

## **Introduction**

FLAC (Free Legal Advice Centres) made a submission to the UPR process in March 2011<sup>1</sup> and is a member of the Cross Sectoral Steering Group of the *Your Rights, Right Now* campaign and has endorsed that campaign's report. FLAC welcomes the publication of the State's National Report in advance of Ireland's examination under the Universal Periodic Review in October 2011. The following observations arise from a reading of the State's report in matters of particular concern to FLAC.

### **Civil Legal Aid**

(Paragraph 15 of the state report)

The government report sets out that “[l]egal aid is also available for certain civil cases” but fails to note that the state funded civil legal aid scheme excludes a number of areas of law from its ambit, which is set out by the Civil Legal Aid Act 1995<sup>2</sup>; for example a person cannot get legal aid in a case claiming defamation or a dispute concerning rights and interests over land. The Legal Aid Board is also prohibited from providing representation before the Employment Appeals Tribunal or the Social Welfare Appeals Office.

The UN Independent Expert on Human Rights and Extreme Poverty, following her official visit to Ireland in January 2011, has recommended that the Board extend legal representation before these bodies as it “is vital for those living in poverty”<sup>3</sup>. She also expressed concern that areas of law relating to “eviction proceedings and local authority housing issues” are excluded from the Act.

The national report also refers to “a waiting time for an appointment with a solicitor” but does not elaborate on the extent of this waiting time. This has increased enormously in recent years. FLAC believes that this waiting time is due to a lack of adequate staff and resources allocated to the scheme's administrator, the Legal Aid Board, as well as a rise in the demand for services with more people unable to afford private representation. FLAC raised this concern in its submission to the UPR. However, according to the latest statistics available for June 2011, a timely service is not being provided for many, with more than 3,800 people waiting for a first appointment at a law centre despite qualifying on the grounds of low income. Waiting times are exceeding the Legal Aid Board's own target of two to four months in 14 State-run centres.

### **Cuts to Human Rights and Equality Infrastructure**

(Paragraphs 39 – 60 of the state report)

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<sup>1</sup> FLAC Submission to the UPR available at [http://www.flac.ie/download/pdf/flacs\\_submission\\_to\\_the\\_upr.pdf](http://www.flac.ie/download/pdf/flacs_submission_to_the_upr.pdf)

<sup>2</sup> For a full list of exclusions see <http://www.flac.ie/gethelp/legalaidexplain/whatiscivillega.html>

<sup>3</sup> Page 4, full report of Magdalena Sepúlveda, UN Independent Expert on Human Rights and Extreme Poverty, Mission to Ireland available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf)

While the national report states that the “Government recognises the importance of independent complaints, monitoring and inspection bodies” and lists the various institutions established, it does not address the continuing issue of budget cuts which have affected the ability of these bodies to carry out their work in an effective manner. Magdalena Sepúlveda, in her report on her visit to Ireland, stated that the

“...cuts have substantially reduced Ireland’s capacity to protect the most disempowered segments of Irish society at a time when they are particularly susceptible to violations of their rights, and will have a negative impact on their enjoyment of economic, social and cultural rights in the long-term”.<sup>4</sup>

She recommended that the government provide the bodies with “adequate resources to enable them to efficiently and effectively exercise their duties and functions”.<sup>5</sup>

### **Transgender Issues**

(Paragraph 92 of the state report)

Since the publication of the national report, the Minister for Social Protection has launched the report of the Gender Recognition Advisory Group<sup>6</sup>. The group was convened in 2010 to address the implications of the Foy case which found the State’s failure to provide Lydia Foy with a birth certificate in her acquired gender to be incompatible with the European Convention on Human Rights. FLAC welcomes the proposals to introduce legislation for gender recognition and “the fact that the report recommends against any requirement that major surgery would be required as a pre-condition of legal recognition”. However, FLAC remains concerned about the proposal in the report that a transgender person who is already married would have to divorce to secure recognition of her/his acquired gender<sup>7</sup>. The government has committed to prioritise this legislation so it is hoped that it will be enacted as a matter of urgency.

### **Social security and the right to an adequate standard of living**

(Paragraphs 101 – 103 of the state report)

The national report makes a welcome government commitment to protecting the vulnerable by reference to comprehensive supports in the social welfare system. It is noted that those supports are available to those who are “habitually resident” in Ireland. The report fails to mention the complexity and difficulties for vulnerable groups in the manner in which habitual residence is decided. The negative impact of the Habitual Residence

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<sup>4</sup> Sepúlveda, above, n.2, at p.5

<sup>5</sup> Sepúlveda, above, n.2, at p.5

<sup>6</sup> Available at <http://www.welfare.ie/EN/Policy/Legislation/Pages/gragreportjune11.aspx>

<sup>7</sup> FLAC press release available at <http://www.flac.ie/news/2011/07/14/flac-welcomes-transgender-report-and-ministers-commitment-to-change-the-law/>

Condition on certain vulnerable groups is of “utmost concern” to the Independent Expert as she feels it

“...represents a considerable obstacle for members of vulnerable groups, particularly people experiencing homelessness, Travellers, asylum-seekers and refugees, migrant workers and returning Irish migrants, to access services to which they are entitled. Any unfair exclusion from the protection of social transfers is unacceptable from a human rights perspective.”<sup>8</sup>

Even the Department of Social Protection’s own guidelines to staff recognise that “an unduly harsh application of the habitual residence condition could be unlawful”.<sup>9</sup>

The state report refers to a “universal Child Benefit scheme” but it fails to mention that this payment is not universally available to parents of all children living in Ireland. The application of the Habitual Residence Condition as an extra qualifying criterion for the Child Benefit payment means that it cannot be referred to as a universal payment. The effect of the application to only those who meet this condition effectively discriminates between children on the basis of their parents’ immigration status. Parents may have to wait for many years for a determination of an application for protection and/or residence.

The state report refers to the Social Welfare Appeals Office, a quasi-judicial tribunal which does not currently operate on an independent statutory basis. The Annual Report of the Department of Social Protection refers to the Social Welfare Appeals Office as “an office of the Department” and despite the fact that it is described as “independent”, Social Welfare Appeals Officers are appointed by the Minister of Social Protection and serve at her pleasure. The former Chief Social Welfare Appeals Officer argued that there was a need to consider “providing statutory independence for the Social Welfare Appeals Office.” While he stated that the Appeals Officers are statutorily appointed and “undertake their function of determining appeal cases in an independent manner”, he recognised that in relation to the Office, appellants:

“...must have confidence in its independence and its ability to carry out its role independently of those responsible for the decision being appealed. If that confidence is not there, the role of the appeals service is diminished and weakened.”<sup>10</sup>

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<sup>8</sup> Sepúlveda, above, n.2, at p.12

<sup>9</sup> Department of Social Protection, (2011), *Operational Guidelines for Deciding Officers on determination of the Habitual Residence Condition* available at <http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx>

<sup>10</sup> Social Welfare Appeals Office Annual Report 2007 available at: <http://www.socialwelfareappeals.ie/pubs/annreps/annrep07.pdf>

FLAC is also concerned about potential inconsistency in decision making and the lack of fair procedures in relation to the Social Welfare Appeals Office through the failure of the Office to publish its previous decisions and to make prior relevant decisions available to appellants. Only a selection decided by the Office is published in the Annual Report of the Office.

**Migrants, refugees and asylum seekers**  
(Paragraphs 141 – 145 of the state report)

The Government has stated that it will introduce legislation to update the current law pertaining to immigration and protection in the State. However, as FLAC previously pointed out in its briefing paper to the UN Independent Expert on Human Rights and Extreme Poverty,

“Both areas [immigration and protection] need to be addressed in updated legislation but they must not be put together in the same statute. The focus of refugee law is the protection of an individual from persecution in his or her country of origin whereas provisions dealing with general immigration matters are primarily concerned with the State’s security and entrance to and permission to remain in the State for non-Irish citizens.”<sup>11</sup>

The urgent need for a single procedure to determine claims for protection has been highlighted by the Dublin office of the United Nations High Commissioner for Refugees in order,

“[t]o ensure that all people have access to a comprehensive protection determination system and to address a principal reason for long stays in direct provision and the burden this places on individuals and the State...”<sup>12</sup>

The UN Committee Against Torture also expressed concern about the delays in the asylum system and in light of recent statistics, it recommended that the state “should investigate the increased drop in positive determinations for refugee status to ensure that applications are processed following due process<sup>13</sup>.” The recognition rate for asylum applications in Ireland fell to 1.1 per cent in 2010<sup>14</sup>.

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<sup>11</sup> See FLAC briefing to UN Independent Expert on Human Rights and Extreme Poverty at p.11 available at [http://www.flac.ie/download/pdf/briefing\\_for\\_un\\_independent\\_expert\\_on\\_human\\_rights\\_and\\_extreme\\_poverty\\_january\\_2011.pdf](http://www.flac.ie/download/pdf/briefing_for_un_independent_expert_on_human_rights_and_extreme_poverty_january_2011.pdf)

<sup>12</sup> UNHCR statement available at [http://www.unhcr.ie/feb\\_statement\\_2011.html](http://www.unhcr.ie/feb_statement_2011.html)

<sup>13</sup> Concluding Observations of UN Committee Against Torture available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>

<sup>14</sup> Smyth, Jamie, “Refugee Figures at Record Low”, *Irish Times*, 4 July 2011 <http://www.irishtimes.com/newspaper/breaking/2011/0704/breaking59.html>

While the number of people seeking protection in the state continues to decrease, the number of people completing the asylum process and leaving direct provision accommodation does not reflect this reduction. In 2010, the Office of the Refugee Applications Commissioner received 1939 applications, almost 28 per cent less than in 2009<sup>15</sup>. However, at the end of 2010, the number of direct provision residents represented almost three times the number of people who sought asylum in the same year: in December 2010 there were 5615 residents representing only a six per cent decrease in the number of people accommodated by the state in direct provision at the end of 2009<sup>16</sup>.

Following her visit which included visits to a number of direct provision centres, the UN Independent Expert for Human Rights and Extreme Poverty has called

“...on the Government to quickly adopt a single procedure for determining refugee and subsidiary protection claims, with strong protection elements, and to ensure that asylum-seekers enjoy the full range of economic, social and cultural rights, including the right to work.”<sup>17</sup>

FLAC is concerned that although the introduction of an efficient and fair single procedure should reduce the number of people living in the direct provision system as well as reduce the amount of time a person will spend in that system, the new system will not apply to those who have already made applications for protection. It is therefore important that a review of the direct provision system is carried out as recommended by the UN Committee on the Elimination on all forms of Racial Discrimination to “improve the living conditions of asylum seekers by providing them with adequate food, medical care and other social amenities.”<sup>18</sup>

## **Conclusion**

FLAC reiterates that the State must see the UPR 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.

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<sup>15</sup> 2010 Report of the Office of the Refugee Applications Commissioner available at <http://www.orac.ie/pdf/PDFCustService/AnnualReports/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%20Annual%20Report%20-%202010.pdf>

<sup>16</sup> See [www.ria.gov.ie](http://www.ria.gov.ie) for monthly statistics for direct provision centres

<sup>17</sup> Sepúlveda, above, see n.2 at p.21

<sup>18</sup> See Concluding Observations of UN CERD on Ireland’s 3<sup>rd</sup> and 4<sup>th</sup> periodic review at p.4 available at [http://www2.ohchr.org/english/bodies/cerd/docs/co/Ireland\\_AUV.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/co/Ireland_AUV.pdf)