recognize that part of such prudence would be **to give the Board wider discretionary powers** than the bill appears to do. The wider the discretionary power, the more the Board can learn from experience, and in consequence the better positioned future governments will be to draft amending legislation.

1. The Board is, in certain ways, restricted to dealing with registered tenancies only (sect. 82). Since it is estimated that only about 20% of private rented tenancies are registered by landlords (despite its being legally required since the mid-'90s), relatively few tenancies will fall within the immediate competence of the Board. Admittedly, the bill allows the tenant (though not the landlord) of an unregistered tenancy to bring a dispute to the Board, but it appears to offer no protection to a tenant who does so. The bill is vague on what stance the Board can take towards a landlord who fails to register, or on whether it has the discretion to penalize such a landlord.

Recommendation: Amend the bill to give discretionary powers to the Board (or its Tribunal) **to take the fact that the tenancy is unregistered into account** in adjudicating between landlord and tenant, and to proceed against such a landlord. The Board may very well choose not to penalize the landlord, but it should have the discretion to do so, which it could employ in cases where the landlord had a large number of unregistered tenancies and where there were aggravating circumstances.

2. In cases where the tenancy is unregistered, and the tenant's bringing a dispute to the Board at some stage during the first six months of tenancy is followed by the tenant's receiving notice to quit, it is probable that the notice to quit arises from vindictive motives. In such a case, the tenant who is instrumental in bringing it (or some other illegal action or omission, such as refusal to provide a rent book or standards violations) to the Board's attention deserves protection against retaliation by the landlord. The government may not at present wish, for its own reasons, to pursue landlords actively for non-registration or violation of standards requirements. But such reasons ought not prevent the Board from blocking a tenant's eviction. It is illegal for a landlord not to register a letting; it would be appallingly unjust that the Board would lack the power to protect tenants who bring that illegality to light. Sect. 14 prohibits penalization of the tenant by the landlord, and it is also listed (sect. 77 (n)) as grounds of complaint to the board, but no penalty is specified.

In other jurisdictions, including many US states (e.g. Massachusetts), the landlord will be denied possession by the courts for a definite period (e.g. 1 year) following action by the tenant which brings legal violations by the landlord (e.g. sub-standard accommodation, non-registration) to the notice of the public authority. In such cases, the courts assume a vindictive motive for any suit to repossess for the duration of that period of time. There is no reason why the bill cannot incorporate such a provision.

If the bill is amended to give the Board the powers suggested, then the landlord of an unregistered tenancy may be careful to refrain from getting into dispute with the tenant. That at least promotes fairness, even if it doesn't promote registration.

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

Recommendation: Amend part 6 (and sect. 14) of the bill to give the Board the power **to deny possession to a landlord where the grounds may reasonably be construed to be vindictive**, seeking to penalize the tenant for bringing the existence of the letting to the notice of the public authority. Since such amendment is unnecessary for tenants enjoying security of tenure, it must specifically apply to tenants in the first six months of tenancy, or in the final six months of a four-year tenancy.

3. It is regrettable that the bill does not enable the Board to pass information on lettings to the Revenue Commissioners. This has drawn strong and not undeserved criticism(xi). No doubt the government is trying to be ‘prudent’ and not scare off landlords. However, if the government is worried that doing so may alienate too many landlords, it could ‘square the circle’ by amending the bill to insert provisions for **ministerial orders** giving the Board the power to do so. There would become operative at some undetermined date in the future, and might require some further legislation. While the government may be uncertain as to how best to proceed against landlords breaking the law, it cannot afford to give the impression that it is complacent about it, or that it regards acquiescence as unachievable. The advantage of this proposal is that it brings in an element of fairness to balance the ‘prudence’, and indicates that tax-evasion by landlords is not ultimately acceptable, even if the government intends to proceed circumspectly as regards enforcement.

Recommendation: Amend the bill as suggested in the foregoing paragraph.

4. The bill has little to say about standards for rented accommodation. While legislation exists already on this score, the bill has little to say about it. This is unfortunate, as it gives a wrong impression as to the government’s attitude on the matter.

Recommendation: Amend the bill to give the Board (or its Tribunal) power to take into account failure by the landlord to keep standards up to legally required levels, when adjudicating on rent-levels or rent-reviews.

Beyond enacting an improved bill, the public authority must monitor its implementation. It is good that landlord-tenant law is being reformed. It is important to realize that the Residential Tenancies Bill 2003 is only the beginning of that process.

Notes:

[i] The proposed legislation deals only with private residential tenancies: not with commercial tenancies, nor with public sector residential tenancies (where the local authority is the landlord). Part of the private rented sector traditionally was rent-controlled with lifetime security of tenure, but for various reasons that sector has now all but disappeared.

[ii] For our analysis of the commission’s report, see ‘The Report of the Commission on the Private Rented Sector: reaction’, *Working Notes* 38 (Nov. 2000).

[iii] On this area, see the excellent survey by Bill Toner, ‘Dying on the streets’, *Working Notes* 38 (Nov. 2000). Also available at www.cfj.ie

Working Notes Issue 46: The Prisons and the Gardai: A Case for Independent Review

[iv] The points being made here have nothing to do with the quality of the typical Irish landlord. Some unscrupulously exploit their tenants: most are probably honest and fair. Most do not raise the rent as high and as often as possible, being prepared to forgo higher rents for the sake of holding on to good tenants. The points at issue here have to do, not with what Irish landlords are like, but with what Irish law allows.

[v] J.J. Lee, *Ireland 1912-85: Politics and Society* (Cambridge 1990).

[vi] *Report 8.5.4*: ‘Safeguards, such as applying a burden of proof on landlords, will also need to be introduced to protect tenants from eviction in circumstances where the tenant has made a complaint or taken other action in pursuit of compliance with the provisions of the statutory regulations applying to the sector.’

[vii] All references are to the section-numbers of the Residential Tenancies Bill 2003 as published in June.

[viii] The Rent Tribunal, set up in the mid-1980s to deal with cases affecting rent-controlled tenants (dealt with basically under the Housing Act 1982), proved far more effective than did the district court.

[ix] See *The Irish Times* June 5, 2003.

[x] For the text of Threshold’s comments, see its website at www.threshold.ie

[xi] ‘The commitment within the bill to keeping information concerning rents and rented accommodation away from the Revenue Commissioners is outrageous. After all the inquiries and public scandals linked to tax evasion in recent years, here is a provision from the Irish Dark Ages. It effectively reassures wealthy property owners that they need not worry about disclosure of their affairs to the Revenue Commissioners and, by extension, paying their legitimate taxes. It should not be allowed to stand. The Department of the Environment appears to have taken the view that the disclosure of such information would act as a deterrent to landlords registering their properties and tenancies with the new PRTB. Such an inference will be deeply resented by those citizens who provide good quality accommodation and pay their taxes, while those operating within the black economy will continue to behave as they see fit. Certainly, the latter group will not be motivated to register by the ludicrous penalty of €140 that has been set out in the Bill.’ - *The Irish Times*, editorial, June 9, 2003.