

Pre-budget submission 2014

A submission by FLAC to the Minister for Social Protection

FLAC

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About FLAC

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

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

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FLAC, the Free Legal Advice Centres, is a human rights organisation which exists to promote equal access to justice for all. One of FLAC's key aims is to achieve greater fairness, consistency and transparency in the administration of the social welfare system. FLAC campaigns for social welfare law reform to improve the situation of different groups impacted by particular social welfare policies and to ensure that fundamental human rights are put at the heart of the welfare system.

It is in this capacity that FLAC makes this pre-Budget submission which it hopes will inform the debate on Budget 2014.

Austerity Measures and Maintaining Rights in a Recession

In 2013 the total expenditure of the Department of Social Protection was €20.7 billion; in 2012 there were almost 1.5 million recipients who receive a social welfare payment which benefits a total of 2.3 million people.¹ However, since 2010, the budget allocation for the Department of Social Protection has decreased from €21.1 billion to €20.26 billion in 2013 in line with austerity measures. This has happened at a time when the unemployment rate has reached 14 per cent (with 31 per cent youth unemployment) so inevitably more people are reliant on the social protection system. Furthermore the latest data available indicates that in 2011 the at-risk-of-poverty rate was 16 per cent even after social transfers were considered.² According to data from the Central Statistics Office the rate of consistent poverty was almost 7 per cent.³ The Government must ensure that the proposed savings of €440 million⁴ in the upcoming 2014 social welfare budget are not achieved at the expense of already vulnerable people who could fall further into poverty.

The State is due to exit the EU-IMF financial assistance or bailout programme in December 2013 which has led to recent critiques of the austerity policies implemented in Ireland and other EU Member States. In May 2013, the President of the European Commission, Manuel Barroso, admitted that “[s]ocially and politically, one policy that is only seen as austerity is, of course, not sustainable”.⁵ This follows comments by the former IMF mission chief to Ireland, Ashoka Mody, who stated that “reliance on austerity is counterproductive”.⁶ Such statements are useful in the context of the current budget and the European Commission has also issued an assessment of the progress made so far in reacting to the Eurozone crisis which noted:

¹ See *Department of Social Protection Annual Report 2012* available online at: <http://www.welfare.ie/en/downloads/ar2012.pdf>.

² See presentation by Jim Walsh at the Social Inclusion Forum 2013 available online at: http://www.socialinclusion.ie/documents/workshop4_incomeadequacy_jimwalshdsp.pdf.

³ See Central Statistics Office data on *Survey on Income and Living Conditions: 2011 & revised 2010 results* available online at: <http://static.rasset.ie/documents/business/income-living-cso.pdf>.

⁴ See debate on Social Welfare and Pensions (Miscellaneous Provisions) Bill 2013: Second Stage, 30 May 2013, available online at: [http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/\(indexlookupdail\)/20130530~G?opendocument#G02300](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupdail)/20130530~G?opendocument#G02300).

⁵ See *The Guardian EU near austerity limit, says Barroso*, 22 April 2013 available online at: <http://www.guardian.co.uk/world/2013/apr/22/eu-near-austerity-limit-barroso>.

⁶ See *Irish Times Former IMF mission chief says austerity doesn't work*, 11 April 2013 available online at: <http://www.irishtimes.com/business/economy/ireland/former-imf-mission-chief-says-austerity-doesn-t-work-1.1357105>.

The crisis has already had a lasting impact on the most disadvantaged within our society, with the share of people at risk of poverty increasing in many countries. Member States need to invest in their human capital and in providing their citizens with adequate services. There is a need for greater attention to the distributional impact of reforms to ensure that they produce lasting results for the benefit of all. Several Member States need to pay more attention to combating different forms of poverty – child poverty, homelessness, in-work poverty and over-indebtedness of households – and to ensure the effectiveness of the welfare systems that deal with those affected.⁷

The policy of austerity implemented by the Government has not afforded due consideration to the State's legal obligations under international human rights law to ensure that people have an adequate standard of living. As FLAC has stated in previous Pre-Budget submissions, human rights obligations are particularly relevant and no less binding in times of recession. Limited resources cannot be used as an argument to counter a State's human rights commitments to maintain its minimum core obligation, or in other words to provide a basic level of subsistence, which allows a person to live in dignity.⁸ A recent Irish Times editorial highlighted a suggestion to invest €1 billion in the construction industry "to offset the impact of austerity".⁹ Any such decision should not be made without first completing a full review of the needs of people living in poverty, including the unemployed. As the Minister for Social Protection herself has pointed out, "protecting core rates makes absolute sense from a social justice perspective... the €20.3 billion social welfare budget is a crucial injection of cash into every corner and region of the economy".¹⁰ It is therefore vital that the social protection budget is protected both from a human rights perspective as well as an economic viewpoint.

A recent UN Resolution on Human Rights and Extreme Poverty adopted by the UN General Assembly by consensus, and published in March 2013, recognised how important social protection systems are in respecting, protecting and promoting fundamental rights as they "make a critical contribution to the realization of human rights for all, in particular for those who are in vulnerable or marginalized situations and are trapped in poverty and subject to discrimination".¹¹ The resolution also noted the "important contribution" a social protection floor (minimum income standard) can make to addressing poverty and social exclusion. As a recently elected member of the UN Human Rights Council it is imperative that the State lead by example and respect the human rights to which it has voluntarily committed itself.

⁷ See *2013 European Semester: Country-Specific Recommendations - Moving Europe Beyond The Crisis* available online at: http://ec.europa.eu/europe2020/pdf/nd/2013eccomm_en.pdf.

⁸ For a more detailed analysis see FLAC's Guide to *Respecting Rights in a Recession* available online at: http://www.flac.ie/download/pdf/maintaining_rights_in_a_recession_final_27_july_2011.pdf.

⁹ See Irish Times *The Right Stimulus?*, 30 May 2013 available online at: <http://www.irishtimes.com/business/the-right-stimulus-1.1410363>.

¹⁰ See debate on Social Welfare and Pensions (Miscellaneous Provisions) Bill 2013: Second Stage, 30 May 2013, available online at: [http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/\(indexlookupdail\)/20130530~G?opendocument#G02300](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupdail)/20130530~G?opendocument#G02300).

¹¹ Resolution 67/164 on Human rights and extreme poverty adopted by the General Assembly in March 2013 available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/488/44/PDF/N1248844.pdf?OpenElement>.

Recommendation:

- 1. The Government in the consideration in the overall budget must respect its international human rights obligations and ensure that sufficient resources are allocated to social protection to make certain that Ireland maintains its minimum core obligations.**

Social Impact Assessments

In previous years, FLAC and other organisations have called for the Department of Social Protection to conduct Poverty Impact Assessments in relation to proposed budgetary measures. FLAC welcomes the publication of the *Social impact assessment of the main welfare and direct tax measures in Budget 2013*¹² which indicates that there has been “no significant change in the at-risk-of-poverty rate” but this remains at 16 per cent. FLAC is concerned that the analysis by the Social Inclusion Unit also indicates that households with children are most impacted by welfare cuts, “in particular lone parent families”.

While the Department’s work in carrying out social impact assessments is a progressive step, the evaluation of Budget 2013 measures was carried out only after the cuts had been made, rather than incorporating such considerations into the decision-making process. The assessment of Budget 2013 did not include a public consultation which the Social Inclusion Division recognises “is ordinarily an important component of social impact assessment” but it hopes that its publication “will contribute to the policy making process for Budget 2014”. The UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, noted the importance of including people experiencing poverty in the decision-making process:

Poverty is not solely a lack of income, but rather is characterized by a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce each other. Powerlessness manifests itself in many ways, but at its core is an inability to participate in or influence decisions that profoundly affect one’s life, while decisions are made by more powerful actors who neither understand the situation of people living in poverty, nor necessarily have their interests at heart.¹³

The Special Rapporteur emphasises that “[t]he right to participation imposes concrete obligations on States voluntarily assumed in several binding human rights instruments”.¹⁴ Thus consulting those experiencing poverty is not simply an option to achieve best practice but it is a fundamental part of any assessment.

The Social Inclusion Forum represents one way of including individuals who will be most impacted by any budgetary cuts. However, to ensure that it is a productive consultation, those people must be made aware of its usefulness and included in a meaningful and effective way.

¹² Available online at: http://www.welfare.ie/en/downloads/2013-03_SIABudget2013_Final.pdf.

¹³ See *Report of the UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona* to the Human Rights Council, 11 March 2013, available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/117/94/PDF/G1311794.pdf?OpenElement>.

¹⁴ See note 13.

When the participation of people living in poverty is not actively sought and facilitated, they are not able to participate in decision-making and their needs and interests are not taken into account when policy is designed and implemented. This exacerbates their exclusion and often perpetuates the privilege of elites who are able to influence policy directly, or of groups such as the middle class who have a considerable voice in the media or other public spaces. Lack of participation in decision-making and in civil, social and cultural life is thus recognized by the international community as a defining feature and cause of poverty, rather than just its consequence.¹⁵

In last year's pre-Budget submission, FLAC quoted the Council of Europe Commissioner for Human Rights, Nils Muižnieks, who recommended that governments refer any budgetary proposals to National Human Rights Structures (NHRS).¹⁶ In light of the new Irish Human Rights and Equality Commission, it is essential that such a structure is involved in any budgetary decisions to ensure that such measures comply with the State's international legal obligations.

Recommendations:

- 1. The Government should refer to National Human Rights Structures including the new Irish Human Rights and Equality Commission for advice on the budgetary impact of its policies and austerity measures on groups susceptible to poverty.**
- 2. Social impact assessments should include a meaningful and effective consultation with people experiencing poverty or groups who are likely to be impacted by proposed budgetary measures.**
- 3. Social impact and poverty impact assessments should be carried out and considered by the whole of Government before budgetary decisions are finalised to assess any potential negative consequences.**

Right to an Adequate Standard of Living

The right to an adequate standard of living is guaranteed in a number of international human rights instruments including Article 25 of the Universal Declaration of Human Rights; Article 34 of the EU Charter of Fundamental Freedoms which "respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources" and Article 13 of the European Social Charter which affords the right to be "granted adequate assistance". The UN Special Rapporteur on Human Rights and Extreme Poverty has stressed that a State's obligation to provide "minimum essential levels of non-contributory social protection" are a legal obligation rather than a policy option.¹⁷

¹⁵ See note 13.

¹⁶ Comment by Nils Muižnieks, Council of Europe Commissioner for Human Rights, published on 31 May 2012 - *National Human Rights Structures can help mitigate the effects of austerity measures* available online at: <http://humanrightcomment.org/2012/05/31/nhrs/> quoted in FLAC Pre-Budget Submission 2013 available at: http://www.flac.ie/download/pdf/pre_budget_submission_2013_september_2012_final.pdf.

¹⁷ See Sepúlveda and Nyst, *Human Rights Approach to Social Protection*, available online at: <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>.

This publication was published by the Ministry of Foreign Affairs of Finland.

The research carried out by the Vincentian Partnership for Social Justice on the right to a basic minimum income has been informative and instrumental in defining the necessary expenditure necessary to ensure an adequate standard of living in Ireland.¹⁸ The fact that almost 25 per cent of the population in 2011 experienced two or more types of enforced deprivation¹⁹ suggests that more must be done to ensure a minimum income standard.

FLAC welcomes the principle of including minimum income guidelines in relation to the Personal Insolvency Act.²⁰ While these guidelines are not overly generous, they at least demonstrate recognition on the part of the authorities that a person must maintain a minimum level of subsistence which allows a person to live in basic dignity. These levels are modest but are still set higher than the accepted threshold that the State itself has set as a “basic minimum income” in the form of Supplementary Welfare Allowance (SWA).

However, this is at odds with a decision to amend s.341 of the Social Welfare (Consolidation) Act 2005 to allow for increased powers of recovering overpayments. The amendment allows the Department of Social Protection to recover an amount up to 15 per cent of a person’s weekly payment without his or her written consent or more with their written consent. This may push some social welfare recipients below the level which is accepted as a basic minimum income. Previously, the Department could not recover an amount which would result in a person receiving less than the basic Supplementary Welfare Allowance rate.²¹

Recommendation:

- 4. The Department of Social Protection should ensure that there is a minimum income standard in place to ensure that every person can live a life of dignity free of financial hardship.**
- 5. No attempt to recover monies from a person should result in the reduction of a person’s income below the minimum subsistence level set by the State.**

The Social Welfare Appeals Process

In October 2012, FLAC published its report - *Not Fair Enough*²² - calling for the reform of the social welfare appeals system. The report analysed the appeals system from a human rights perspective and concluded that the Social Welfare Appeals Office is not sufficiently independent; its processes are not adequately transparent and due to lengthy delays it does not constitute an effective remedy.

While there has been an overall reduction of 10.2 weeks in processing times, appellants still experience significant delays. The processing time for an oral hearing has fallen from 52.5 weeks in 2011 to 39.5 weeks in 2012 but delays have risen from 25.1 weeks in 2011 to 27.8 weeks in 2012 in relation to those decided on the

¹⁸ See www.budgeting.ie.

¹⁹ See Central Statistics Office data on *Survey on Income and Living Conditions: 2011 & revised 2010 results* available online at: <http://static.rasset.ie/documents/business/income-living-cso.pdf>.

²⁰ See *FLAC Statement on Launch of Insolvency Service of Ireland* available online at:

<http://www.flac.ie/news/2013/04/18/statement-on-launch-of-insolvency-service-of-ireland/>.

²¹ For further details see *FLAC and NCLC: Submission on Social Welfare Bill 2012* available online at:

http://www.flac.ie/download/pdf/flac_and_nclc_submission_on_social_welfare_bill_2012_final.pdf.

²² *Not Fair Enough: Making the case for reform of the social welfare appeals system* (2013) available online at: http://www.flac.ie/download/pdf/not_fair_enough_final.pdf.

written evidence only. Notably the statistics consistently demonstrate that a person who is granted an oral hearing has a much better chance of success with 53 per cent of all oral hearings resulting in a positive decision compared to only 31 per cent success rate for summary decisions.²³

- 6. *The social welfare appeals process should be transparent, fair and efficient to make certain that people can assert their rights and entitlements in a fair and timely fashion.***
- 7. *The Appeals Office should carry out an audit of its procedures to ensure the optimum use of available resources and the outcomes of the audit should be made public.***

The Habitual Residence Condition and Social Welfare Appeals

In February 2013, the European Commission against Racism and Intolerance (ECRI), a human rights body of the Council of Europe which monitors issues related to racism, discrimination and xenophobia, issued its fourth country report on Ireland.²⁴ ECRI recommended that clear rules be published for the application of the Habitual Residence Condition (HRC) as well as calling for the publication of Social Welfare Appeals Office decisions in cases involving the Condition, highlighting the importance of access to this type of information. This recommendation echoes FLAC's proposal to make available important decisions which clarify a point of law or policy.²⁵

FLAC was involved in a 15-month EU Commission funded Tri-City project on EU migrants' access to special non-contributory benefits with the Aire Centre and a Dutch consultant. The aim of the project was improve the information that EU migrants in Amsterdam, Dublin and London have about their right to access special non-contributory benefits. The final project report *Welfare Benefits for Marginalised EU Migrants*²⁶ concluded that "the right to reside and habitual residence conditions in the UK and Ireland are arguably inconsistent with the scheme and objectives of Regulation 883/2004" as "they impose additional residence requirements that go beyond the habitual residence condition in Regulation 883/2004". The report called on Member States to make a database of decisions publicly available as well as highlighting that Regulation 883/04 "provides for a distributive system of habitual residence, where one (and only one) Member State is the State of habitual residence of any citizen resident in the Union". The EU Commission has since issued infringement proceedings against the UK for incorrect application of EU social security law and imposing a right to reside test on EU nationals for certain payments.²⁷

²³ Figures are taken from a document supplied by the Chief Appeals Officer to the Joint Oireachtas Committee on Social Protection in February 2013. For a transcript of the committee hearing see: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/EDJ2013022000003?opendocument#C00200>.

²⁴ The ECRI report on Ireland is available online at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf>.

²⁵ See FLAC's *Not Fair Enough: Making the case for reform of the social welfare appeals system* (2013) available online at: http://www.flac.ie/download/pdf/not_fair_enough_final.pdf.

²⁶ The report is available online at: http://eubenefitsadviser.org/wp-content/uploads/2013/03/AIRE_ECSS_FINAL-REPORT.pdf.

²⁷ See European Commission press release available online at: http://europa.eu/rapid/press-release_IP-13-475_en.htm.

The Chief Appeals Officer has also highlighted the impact of the Habitual Residence Condition in her 2011 annual report. She noted the shift in the background of people appealing social welfare refusals on the ground of the Habitual Residence Condition. She noted that in previous years asylum seekers had mostly appealed decisions following the introduction of the Condition to “an increasing number of EU nationals... giving rise to different issues”. The Appeals Office also referred to the “additional complexity” caused by the “right to reside” condition as well as the “potential for over reliance on an employment record in determining the HRC” and that Deciding Officers must be conscious that a person’s centre of interest may be in fact be in Ireland even when his or her immediate family is living in another State. This is particularly relevant in the case of EU workers.

Recommendations:

- 8. The Department of Social Protection and the Social Welfare Appeals Office should implement the recommendations by ECRI, FLAC and the Tri-City Project to make important decisions, particularly on the Habitual Residence Condition, publicly available.***
- 9. If the State determines that another EU Member State is the EU citizen’s habitual residence, then it should notify the other State to determine between them which one is responsible for the payment of any social welfare benefits.***