



**FLAC Submission to the
Department of Children,
Equality, Disability, Integration
and Youth's Consultation on
Ireland's National UPR Report**

May 2021

About FLAC

FLAC (Free Legal Advice Centres) was founded in 1969 and is one of Ireland's oldest civil society organisations. It is a voluntary, independent, legal and human rights organisation which for the last fifty years has been promoting access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights.

FLAC makes policy recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

FLAC works in a number of ways, it:

- Operates a telephone information and referral line where approximately 12,000 people per annum receive basic legal information.
- Runs a nationwide network of legal advice clinics in 71 locations around the country where volunteer lawyers provide basic free legal advice to approximately 12,000 people per annum.
- Is an independent law centre that takes cases in the public interest, mainly in the areas of homelessness, housing, discrimination and disability.
- Operates a legal clinic for members of the Roma Community.
- Has established a dedicated legal service for Travellers.
- Operates the public interest law project PILA that operates a pro bono referral scheme that facilitates social justice organisations receiving legal assistance from private practitioners acting pro bono.
- Engages in research and advocates for policy and law reform in areas of law that most affect the marginalised and disadvantaged.

INTRODUCTION

FLAC welcomes the opportunity to make this submission to the Department of Children, Equality, Disability, Integration and Youth's Consultation on Ireland's National Report for its third review under the Universal Period Review (UPR) mechanism of the United Nations Human Rights Council. The UPR is a valuable opportunity to assess Ireland's human rights performance as a Member State of the United Nations. The stated purpose of the National Report is "to provide updates on progress made in respect of recommendations from previous [UPR] cycles and to provide updates on developments, changes, new and emerging issues".

In advance of the 39th session of the UPR Working Group which will include Ireland's third review under the UPR mechanism, FLAC made a "Stakeholder" submission to the Office of the United Nations High Commissioner for Human Rights (OHCHR).¹ In accordance with the relevant guidelines², that submission addressed recommendations contained in Ireland's previous reviews under the UPR mechanism, and highlighted emerging areas of concern.³ FLAC's Stakeholder Submission focused on updates and developments in areas which are most relevant to FLAC's work on access to justice, namely: Equality; Social Security; Issues affecting Travellers and Roma; and Civil Legal Aid.

This submission will also focus on these four area. It will highlight recommendations in relation to each from previous UPR cycles, and issues of concern in Ireland's progress in implementing those recommendations. The submission will then make recommendations as to how these issues should be addressed in Ireland's National Report.

¹ *FLAC Submission to the Office of the United Nations High Commissioner for Human Rights: Third Review of Ireland under the UN UPR Mechanism*, available at: <https://www.flac.ie/publications/flac-submission-to-the-office-of-the-united-nation/>

² *Universal Periodic Review (Third Cycle): Information and Guidelines for Relevant Stakeholders' Written Submissions*. Available at: <https://www.ohchr.org/en/hrbodies/upr/pages/NgosNhris.aspx>

³ All recommendations referred to are contained in this report of the Working Group on foot of Ireland's second review under the UPR mechanism: Office of the High Commissioner for Human Rights (2016) *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/157/18/PDF/G1615718.pdf?OpenElement>

1. EQUALITY

Ireland accepted several recommendations on foot of its last UPR Review in relation to the promotion of equality and the elimination of discrimination.⁴ Ireland's National Report should therefore address the steps which are being take to ensure that Ireland's equality legislation and framework for dealing with discrimination complaints are robust enough and meet Ireland's human rights obligations under international instruments.

Issues of Concern

The Equal Status Acts 2000-2018 prohibit discrimination in the provision of goods and services, accommodation and education on nine grounds.⁵ The Employment Equality Acts 1998-2015 prohibit discrimination on the same grounds in employment. Discrimination complaints are generally heard by the Workplace Relations Commission (WRC). In Employment Equality cases, there is a right of appeal to the Labour Court.

There was an 11% reduction in complaints under the Equal Status Acts received by the WRC in 2018 (compared with 2017) and a further 26% reduction in 2019

⁴ Ireland supported 14 recommendations in relation to addressing racial discrimination. See for example Rec 135.104: Reinforce the policies for the protection against racism.

Ireland supported several recommendations in relation to the promotion of gender equality. See in relation to employment equality, for example: Rec 135.91: Continue to take actions to address the issue of gender pay gap, improve the access to decent work for marginalised women, and ensure adequate social protection system for women in vulnerable situations, and; Rec 135.93: Adopt effective measures to increase the representation of women in the public and private sectors, especially in decision-making posts.

Ireland supported Rec 135.143: Continue to improve employment opportunities and remove barriers to employment for persons with disabilities.

Ireland supported Rec 135.119: Take further steps to address discrimination of lesbian, gay, bisexual, transgender and intersex persons in access to goods, employment and services, including healthcare.

⁵ The Equal Status Acts 2000-2018 cover nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community. They also prohibit discrimination in the provision of accommodation against people who are in receipt of certain "housing assistance" social security payments.

(compared with 2018). In 2019, there was also an 11% decrease in complaints under the Employment Equality Acts (compared with 2018).⁶

Socio-economic status is not a protected ground under Ireland's equality legislation. In 2015, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) recommended that Ireland "adopt comprehensive anti-discrimination legislation that includes all the grounds for discrimination [including socio-economic status] set out in article 2 (2) of the [International Covenant on Economic, Social and Cultural Rights]"⁷. The Programme for Government published in June 2020 contains a commitment to "examine the introduction of a new ground of discrimination, based on socio-economic disadvantaged status to the Employment Equality and Equal Status Acts".⁸

Neither piece of equality legislation explicitly prohibits multiple or intersectional discrimination.

Section 14 of the Equal Status Acts precludes complaints in relation to discriminatory effects of the operation of legislative provisions. In practical terms, this means that any legislation which discriminates on one of the nine grounds 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 2017, the UN Committee on the Elimination of all forms of Discrimination against Women (UNCEDAW) expressed concern that section 14 of the Equal Status Acts 2000- 2018 precludes the use of the equality framework to challenge other discriminatory laws.⁹ Thereafter, the Committee recommended that Ireland amend section 14 of the Equal Status Acts to

⁶ See: *Workplace Relations Commission Annual Report 2019*, and; *Workplace Relations Commission Annual Report 2019*. Both available at: https://www.workplacelrelations.ie/en/publications_forms/corporate_matters/annual_reports_reviews/

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.12.

⁸ Department of the Taoiseach (2020), *Programme for Government: Our Shared Future*. Available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

⁹ UN Committee on the Elimination of all forms of Discrimination against Women, *Concluding observations on the combined sixth and seventh periodic reports of Ireland*. Geneva: OHCHR, para.12.

ensure that an effective remedy is available for discrimination that has a legislative basis.¹⁰

The definition of “services” in the Equal Status Acts is broad enough to include services provided by public bodies.¹¹ However, the scope of the Acts does not extend to the performance of the functions of public bodies generally. Therefore, it is unclear to what extent the prohibition on discrimination on the nine grounds apply to public authorities such as An Garda Síochána.

Where a person considers that they have been discriminated against on or at the point of entry to a licensed premises, they must apply to the District Court for redress.¹² The Irish Human Rights and Equality Commission (IHREC) have noted that this acts as “a barrier to justice”.¹³ In 2019, the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) expressed its concern that the need to initiate “complex court proceedings may effectively hinder Travellers and Roma from accessing justice and remedies for the racial discrimination they have experienced”.¹⁴ They then recommended that steps should be taken to allow complaints in relation to discrimination that occurs on or at the point of entry to licensed premises to be heard by the WRC.¹⁵

In 2019, UNCERD recommended that Ireland review its equality legislation with a view to: “providing for explicit prohibition of multiple or inter-sectional discrimination”; “explicitly including the functions of public authorities within the definition of the

¹⁰ UN Committee on the Elimination of all forms of Discrimination against Women, *Concluding observations on the combined sixth and seventh periodic reports of Ireland*. Geneva: OHCHR, para.13.

¹¹ Section 2, Equal Status Acts 2000- 2018. Available at: <https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html#SEC2>

¹² Section 19, Intoxicating Liquor Act 2003. Available at: <http://www.irishstatutebook.ie/eli/2003/act/31/section/19/enacted/en/html#sec19>

¹³ Irish Human Rights and Equality Commission (2019), *Submission to the Universal Periodic Review of the UN Human Rights Council: Second Cycle Mid-Term Review*, para. 36.

¹⁴ UN Committee on the Elimination of Racial Discrimination (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 45.

¹⁵ UN Committee on the Elimination of Racial Discrimination (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 46.

'services' in Section 5 of the Equal Status Acts"; and, "ensuring that an effective remedy is provided for discrimination that has a legislative basis".¹⁶

Recommendation

- **Ireland's National Report should address the steps that are being taken to ensure Ireland's equality legislation and framework for dealing with discrimination complaints are robust enough and meet Ireland's human rights obligations under international instruments.**
- **The report should specifically address the steps that are being taken to implement the recommendations of UNCESCR, UNCEDAW and UNCERD in relation to Ireland's Equality legislation, specifically the recommendation of UNCERD that Ireland review its equality legislation with a view to: "providing for explicit prohibition of multiple or intersectional discrimination"; "explicitly including the functions of public authorities within the definition of the 'services' in Section 5 of the Equal Status Acts"; and, "ensuring that an effective remedy is provided for discrimination that has a legislative basis".**

¹⁶ UN Committee on the Elimination of Racism (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 12.

2. SOCIAL SECURITY

Ireland supported four recommendations¹⁷ arising from its last UPR Review in relation to its social security system, and was encouraged (at Recommendation 135.128) to take “effective measures to safeguard the rights and status of the unemployed and vulnerable groups, through focused social assistance and income support”.

Issues of Concern

People under the age of 25 years who are eligible for certain social security payments currently receive a lesser amount than those aged 25 and over. Eligible individuals aged 25 and over receive a basic weekly payment of €203, while claimants aged between 18 and 24 years with no dependent children receive €112.70¹⁸. These lower payments fall below the basic minimum income standard set by the Government.¹⁹

The Habitual Residence Condition (HRC) is a qualifying condition for all means-tested social security payments and Child Benefit under which an applicant has to show a connection to the State. The UN Independent Expert on Extreme Poverty²⁰ and UNCESCR have both expressed concerns about the discriminatory impact of the HRC on vulnerable and marginalised groups. In 2015, UNCESCR specifically recommended that Ireland “review the habitual residence condition so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalized individuals and groups, and ensure the consistent

¹⁷ Ireland supported: Rec 135.91: Continue to take actions to address the issue of gender pay gap, improve the access to decent work for marginalized women, and ensure adequate social protection system for women in vulnerable situations; Rec 135.128: Continue to take effective measures to safeguard the rights and status of the unemployed and vulnerable groups, through focused social assistance and income support; Rec 135.129 Conduct targeted/focused policy of social support to the population in need, especially children, and; Rec 136.57: Continue strengthening its sound social policies in order to improve the quality of life of its people with an emphasis on vulnerable groups, in particular ethnic, racial and cultural minorities.

¹⁸ See for example the rates of payment for Jobseeker's Allowance: <https://www.gov.ie/en/service/1306dc-jobseekers-allowance/>

¹⁹ See Rates of Payment for Supplementary Welfare Allowance (“a weekly allowance paid to people who do not have enough income to meet their needs and those of their families”): <https://www.gov.ie/en/service/36e514-supplementary-welfare-allowance/>

²⁰ 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, pp.11-12.

application of the criteria by providing clear guidelines and training to the relevant officials".²¹ The specific impact of the Habitual Residence Condition on Roma will be discussed in further detail in Part 3 below.

The social welfare appeals system, as it currently operates, does not comply with the State's domestic and international human rights obligations and does not provide a fair, efficient and effective remedy.²² The Social Welfare Appeals Office (SWAO) is not an independent entity and Appeals Officers are employees within the Department of Social Protection (the decision-maker in the first instance). Further, decisions of the SWAO are only published on a selective basis at that office's discretion.

The SWAO decides on around 20,000 appeals each year. In each of the last five years, almost 60% of appeal have been decided in favour of the appellant.²³ The consistently high rate of successful appeals indicates an issue with social welfare decision-making at first instance. In 2015, UNCESCR expressed concern at "the large number of social welfare appeals owing to the lack of clear understanding and consistent application of the eligibility criteria".²⁴

Recommendations

- **Ireland's National report should address the steps that are being taken to implement UNCESR's recommendation to review the habitual residence condition "so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalized individuals and groups".**

²¹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

²² FLAC (2012) *Not Fair Enough: Making the case for the reform of the social welfare appeals system*. Available at: <https://www.flac.ie/publications/not-fair-enough/>

²³ See Annual Reports of the Social Welfare Appeals Office. Available at: <https://www.gov.ie/en/publication/888e0f-social-welfare-appeals-office-annual-report-2018/>

²⁴ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.

- **The report should address the steps that are being taken to address UNCESR's concerns as to the quality of first-instance social welfare decision-making.**
- **The report should address the practice of providing a lower rate of social welfare payments to people under the age of 25 and any plans to review that practice.**
- **The report should address the measures taken to ensure that the social welfare appeals system, complies with the State's domestic and international human rights obligations and provides a fair, efficient and effective remedy.**

3. TRAVELLERS & ROMA

Ireland supported or partially supported nine recommendations arising from its last UPR review in relation the inclusion of (and elimination of discrimination against) Roma and Travellers.²⁵ Since 2017, FLAC has operated a dedicated legal service for Roma²⁶ and, since 2019, has operated a Traveller Legal Service²⁷. The experience of providing those services, as well as other developments, are drawn on in this submission.

Issues of Concern

In March 2016, the UN Committee on the Rights of the Child (UNCRC) criticised “drastic reductions” in the capital budget for the provision of Traveller accommodation over a ten-year period.²⁸ Further, in December 2019, UNCERD highlighted its concern at “the persistent underspending of available budgets by local authorities on culturally appropriate housing for Travellers”.²⁹ In 2019, an independent review group

²⁵ Ireland supported: Rec 135.144: Continue to strengthen the basic rights and non-discrimination of the Roma and Travellers; 135.145 Adopt a progressive Traveller Roma Inclusion strategy; Rec 135.146: Activate the policies of integration of Travellers and Roma in all social, economic, cultural, political, educational, and other policies; 135.147: Give special emphasis to employment, access to health care and the right to housing in the application of the national strategy on the inclusion of Travellers and Roma, and; 136.83: Conduct and finalise a timely review of the request for recognition of the Travellers as an ethnic group.

Ireland partially supported: Rec 136.44: Step up measures to combat acts of racism by the law enforcement bodies, including against Travellers; Rec 136.84: Take concrete measures for the issuance of medical cards in Traveller and Roma communities, to guarantee that such children enjoy the same access to and quality of health-care services as others; Rec 136.85: Strengthen measures to eliminate racial discrimination against Roma and children on the basis of religion in health and education sectors, and; Rec 136.86: Introduce measures to improve the living standards of Travellers in society and ensure the legislation in place does not hinder their nomadic customs and practices.

²⁶ In 2017, FLAC was invited to be an associate partner in the JUSTROM Programme, a joint programme of the Council of Europe and the European Commission, which aims to improve the access to justice for Roma and Traveller women. Throughout 2017 to early 2018, FLAC facilitated the operation of legal advice clinics aimed at the Traveller and Roma communities, which provided legal advice and advocacy services. In June 2018, with the assistance of the Department of Justice & Equality, FLAC began operating a dedicated legal clinic for the Roma community.

²⁷ The FLAC Traveller Legal Service (TLS) was launched in July 2020. It functions under the auspices of a Steering Group of Traveller organisations and its purpose is to address unmet legal need of the Traveller community through legal representation and the provision of legal training to Traveller advocates.

²⁸ United Nations Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, Geneva: OHCHR, para.69(c).

²⁹ UN Committee on the Elimination of Racism (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 27.

established by the Government published the *Traveller Accommodation Expert Review*.³⁰ That report called for an “overhaul” of the legislation in relation to the provision of Traveller accommodation.³¹ The failures of the Housing (Traveller Accommodation) Act 1998, they reported, are evidenced by failures to meet the scale of accommodation needed by Travellers, an “extremely high rate of Traveller homelessness”, and an increase in those living in “overcrowded conditions”.³²

This specific issue was highlighted in detail in a collective complaint against the State to the European Committee on Social Rights (*ERRC v Ireland*). In its decision, the Committee found that Ireland violated the Charter by failing to provide safe and adequate accommodation to Travellers. They also found that there were violations of Article 16 of the Charter on the grounds that Part 2A of the Criminal Justice (Public Order) Act 1994 and section 10 of the Housing Act 1992 provide inadequate safeguards for Travellers threatened with eviction.³³ In March 2016, UNCRC called on the State to:

“Respect the right to the cultural practice of nomadism, including by repealing/amending relevant legislation to ensure that this cultural practice is not criminalised; in doing so, the State party should also ensure adequate safeguards against forced eviction and access to timely recourse and commensurate reparation for victims of such forced evictions.”³⁴

³⁰Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*. Available at: <https://rebuildingireland.ie/news/minister-english-publishes-the-report-of-the-expert-review-group-on-traveller-accommodation/>

³¹ Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*. Page i.

³² Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*. Page i.

³³ *ERRC v Ireland* Complaint 100/2013. Decision on the Merits published 16 May 2016. See: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-100-2013-european-roma-rights-centre-errc-v-ireland?inheritRedirect=false

³⁴ United Nations Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, Geneva: OHCHR, para.70(d).

The recent *Roma in Ireland: National Needs Assessment* report set out the difficulties faced by the Roma community in accessing public services.³⁵ This assessment established that 14% of Roma adults in Ireland reported having no income. 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.

Roma face significant difficulties satisfying the HRC due to lack of documentation, proof of address and language and literacy skills. FLAC is concerned that the application of the habitual residence condition by the Department of Social Protection is having a disproportionate negative impact on Roma, which is not necessarily dictated by EU law.

Further, the strict application by local authorities of a non-statutory departmental circular (Housing Circular 41/2012), which purports to exclude of certain categories of non-Irish EU Nationals from accessing social housing supports, creates a particular difficulty for Roma and other EU Nationals seeking to access social housing.³⁶

Recommendations

- **Ireland's National report should address the steps that are being taken to implement UNCERD and UNCRC's recommendations in relation to the provision of Traveller Accommodation and to ensure adequate safeguards against forced evictions.**
- **The report should specifically address how and when the recommendations set out in the *Expert Review Group on Traveller Accommodation* will be implemented.**

³⁵ Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018), *Roma in Ireland: A National Needs Assessment*. Available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/RNA-PDF.pdf>

³⁶ Mercy Law Resource Centre (2021), *Minority Groups and Housing Services: Barriers to Access*, pp. 5-8. Available at: https://mercylaw.ie/wp-content/uploads/2021/03/ML_2020_Minority-Groups-and-Housing-Services_Report_D6.pdf

- **The report should address the steps being taken to address barriers faced by Roma in Ireland in accessing public services such as housing and social security, particularly those created by the application of the Habitual Residence Condition (in the context of social security) and Housing Circular 41/2012.**

4. Civil Legal Aid

The final part of this submission will address the area of Civil Legal Aid. In Ireland, legal aid is not provided in cases before the tribunals which deal with equality cases and social welfare appeals. It is also unavailable for many types of cases which are particularly relevant to people living in poverty and marginalized groups such as Travellers and Roma. As a result, the area of Civil Legal Aid is relevant to each of the UPR recommendations which have been highlighted above.

Issues of Concern

Ireland's State-funded civil aid scheme is administered by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995. Its stated purpose under this legislation is "to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases".³⁷

Legal representation and advice under this scheme is not free. Following a successful campaign by FLAC, applicants no longer have to make a financial contribution in cases of domestic violence.³⁸ However, in other cases applicants must pay a financial contribution which in some instances may be quite significant.³⁹ Applicants are also subject to a very strict means test. The applicant's disposable income must be below €18,000 and the disposable capital threshold is €100,000.⁴⁰ If a person does not satisfy the means test there is no facility for the Legal Aid Board to provide legal aid.

³⁷ Civil Legal Aid Act, 1995.

³⁸ FLAC Press Release (28 December 2017), *FLAC welcomes the decision of the Minister for Justice and Equality to abolish the financial contribution requirement for civil legal aid for people affected by domestic violence in the District Court*. Available at: <https://www.flac.ie/news/2017/12/28/flac-welcomes-the-decision-of-the-minister-for-jus/>

³⁹ See Legal Aid Board Information re "Paying for your civil legal aid and advice": <https://www.legalaidboard.ie/en/our-services/legal-aid-services/how-much-will-i-have-to-pay-/paying-for-your-civil-legal-aid-and-advice.html>

⁴⁰ See Legal Aid Board Information re "Financial Eligibility & Contributions": <https://www.legalaidboard.ie/en/our-services/legal-aid-services/do-i-qualify-/financial-eligibility-contributions.html>

Waiting times for civil legal aid is a significant issue. In January 2021, Legal Aid Board Law Centres reported waiting times of up to 44 weeks for an initial consultation with a lawyer.⁴¹

While its statutory remit is fairly broad, the vast majority of advice and representation relates to family law. In 2019, 74% of cases handled by the Legal Aid Board related to family law, 14% to International Protection, 4% to childcare and only 8% to “other civil matters”.⁴² Civil legal aid is not available for “disputes concerning rights and interests over land”⁴³; the Legal Aid Board takes the general view that eviction proceedings are subject to this exception and are excluded from the remit of the civil legal aid scheme. These factors, combined with the strict application of the means test and a “merits test” mean that legal aid is often not available in cases related to housing (including family home repossession) and debt.

Furthermore, the Legal Aid Board is precluded by law from providing representation before many quasi-judicial tribunals. These include the WRC and SWAO.

Employers and businesses can often afford to pay for private legal representation in equality cases before the WRC; however persons making complaints often cannot. Where a person 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.

Concerns around the absence of legal aid before tribunals such as the WRC are all the more pressing in light of the recent decision of the Supreme Court in *Zalewski v Adjudication Officer & Ors* [2021] IESC 24. In that landmark decision, the Court held that the exercise of powers by WRC Adjudication Officers, while permissible under Article 37 of the Constitution, also constitutes the administration of justice under Article 34. Notably, at paragraph 138 of his judgment, Mr Justice O'Donnell held that: “The

⁴¹ See Legal Aid Board Information re “Law centre waiting times and other statistical information”: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/waiting-times/>

⁴² Legal Aid Board (2019), *Annual Report 2019*. Available at: <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/legal-aid-board-annual-report-2019-pdf-version.pdf>

⁴³ Section 28(9)(iii), Civil Legal Aid Act, 1995.

standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34".

In 2019, UNCERD expressed its "concern about the lack of legal aid provided for appeals concerning social welfare, housing and eviction, which has a significant adverse impact on Travellers and other ethnic minority groups to claim their rights".⁴⁴ As has been noted above, Roma face particular difficulty in accessing social security payments and complex issues such as the HRC and EU Law are often dealt with at social welfare appeals. The absence of civil legal aid for "disputes concerning rights and interests over land" and waiting lists also means Travellers encounter difficulties accessing legal aid for forced evictions which may occur with little or no notice.

In 2011, the former UN Special Rapporteur on extreme poverty and human rights 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.⁴⁵ In 2015, UNCESCR 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".⁴⁶ Thereafter, UNCESCR 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.⁴⁷

⁴⁴ UN Committee on the Elimination of Racism (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 43.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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.

An "Action Plan" published by the Department of Justice in February 2021 commits the Department to a review of the civil legal aid scheme in the third quarter of 2021 for the purpose of bringing forward "proposals for reform".⁴⁸

Recommendations

- **Ireland's National Report should address the steps being taken to implement to the recommendations of UNCERD and UNCESCR in relation to the provision of Civil Legal Aid.**
- **Specifically, the report should clarify whether the planned review of the Civil Legal Aid scheme will be conducted with a view to ensuring that Ireland complies with its obligations under regional and international human rights instruments. FLAC believes that this can only be achieved through a comprehensive, independent review of the civil legal aid system which examines the functions of the Legal Aid Board, its resources, the criteria for legal aid (including the means test, and financial contributions), the areas of law covered, and the methods of service delivery.**

⁴⁸ Department of Justice (2021), *Justice Plan 2021*. Available at: http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf