



Submission of FLAC to the UN Committee on the Elimination of Racial Discrimination for the examination of Ireland's combined fifth, sixth and seventh periodic reports

FLAC October 2019

About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. FLAC focuses on the use of law as a tool for social change and on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence. FLAC was also a partner of the JUSTROM programme. It made a submission to the Department of Justice and Equality's consultation on a new National Traveller and Roma Inclusion Strategy, 2017-2020

You can download/read FLAC's policy papers at
<http://www.flac.ie/publications/policy.html>

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Introduction

FLAC has a longstanding commitment to promote human rights and equal access to justice. FLAC operates a telephone legal information and referral line and runs a network of legal advice clinics where volunteer lawyers provide basic free legal advice. FLAC also provides specialist legal advice to advisers in MABS and CISs. FLAC works to improve access to justice for marginalised communities. It also operates PILA, the Public Interest Law Alliance, which operates a Pro Bono Referral Scheme for NGOs, community groups and independent law centres. FLAC is also an independent law centres and engages in litigation in the public interest and strategic litigation, seeking to achieve outcomes which will have benefit beyond the individual, and which may test and possibly bring about change in law and practice.

FLAC has recently worked to improve access to justice in particular for Roma and Traveller women as part of the JUSTROM (Joint Programme on Access of Roma and Traveller Women to Justice) programme, a Council of Europe initiative. The pilot programme aimed to increase Roma and Traveller women's awareness of their rights and existing complaint mechanisms, with a particular focus on anti-discrimination and equality of opportunity. Within JUSTROM, FLAC supported the running of legal clinics for Travellers¹ and Roma². FLAC with the financial assistance of the Department of Justice currently operates a legal clinic for the ROMA community. It also within its limited resources continues to engage in legal representation for members of the Traveller community, primarily in the area of accommodation provision. The experience of those clinics and litigation is drawn on in this submission to highlight specific matters of importance to achieving equality for those communities.

FLAC welcomes the opportunity to make a submission to the UN Committee for the examination of Ireland on its combined report to the United Nations Committee for the Elimination of Racial Discrimination.

It is not proposed to address all of the issues that arise under Ireland's combined periodic reports setting out the measures that the Government of Ireland is taking to give effect to its obligations under the International Convention on the Elimination of all forms of Racial Discrimination (hereafter 'ICERD'), but rather to focus on the matters that are most relevant to FLAC's work on access to justice. There are a number of overarching points which FLAC wishes to make at the outset.

¹ In relation to Travellers 40 casefiles were opened with accommodation and housing constituting 75% of them, discrimination 20% and civil cases 5%. FLAC is engaged in advocacy on behalf of 26 others (Accommodation/Housing: 18 (69.2%); Civil Issues: 5 (19.2%); Discrimination: 2 (7.7%) and Social Welfare: 1 (3.8%).

² Arising from the Roma clinic, FLAC opened 39 case files: (Social Welfare Cases: 13 (33.3%); Accommodation/Housing Cases: 11 (28.2%); Citizenship Cases: 7 (17.9%); Civil Cases: 3 (7.7%); Discrimination Cases: 3 (7.7%); Criminal Cases: 1 (2.6%); Administrative law Cases: 1 (2.6%). FLAC also provided advocacy in respect of 89 Roma with the following breakdown:-Citizenship: 28 (31.4%); Social Welfare: 19 (21.3%); Accommodation/Housing: 17 (19.1%); Discrimination: 12 (13.4%); Administrative Issues: 10 (11.2%); Civil Issues: 2 (2.2%) and Criminal: 1 (1.1%).

Public Sector Duty

Since the State's combined previous report in 2009, the Public Sector Duty has been introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014. The Public Sector Duty provides one of the most important national mechanisms for mainstreaming racial and ethnic equality and protecting the human rights of ethnic minorities, such as Travellers and Roma. The Public Sector Duty specifically requires public bodies to carry out an assessment of the human rights and equality issues relevant to its functions and the policies, plans and actions in place or proposed to be put in place to address those issues. In fulfilling their duties under the 2014 legislation, public bodies must consider the human rights and equality impact, including the impact in relation to the elimination of racial discrimination and promotion of equality of their policies, delivery of services, budgets, procedures and practices. The Public Sector Duty requires public bodies to take a proactive approach to tackling institutional racism and promote the mainstreaming of an equality perspective in all their functions. Such an approach, has the potential to ensure that minorities such as Travellers and Roma are given specific consideration in all public action, policy and procedure, and to complement actions which are required under European Union law and ICERD. FLAC believes that the roll out of the public sector duty is relevant to a number of the Committee's concerns including but not limited to:

- The interaction Travellers and Roma with the health and education sector;
- The representation of Travellers in political institutions;
- Racial profiling;
- The need to ensure that human rights training is mainstreamed in the civil service, An Garda Síochána and the judiciary, and
- The need to ensure that migrant and minority women continue to be a focus of the targeted actions and objectives of the National Women's strategy.

RECOMMENDATIONS

- FLAC requests that the Government be invited to provide in its periodic report details of the procedures adopted to ensure that all public bodies carry out an assessment of the human rights and equality issues relevant to their functions, including in particular, an assessment of the human rights and equality issues that impact on Travellers and Roma relevant to their functions, and the policies, plans and actions being taken or proposed to be taken to address those issues.
- FLAC requests the Government be invited to provide in its periodic report information on what legal, policy and practice initiatives have been put in place pursuant to the public sector duty to ensure effective mainstreaming of anti-discrimination and equal treatment for Roma and Travellers in Ireland.
- FLAC requests that the Government in its periodic report be invited to include information on how it is monitoring the implementation of the Section 42 Public

Sector Duty across the public sector, including the delivery of specific training for staff.

Civil legal aid scheme and the right to equal treatment before tribunals:

Article 5 of ICERD requires State parties to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone without distinction as to race, colour or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: “(a) The right to equal treatment before the Tribunals and all other organs administering justice”. Similarly, Article 7 of the Racial Equality Directive obliges EU Member States to ensure that judicial and/or administrative procedures are available to victims of racial discrimination to enforce their right to equal treatment³.

However, the effectiveness of such procedures is undermined where victims are reluctant or unable to use them. Research conducted by the Fundamental Rights Agency across the European Union has highlighted that awareness of the national legislative and procedural framework giving effect to the prohibition on discrimination appears to be low among racial minorities.⁴ This in turn, affects the degree to which victims pursue their rights and reduces the frequency with which the prohibition of discrimination is enforced and remedies are obtained. This discrimination is compounded due to some of the most prevalent legal issues affecting Travellers and Roma being excluded from the remit of the Legal Aid Board. The Legal Aid Board is precluded from providing representation before quasi-judicial tribunals dealing with social welfare appeals, as well as employment and equality cases. In 2011, the former UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, during a fact-finding mission to Ireland, noted her concern that “several areas of law that are particularly relevant for people living in poverty” are excluded from the scope of the Legal Aid Board.⁵ Further, in July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern regarding the exclusion of certain areas of law from the civil legal aid scheme “which prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits”.⁶ Thereafter,

³ Council Directive 2000/43/EC. The right of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights, which guarantee the rights to a fair trial, to an effective remedy and to legal aid to those who lack sufficient resources so far as this is necessary to ensure effective access to justice.

⁴ European Union Agency for Fundamental Rights (2012) *The Racial Equality Directive: application and challenges*, Luxembourg: FRA, p.25.

⁵ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona to the Human Rights Council, Geneva: OHCHR, p.4.

⁶ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

the UN Committee recommended that the remit of the Legal Aid Board be expanded and that civil legal aid services be made available in a wider range of areas.⁷

FLAC is concerned that the lack of availability of legal representation in these types of cases means that many Travellers and Roma cannot present their cases, including discrimination claims, in the manner that fairness demands, depriving them of equality before the law and the right to equal treatment before Tribunals as required by ICERD.

For example, in social welfare appeals, Appeals Officers will often deal with complex legal issues such as the application of the “right to reside” test and the Habitual Residence Condition. Roma face significant difficulties satisfying the right to reside test due to lack of documentation, proof of address and language and literacy skills. In its application, the Habitual Residence Condition disproportionately affects members of the Traveller and Roma communities who experience considerable challenges in terms of establishing a connection to Ireland, by reason of either their nomadic way of life or, in the case of Roma, the inherent barriers they experience in proving their connection to the State. Given the complexity of the law in this area, FLAC is concerned that Travellers and Roma are significantly disadvantaged by lack of legal representation in making social welfare appeals.

Additionally, while employers and businesses can often afford to pay for private legal representation before the Workplace Relations Commission, Travellers and Roma making complaints under the Employment Equality Acts and the Equal Status Acts often cannot. Where a Traveller or Roma alleging discrimination does not have such financial means and is faced with an experienced legal team on the other side, this can give rise to an inequality of arms in practice. Furthermore, civil legal aid is not available for “disputes concerning rights and interests in or over land”, which means that there may be difficulties in obtaining legal aid for housing issues. The Legal Aid Board takes the general view that eviction proceedings constitute “a dispute concerning rights or interests over land” and are therefore excluded from the remit of the civil legal aid scheme. While there is an extremely limited exception to this rule, the exclusion of this area of law means Travellers encounter difficulties accessing civil legal aid for forced evictions.⁸

RECOMMENDATIONS:

- FLAC request that the State be invited to provide information on whether it has plans to ensure equal treatment before tribunals and in particular plans to designate the Social Welfare Appeals Office and Workplace Relations Commission as “prescribed” tribunals for the purposes of Section 27(2)(b) of the Civil Legal Aid Act 1995;

⁷ UN Committee on Economic, Social and Cultural Rights (2015) Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland, Geneva: OHCHR, para.8.

⁸ The legislation relevant to the forced eviction of Travellers is dealt with separately in this submission.

- FLAC request that the State be invited to provide information on whether it plans to ensure that civil legal aid is available to Travellers in unauthorised encampments facing eviction proceedings;

Effective remedies

State parties are also obliged pursuant to Article 6 ICERD to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunal and other State institutions, against all acts of racial discrimination which violates his human rights and fundamental freedoms as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

The Equal Status Acts 2000 – 2015 prohibit discrimination on the grounds of race and membership of the Traveller community in the provision of goods and services, the provision of accommodation and access to education. However, Section 14 of the Equal Status Acts precludes complaints against legislative provisions. In practical terms, this means that any legislation which discriminates on the grounds of race or membership of the Traveller community or has a disproportionately negative impact in this regard falls outside the scope of the Equal Status Acts and cannot be challenged under domestic equality legislation. In February 2017, the UN Committee on the Elimination of all forms of Discrimination against Women expressed concern that section 14 of the Equal Status Acts 2000 – 2015 precludes the use of the equality framework to challenge other discriminatory laws. Thereafter, the Committee recommended that Ireland amend section 14 of the Equal Status Acts to ensure that an effective remedy is available for discrimination that has a legislative basis.

Further, the definition of “services” in section 2 of the Equal Status Acts is broad enough to include the services provided by public bodies. However, the scope of the Acts does not extend to the performance of the functions of public bodies generally not within the definition of “services” under the Equal Status Acts. Therefore, it is unclear to what extent the prohibition on discrimination on the ground of race and the Traveller community ground apply to public authorities such as An Garda Síochána and immigration services in performing functions which may not come within the definition of “services”. The definition of “services” in the Act should, with only necessary and proportionate exceptions, include functions of the State most relevant to discrimination on grounds of race and membership of the Traveller community such as immigration, citizenship and police powers.

RECOMMENDATIONS:

- FLAC request that in its periodic report that the State be invited provide information on what, if any, proposal it has to amend Section 14 of the Equal Status Acts 2000 – 2015 to ensure that an effective remedy is available for discrimination that has a legislative basis;
- FLAC request that in its periodic report that the State provide information on any plans to broaden the scope of the Equal Status Acts 2000 – 2015 to include the

functions of public bodies most relevant to race discrimination and discrimination on grounds of the membership of the Traveller community.

Human Rights Institutions

Following the examination of Ireland's combined third and fourth reports, the CERD Committee expressed concern about budget cuts to human rights institutions.¹⁰ It further reiterated that the financial and economic crises should not lead to a situation which would potentially give rise to racism, xenophobia and related intolerance against foreigners, immigrants and persons belonging to minorities and recommended that, notwithstanding the economic recession, enhanced efforts are made to protect individuals from racial discrimination and that budget cuts to human rights bodies should not result in the stifling of their activities to monitor the protection of human rights.⁹

RECOMMENDATION:

- FLAC requests the Government provides in its periodic report information on any enhanced efforts made to protect individuals from racial discrimination and the budget allocated to same.

Incorporation of the Convention into domestic law

FLAC notes that the CERD Committee reiterated its regret that Ireland has not incorporated the Convention into Irish law and restated its position from previous concluding observations that the State party should incorporate the Convention into its legal system to ensure its application before Irish Courts in order to afford all individuals its full protection.¹⁰

RECOMMENDATIONS:

- FLAC requests the Government be invited to provide specific information on what consideration it has given to the CERD Committees' recommendation regarding the incorporation of ICERD.
- FLAC requests the Government be invited to provide information on what awareness raising measures have been put in place to highlight the possibility of complaints being submitted by individuals and groups of individuals under Article 14 of the ICERD.
- FLAC further urges the Government be invited to provide a detailed account of how, in the absence of direct incorporation, the protections under ICERD are mirrored in domestic legislation, also addressing the accessibility of any such remedies and any gaps in protection.

⁹ General recommendation No. 33 (2009) on the Follow-Up to the Durban Review Conference

¹⁰ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.16

Hate Crime legislation

Ireland signed ICERD in 1968 and ratified it in December, 2000 whereupon it became binding on Ireland in international law. At the time of ratification of the Convention, a reservation/interpretative declaration was entered in relation to Article 4 of the Convention.¹¹

The declaration (i) notes that the measures described in Article 4(a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights set forth in Article 5 of the Convention and (ii) states that Ireland considers that through the measures described in Article 4, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. The CERD Committee recalled its previous concluding observations (CERD/C/IRL/CO/2) and noted that the State party's reservation/interpretative declaration on article 4 of the Convention and stated that the Government has not provided compelling reasons for its retention.¹²

It further reiterated its recommendation to the State that it should reconsider its position and withdraw the reservation/interpretative declaration made to article 4 of the Convention.

The continued retention of the reservation weakens Ireland's commitment to remove all reservations to international human rights treaties. In relation to the specific protections provided under Article 4, and the obligations of the State in that regard, FLAC notes the current status of the Criminal Justice (Aggravation by Prejudice) Bill 2016 and the limited scope of that legislative proposal, and regrets the lack of progress made in relation to further legislative initiatives relevant to article 4 of the Convention.¹³

¹¹ 3 ICERD Article 4 States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

¹² Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.17

¹³ In its submission in relation to the review of the Defamation Act 2009, FLAC recommended that the Department conduct the present review of the Defamation Act, 2009 in tandem with the ongoing review of the Incitement to Hatred Act 1989, to ensure that a complimentary approach is taken to regulating hate speech, including the provision of accessible civil remedies to those targeted by such speech. See Submission to the Department of Justice to inform its review of the Defamation Act 2009 p8, at <http://flac.ie>

In particular the protracted review of the Incitement to hatred legislation¹⁴ is a matter that merits particular attention in the State report considering its importance to combating hate speech.¹⁵

RECOMMENDATIONS:

- FLAC requests the Government provide information outlining the manner in which the State complies with article 4 of the Convention specifically dealing with the State's objectives regarding the review of the Prohibition of Incitement to Hatred Act 1989.
- FLAC recommends that Government be invited to determine whether any purpose is served by the interpretative reservation to article 4, and consider withdrawing same.

Racial Profiling

The Committee noted in its concluding observations the lack of legislation proscribing racial profiling by An Garda Síochána and other law enforcement officers and further notes with regret many non-Irish people are subjected to police stops and asked to produce identity cards which has the potential to perpetuate racist incidents and the profiling of individuals on the basis of their race and colour (arts 2, 3 and 6).¹⁶ The Committee further recommended the adoption of legislation preventing racial profiling and requested the State strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by An Garda Síochána in accordance with international human rights law. As noted above the functions of the Gardaí and the immigration functions of the State are largely excluded from the prohibition of discrimination in the Equal Status legislation.

FLAC notes the statement in the draft report that An Garda Síochána does not, as an institution, engage in discriminatory profiling. However, a high profile instance of such profiling was revealed in the report of the Ombudsman for Children into the removal of two Roma Children from their families by An Garda Síochána in 2013.¹⁷ Therefore the current assertion in the draft report is not a comprehensive response to the issue. The experience of the Justron programme revealed that many Roma and Travellers perceive that their communities are disproportionately targeted by An

¹⁴ Prohibition against Incitement to Hatred Act, 1989.

¹⁵ The Hate and Hostility Research Group presented a draft heads of Bill to Government in 2015. The Criminal Law (Hate Crime) Bill was based on a research report entitled 'Out of the Shadows: Legislating for Hate Crime in Ireland Report', but there has been no Government response to the proposals in the Bill or alternative proposal to deal with the matters set out in the Bill.

¹⁶ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4, para.18

¹⁷ 9 Garda Síochána Act 2005 (section 42) (Special Inquiries relating to Garda Síochána) Order 2013, Report of Ms Emily Logan, July 2014.

Garda Síochána. However, as noted earlier in relation to the scope of the Equal Status Acts, there is no specific mechanism for ethnic or racial minorities to make a complaint if they consider that they have experienced racial profiling.

RECOMMENDATIONS:

- FLAC requests that Government be invited to provide in its periodic report information outlining whether and in what manner An Garda Síochána monitors against racial profiling in practice, including through the public sector duty under Section 42 of the Irish Human Rights and Equality Commission Act 2014 and in relation to any proposals to address deficits in this area.
- FLAC recommends that the State take the opportunity to consider legislative measures to allow individuals, or groups representing their interests, to make complaints through GSOC and the WRC in relation to discrimination including discriminatory profiling to allow for such allegations to be investigated and remedied independently.

Travellers and Roma generally

The CERD Committee notes and regrets the continued poor outcomes in the fields of health, education, housing, and employment for Travellers as compared to the general population and recommends that concrete measures are taken to improve the livelihood of the Traveller community by focusing on improving student enrolment and retention in schools, employment, and access to health care, housing and culturally appropriate accommodation.¹⁸

Access to housing and Traveller specific accommodation emerged as the single most pressing issue for Travellers when attending the Justrom advice clinics over the past year. The importance of this issue is also borne out by statistics published by the Department of Housing, Planning and Local Government, which shows that the numbers of roadside Travellers is increasing year on year, and the budget for Traveller specific accommodation has been dramatically cut over the last few years.¹⁹ Issues around accommodation provision go hand in hand with concerns in relation to forced evictions as noted earlier.

This specific issue was highlighted in detail in a collective complaint against the State and the Government is urged to provide specific details to the Committee in relation to the outcome of the collective complaint (ERRC v Ireland).²⁰ In its decision, the European Committee on Social Rights found that Ireland violated the Charter by failing to provide safe and adequate accommodation to Travellers and also found that there were violations of Article 16 of the Charter on the grounds that

¹⁸ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.13

¹⁹ See <http://www.housing.gov.ie/housing/special-housing-needs/traveller-accommodation/annual-counttraveller-families-2016-all> (accessed February 2018).

²⁰ Complaint 100/2013. Decision on the Merits published 16 May 2016.

Part II A of the Criminal Justice (Public Order) Act 1994 and section 10 of the Housing Act 1992 provide inadequate safeguards for Travellers threatened with eviction. As these findings relate specifically to accommodation provision and protection from arbitrary eviction of Travellers, the response of the State to the decision of the European Committee on Social Rights is of particular relevance to the protections under ICERD.

The recent Roma in Ireland: National Needs Assessment that set out to provide a better understanding of the level and type of difficulties in accessing public services faced by the Roma community is of importance too.²¹ This assessment established that 14% of Roma adults reported having no income; service providers reported families to be living without food, gas, electricity and water; and 93% of Roma adults surveyed reported discrimination in education. The report also identified the impact of European Directive 2004/38 on the freedom of movement and residence and the habitual residence condition as key factors in many Roma not being entitled to employment and training supports, social protection including child benefit and housing supports with 48% of those who applied for social protection being unsuccessful.²² FLAC is concerned that it is the application in practice by the Department of Employment Affairs and Social Protection and local authorities of the right to reside test and the habitual residence condition that is often having a disproportionate negative impact on Roma not necessarily dictated by EU law.

RECOMMENDATIONS

- FLAC recommends that Government be invited to provide information setting out any specific plans to mainstream equal treatment for Roma in the areas of health, education and housing, matters previously raised by the Committee.²³
- FLAC requests the Government be invited to provide information concerning the collective complaint and the measures being taken to implement the required changes.
- FLAC requests the Government be invited to provide an outline of any plans to review of the Habitual Residence Condition so as to establish whether it has a discriminatory impact on access to social welfare, particularly among Travellers and Roma.²⁴
- FLAC requests the Government be asked to provide details in its periodic report as to whether it will be adopting an implementation plan to accompany the National Traveller and Roma Inclusion Strategy 2017 – 2021.²⁷

²¹ Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018) Roma in Ireland – A National Needs Assessment.

²² Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018) Roma in Ireland – A National Needs Assessment, p13.

²³ See FLAC, Submission to inform the Department of Justice and Equality's consultation on a new National Traveller and Roma Inclusion Strategy 2017-2020, available at <http://flac.ie>

²⁴ See FLAC, Submission to inform the Department of Justice and Equality's consultation on a new National Traveller and Roma Inclusion Strategy 2017-2020, available at <http://flac.ie>

Direct Provision

The CERD Committee outlined its concern at the negative impact of the policy of “direct provision” on the welfare of asylum seekers due to the inordinate delay in processing their applications and the very serious physical and psychological health problems that can arise from living in such poor conditions.²⁵ The Committee recommended the State take all necessary measures to improve the living conditions of asylum-seekers.

The Committee also noted its regret that legislation protecting the rights of separated and unaccompanied children seeking asylum, does not provide adequate protection as required by the standards set by the Office of the United Nations High Commissioner for Refugees (UNHCR).²⁶ FLAC campaigned for many years to ensure that asylum seekers have access to child benefit as a universal payment for the support of all children in the State.

In 2016 a judgment was delivered in the case of DN (A minor suing by his mother and next friend AS), AS v the Chief Appeals Officer & Ors.²⁷ The Court found that the applicant in that case had waited a disproportionate length of time for a decision in relation to her international protection application, and as a result had been denied access to child benefit during the period of that delay breaching her constitutional rights and rights under EU law. The Court ordered that a sum equivalent to the lost child benefit be paid to the applicant mother in the case. At that time FLAC called on Government to accord all those who were in the asylum system and also experiences a protracted delay in decision making on their asylum or subsidiary protection application, the same treatment. It does not appear that this has been done to date.

RECOMMENDATIONS:

- FLAC requests the Government be asked to provide information regarding any reviews previously undertaken, or proposed, of the habitual residence condition and its application to those in direct provision.²⁸
- FLAC requests the Government provide information on any plans to include the ‘best interests’ principle at the centre of any decisions concerning children within the direct provision system.²⁹

²⁵ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland’s Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.20

²⁶ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland’s Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.22

²⁷ Judgment of the High Court, 3 February 2017

²⁸ See FLAC, Submission on the Habitual Residence Condition to the Joint Oireachtas Committee on Social Protection 2010, and FLAC Concerns in relation to the Application of the Habitual Residence Requirement at <http://flac.ie>

²⁹ The UN Convention on the Rights of the Child stipulates in Article 3 that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”

Conclusion

FLAC believes that the State must see the Report to the CERD committee as an opportunity to review its current human rights record and make improvements to ensure that the dignity and rights of everyone living in the State are upheld and respected in accordance with its international obligations.