



Submission to inform the implementation of the Irish Human Rights and Equality Commission's Strategy Statement 2016-18

A submission by FLAC to the Irish Human Rights and Equality Commission

FLAC, October 2015

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. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly 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 Policy

Towards achieving our 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>

For **more information**, contact us at:

FLAC,
13 Lower Dorset Street, Dublin 1
01-8873600 | info@flac.ie | www.flac.ie | fb.me/flacireland | [@flacireland](https://twitter.com/flacireland)

Introduction

FLAC welcomes the opportunity to contribute to the implementation of the Irish Human Rights and Equality Commission's first Strategy Statement 2016-2018. FLAC is pleased to note the considerable efforts of the Irish Human Rights and Equality Commission (IHREC) to engage with all relevant stakeholders in preparing the Statement, including through the organisation of public consultations throughout the country. This form of proactive outreach is important and should be continued as IHREC moves forward.

In this submission, FLAC intends to outline potential work which IHREC could undertake to most effectively deliver on Goal 1, Goal 2 and Goal 3.

Goal 1: Leadership

- *Assist the State in progressing towards ratification of international human rights treaties which it has signed.*

In Irish treaty practice, the State must be in a position to meet the obligations it assumes under the terms of an international agreement from the moment it enters into force.¹ Therefore, before ratifying an international human rights treaty, the State may be required to take certain steps to align domestic laws, policies and practices with international human rights standards. Where it is determined that steps must be taken, such as enactment of legislation, it is common for the Government to sign an international instrument subject to ratification.²

In considering what steps have to be taken prior to ratification, the State will engage in consultations with relevant Government departments and consider all relevant issues. For example, the State has informed that ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will take place only once all the issues have been examined, obligations screened and appropriate consultations have been held with all relevant Government departments.³

To ensure leadership in the promotion and protection of human rights, FLAC suggests that IHREC assist the State in progressing towards ratification of those international human rights instruments which Ireland has signed but not yet ratified. IHREC could assist relevant Government departments in determining what the relevant issues are, the implications of ratification and the scope of the

¹ For more information see <https://www.dfa.ie/our-role-policies/international-priorities/international-law/treaties/> [last accessed 8 October 2015].

² Ireland has signed, but has yet to ratify, a number of international human rights instruments including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

³ *Universal Periodic Review, Ireland, Mid-Term report*, para. 107.4, available at http://lib.ohchr.org/HRBodies/UPR/Documents/session12/IE/Ireland_mid-termReview.doc [last accessed 8 October 2015].

obligations they are assuming. IHREC could also help in identifying which laws, policies and practices, if any, are inconsistent with the international human rights instrument the State intends to ratify. Such assistance could be facilitated through the Inter-Departmental Committee on Human Rights, which was established to, *inter alia*, assist in progressing towards the ratification of international human rights treaties.⁴

Goal 2: Pro-active approach to monitoring and compliance

- *Prioritisation of the Legal Aid Board and the Social Welfare Appeals Office in IHREC's public sector duty work*

FLAC notes that the Irish Human Rights and Equality Commission Act 2014 places a positive obligation on all Government departments and public bodies to be human rights and equality compliant.⁵ Article 42(3) provides that IHREC can, in order to assist public bodies to perform their functions in a manner consistent with this duty, give guidance to and encourage public bodies in developing policies of, and exercising, good practice and operational standards in relation to, human rights and equality.⁶ FLAC would like to see two public bodies prioritised under Article 42(3), namely the Social Welfare Appeals Office and the Legal Aid Board, given the importance of both in realising the right of access to justice.

Since its establishment, FLAC has campaigned for a fairer and more accessible civil legal aid system. It is FLAC's view that Ireland's restrictive legal aid scheme in civil matters, which is administered by the Legal Aid Board, is one of the main obstacles to achieving progress on human rights and equality-related issues. Legal aid enables vulnerable and marginalised groups, in particular those on low incomes, to access justice and to assert their basic human rights effectively.

Since the onset of the recession in particular, the Government has sought to narrow the pool of people eligible for the Legal Aid Board's services. Minimum contributions for legal aid and advice have increased by 200% and 160% respectively.⁷ The threshold for assessment of capital has also been significantly reduced, with the inevitable effect of excluding from the scheme some individuals who are on very low incomes but who possess valuable assets, such as land and machinery.⁸ Furthermore, changes to the waiver system have made it more difficult for applicants to have their contributions waived or reduced.⁹ As a result of these measures, affordable legal assistance for many is now out of reach.

⁴ Department of Foreign Affairs and Trade (2015) *The Global Island – Ireland's Foreign Policy for a Changing World*, Dublin: DFAT, p.36.

⁵ Article 42(1) of the Irish Human Rights and Equality Act 2014.

⁶ Article 42(3) of the Irish Human Rights and Equality Act 2014.

⁷ The Civil Legal Aid Regulations 2013 (S.I. No. 346/2013) increased the minimum contribution payable for legal advice from €10 to €30 and for legal aid from €50 to €130.

⁸ Section 3(a) of the Civil Legal Aid Regulations 2013 (S.I. No. 346/2013) reduced the capital threshold from €320,000 to €100,000.

⁹ Previously, the Legal Aid Board could provide legal aid without reference to an applicant's resources, or could waive any contribution payable or accept a lower contribution. However, the Civil Law (Miscellaneous

Additionally, applicants are encountering severe difficulties in accessing legal services in a timely manner. Under the triage system, applicants are supposed to have a short consultation with a solicitor within the first month of applying for legal services. Statistics released by the Legal Aid Board for June 2015 show that 25 of the 30 Law Centres had waiting times of two months or more for this initial contact.¹⁰ The longest waiting times for a first appointment currently stand at a maximum waiting time of 25 weeks in Clondalkin, with Letterkenny presently having a maximum waiting time of 21 weeks.¹¹ These delays mean that people on low incomes who are deemed eligible for state-subsidised legal services are being denied effective access to justice.

Another key barrier to progressing human rights and equality is the narrow remit of the Legal Aid Board. The Board is precluded from providing legal aid in cases related to social welfare, employment and most housing issues, in particular eviction proceedings and issues related to local authority housing. These issues disproportionately affect vulnerable and marginalised groups, and have done so to an even greater extent during the recession. As a result, individuals without the financial means to pay for a private lawyer must self-represent before quasi-judicial tribunals such as the Social Welfare Appeals Office and the Workplace Relations Commission.

The exclusion of these areas from the remit of the Legal Aid Board raises questions regarding Ireland's compliance with international human rights law. During Ireland's June 2015 review under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Committee on Economic, Social and Cultural Rights expressed concern regarding "the lack of free legal aid services" available in Ireland which, in their view, "prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies".¹² The UN Independent Expert on Human Rights and Extreme Poverty, voiced similar concerns, noting that "several areas of the law that are particularly relevant for people living in poverty...are not included in the [Civil Legal Aid] Act".¹³ Both recommended that the Legal Aid Board's remit be broadened.

Another area of FLAC's core work is social welfare law reform. Social welfare benefits provide a social security net for vulnerable and marginalised groups¹⁴ and play an important role in supporting

Provisions) Act 2008 amended Section 29(2) of the Civil Legal Aid Act 1995 to provide that a contribution can only be waived or a lower contribution accepted where failure to do so would cause "undue hardship".

¹⁰ Legal Aid Board (2015) *Law centre applications and waiting times – June 2015*, available at [http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/c356d41b03e14aed80257e90003e7280/\\$FILE/June%202015.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/c356d41b03e14aed80257e90003e7280/$FILE/June%202015.pdf) [last accessed 8 October 2015].

¹¹ Legal Aid Board (2015) *Law centre applications and waiting times – June 2015*, available at [http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/c356d41b03e14aed80257e90003e7280/\\$FILE/June%202015.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/c356d41b03e14aed80257e90003e7280/$FILE/June%202015.pdf) [last accessed 8 October 2015].

¹² 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.

¹³ 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.

¹⁴ 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 realisation of many of the rights protected under ICESCR.¹⁵ FLAC promotes greater fairness, consistency and transparency in the administration of the welfare system.

Research conducted by FLAC has found that the social welfare appeals system does not conform to domestic and international standards of fair procedures.¹⁶ For instance, the Social Welfare Appeals Office does not satisfy the requirements of actual and perceived independence as it does not have statutory independence and Appeals Officers are appointed by the Minister for Social Protection and may be re-deployed to other sections of the Department.

Problems also arise in relation to equality of arms. Appellants are frequently unaware of their right to access their social welfare files. In addition, there is no right to an oral hearing in appeals cases. Instead, an oral hearing is granted at the discretion of the Appeals Officer. Furthermore, major issues exist in relation to transparency and consistency in decision-making. Decisions of Appeals Officers are not publicly accessible, which means that anyone taking an appeal is forced to work within a knowledge vacuum.¹⁷ Concerns regarding consistency in appeals decision-making are shared by the UN Committee on Economic, Social and Cultural Rights¹⁸ as well as the UN Independent Expert on Extreme Poverty.¹⁹

For all these reasons, FLAC would like to see both the Social Welfare Appeals Office and the Legal Aid Board as key frontline access to justice bodies prioritised in IHREC's future work on the new public sector human rights and equality duty.

¹⁵ UN Committee on Economic, Social and Cultural Rights (2008) *General Comment No.19 – the right to social security (art.9)*, Geneva: OHCHR, p.9.

¹⁶ Free Legal Advice Centres (2012) *Not Fair Enough: Making the case for the reform of the social welfare appeals system*, Dublin: FLAC, p.70.

¹⁷ Northside Community Law Centre (2005) *The Social Welfare Appeals System: Accessible & Fair?*, Dublin: NCLC, p.19.

¹⁸ The Committee on Economic, Social and Cultural Rights expressed concern at the large number of social welfare appeals owing to the lack of clear understanding and consistent application of the eligibility criteria. (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.).

¹⁹ The UN Independent Expert on Extreme Poverty called for the transparency of the social protection system to be enhanced so that beneficiaries have access to clear information about the criteria and process by which decisions are made. Accordingly, the Independent Expert recommended that the decisions of the Social Welfare Appeals Office be published in a form which allows for broad dissemination and understanding among existing and potential beneficiaries. (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.12.).

Goal 3: Interdependence of civil, political, economic, social and cultural rights

- *Assisting in the dissemination of the concluding observations of the UN Committee on Economic, Social and Cultural Rights*

In advance of Ireland's third examination under ICESCR, FLAC coordinated a civil society report to the Committee on Economic, Social and Cultural Rights, entitled *Our Voice, Our Rights*.²⁰ The report and its update assessed the Government's progress in realising a range of basic human rights including health, education, housing, decent work, social security and culture. Following Ireland's examination, the Committee issued a series of strong Concluding Observations to the Government, recommending action across a number of policy areas.

The Committee also requested that the Government disseminate its concluding observations widely among all levels of society, in particular among Government officials, members of Parliament, judicial authorities and civil society organisations.²¹ Given the role of National Human Rights Institutions in engaging with a wide range of stakeholders and increasing public awareness about human rights²², FLAC suggests that IHREC could play an important role in assisting the Government to disseminate these important findings. FLAC observes that IHREC has a number of tools at its disposal to address this issue, such as the provision of information to the public on the promotion and protection of human rights as well as the delivery of human rights training to officials in the civil and public service.

- *Greater role for IHREC in the budgetary process*

In recent years, FLAC has advocated for a human rights based approach to budgeting.²³ It is FLAC's view that human rights principles should underpin the budgetary process. In other words, the budget-making process should ensure a sufficient level of transparency, participation and accountability. Similar views were expressed by the UN Independent Expert on Human Rights and Extreme Poverty during her 2011 visit to Ireland.²⁴ According to the Independent Expert, failure to ensure transparency, participation and accountability jeopardises the State's ability to respond to its

²⁰ For more information see Free Legal Advice Centres (2014) *Our Voice, Our Rights – a parallel report in response to Ireland's Third Report under the International Covenant for Economic, Social and Cultural Rights*, Dublin: FLAC.

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.38.

²² UN General Assembly (1993) *Principles relating to the Status of National Institutions (The Paris Principles)*, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx> [last accessed 8 October 2015].

²³ For more information see FLAC's *Briefing note on A Human Rights Approach to Budgeting* available at http://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf [last accessed 7 October 2015].

²⁴ 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.10.

human rights obligations, undermines the effectiveness of budgetary adjustment policies and prevents the needs of those who are most marginalised from being taken into account.²⁵

In Ireland, avenues for participation in budgetary decision-making are limited. The Department of Social Protection organises a pre-budget forum, certain Government departments accept pre-budget submissions and some Oireachtas Committees allow civil society representatives to deliver pre-budget presentations²⁶. However, FLAC would like to see more opportunities for participation in budgetary processes and decisions. The direct input of civil society and other relevant stakeholders, particularly those who are directly affected by policy decisions, provides crucial value to the political decision-making process, enhancing the quality, understanding and longer-term applicability of the policy initiative.²⁷

With this in mind, FLAC suggests that IHREC could seek a greater participatory role in budget decision-making. The Equality and Human Rights Commission in Scotland has been very active in this regard and provides evidence of good practice. The Commission consistently advocates for a human rights-based approach to policy-making and budgeting. The Commission is also represented on the Equality and Budget Advisory Group, a body comprised of Government, civil servant and civil society representatives, which regularly provides advice to the Government on the human rights and equality implications of budgetary decisions across all policy areas.²⁸

Furthermore, according to the Committee on Economic, Social and Cultural Rights, another element lacking from Ireland's policy-making process is human rights and equality impact assessments.²⁹ In Ireland, while there is an obligation on all Government departments and public bodies to undertake Social Impact Assessments, only the Department of Social Protection makes its assessment publicly available. Given the impact of budgetary decisions on the promotion and protection of economic, social and cultural rights, FLAC suggests that IHREC could play an important role in analysing budgetary decisions through a human rights lens.

Analysing budgets is particularly relevant for monitoring efforts towards the progressive realisation of ESC rights, including the extent to which the most efficient use is made of the available

²⁵ 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.10.

²⁶ For example, the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, the Committee on Health and Children and the Committee on Education and Social Protection conduct pre-budget hearings.

²⁷ Conference of INGOs of the Council of Europe (2009) *Code of Good Practice for Civil Participation in the Decision-Making Process*, Kyiv: INGO, p.5.

²⁸ For more information see:

<http://www.gov.scot/Topics/People/Equality/18507/13477/EqualityandBudgetAdvisoryGroup> [last accessed 7 October 2015].

²⁹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

resources.³⁰ Other benefits include helping to identify certain measures which may need to be taken to more effectively benefit specific groups and to avoid or mitigate particular negative impacts.

Such a task would seem to fit within IHREC's mandate, given the role of National Human Rights Institutions (NHRIs) in scrutinising existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights.³¹ National Human Rights Institutions also have the scope to identify national level benchmarks against which the realisation of Covenant obligations can be measured.³² Guidance produced by the UN Office of the High Commissioner for Human Rights on human rights indicators may be relevant in this regard.³³

³⁰ Office of the High Commissioner for Human Rights (2008) *Frequently Asked Questions on Economic, Social and Cultural Rights*, Geneva: OHCHR, p.33.

³¹ UN Committee on Economic, Social and Cultural Rights (1998) *General Comment No.10 - The role of national human rights institutions in the protection of economic, social and cultural rights*, Geneva: OHCHR, p.2.

³² UN Committee on Economic, Social and Cultural Rights (1998) *General Comment No.10 - The role of national human rights institutions in the protection of economic, social and cultural rights*, Geneva: OHCHR, p.2.

³³ For more information see Office of the High Commissioner for Human Rights (2012) *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva: OHCHR.