

# Our Voice, Our Rights

a parallel report in response to Ireland's  
Third Report under the  
International Covenant on  
Economic, Social and Cultural Rights

Submitted by FLAC

November 2014

“Where, after all, do universal human rights begin?

In small places, close to home - so close  
and so small that they cannot be seen on  
any maps of the world. Yet they are the  
world of the individual person; the  
neighborhood he lives in; the school or  
college he attends; the factory, farm, or  
office where he works. Such are the places  
where every man, woman, and child seeks  
equal justice, equal opportunity, equal  
dignity without discrimination. Unless these  
rights have meaning there, they have little  
meaning anywhere. Without concerted  
citizen action to uphold them close to home,  
we shall look in vain for progress in the  
larger world.”

— Eleanor Roosevelt, 1958.

# Our Voice, Our Rights

## A Parallel Report

in response to Ireland's Third  
Report under the International  
Covenant on Economic, Social  
and Cultural Rights

submitted by FLAC to the  
UN Committee on Economic, Social &  
Cultural Rights

November 2014



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## Preface

FLAC (Free Legal Advice Centres) is an independent human rights organisation which exists to promote equal access to justice for all. We recognise that human rights are fundamental to everyone and permeate all areas of law and one of our key aims is to advance international and national standards that promote human rights. The Irish State signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989 and is now due to undergo its third examination by the Committee on Economic, Social and Cultural Rights in June 2015. It is with this important event in mind that FLAC coordinated a Shadow or Parallel Report on how the State is meeting its obligations under the Covenant.

In compiling this report, FLAC consulted with other civil society organisations and interested individuals. This Parallel Report represents a range of issues which FLAC believes have not been adequately covered by the Irish State Report. It covers the period from 2002 to mid-September 2014 and examines issues arising under each of the different Covenant Articles where relevant. While this report endeavours to provide the Committee with as much evidence and detail as possible, the lack of available disaggregated data in a number of areas is apparent and means that a complete overview is not possible.

In May 2014, FLAC held a series of consultations in Dublin, Cork and Galway to determine the key issues arising on the ground in relation to the rights protected under the Covenant. These included two thematic consultations on the right to social security (Article 9) and the right to housing (Article 11). Twenty-three civil society organisations made initial written submissions to FLAC which informed a draft report which was circulated to a wide range of civil society organisations for comment. A final consultation was held in Dublin on 15 September 2014 with 27 representatives from 21 organisations. More than 20 organisations submitted additional information and feedback to be included in the final report.

FLAC is grateful to our advisory group comprising experts who provided advice and guidance throughout the compilation process: Professor Gerry Whyte, Trinity College Dublin (chair); Mike Allen, Focus Ireland; Michael Farrell, FLAC; Dr Eilionóir Flynn, Centre for Disability Law & Policy, NUI Galway; Dr Aoife Nolan, University of Nottingham; Brian Ruane, Centre for Human Rights and Citizenship Education, St Patrick's College Drumcondra; Dr Liam Thornton, University College Dublin. Our sincere thanks go also to the Children's Rights Alliance which was commissioned to conduct the report research, led by Project Manager Saoirse Brady.

On behalf of those who contributed to and supported this report and on our own part, FLAC submits this Parallel Report to the Committee on Economic, Social and Cultural Rights.



## List of organisations contributing to the Parallel Report:

Abortion Rights Campaign  
Age Action  
Alzheimer Society of Ireland  
ATD Ireland  
Atheist Ireland  
Ballymun Community Law & Mediation Centre  
Barnardos  
Blue Drum  
Children's Rights Alliance  
Ciara Murray  
Coalition of Mother and Baby Homes  
Survivors (CMABS)  
Community Action Network  
Community Law & Mediation  
Cork Women's Right to Choose Group  
Crosscare  
Domestic Violence Response  
European Anti-Poverty Network  
ESC Rights Initiative  
Equality & Rights Alliance  
Fighting Words  
FLAC  
Focus Ireland  
Gay & Lesbian Equality Network  
Immigrant Council of Ireland  
Inclusion Ireland  
Ireland Offline  
Irish Advocacy Network  
Irish Family Planning Association  
Irish Centre for Human Rights  
Irish Council for Civil Liberties  
Irish Council for Social Housing  
Irish Heart Foundation  
Irish National Organisation of the  
Unemployed  
Justice for Magdalens  
Law Centre for Children & Young People  
Mental Health Reform  
Mercy Law Resource Centre  
Migrants Rights Centre Ireland  
Mind Freedom  
National Association of Building Co-operatives  
National Women's Council of Ireland  
NASC  
Patricia Conboy  
Pavee Point  
Public Interest Law Alliance  
Respond! Housing  
SIPTU  
Social Justice Ireland  
Sophia Housing  
St Vincent de Paul  
Talla Trialogue  
Treoir  
Women's Aid





## Recommendations

### FLAC urges the Committee to recommend that the State:

- Incorporate the principles of ICESCR into domestic law, including the Constitution.
- Ratify the Optional Protocol to ICESCR and ratify the Convention on the Rights of Persons with Disabilities as a matter of priority.

### Under each of the Articles FLAC also urges the Committee to recommend that the State:

#### Article 1

- No recommendations.

#### Article 2

- Amend the tax regime to maximise available resources to protect and promote human rights and ensure the regime does not impact disproportionately on poorer sections of society.
- Take measures to ensure that the Irish Human Rights and Equality Commission is fully independent, directly accountable to the Oireachtas, and adequately resourced to effectively promote the rights of people whose rights have been breached.
- Ensure an independent statutory body is mandated and adequately resourced to provide advice and guidance to Government on how to reduce poverty and promote social inclusion.
- Allocate adequate funding to local community development projects.
- Ensure the Irish Human Rights and Equality Commission is mandated and adequately resourced to independently monitor incidences of racism and discrimination.
- Renew the National Action Plan against Racism and take steps to effectively tackle racism.
- Collate and make publicly available disaggregated data on the basis of ethnicity, including Irish Travellers, by official data collection systems.

#### Article 3

- Hold a referendum, as soon as practicable, to amend the Irish Constitution to include gender-inclusive language, in line with the recommendation of the Constitutional Convention.
- Resource the full implementation of the National Women's Strategy.
- Provide adequate funding for the National Women's Council and women's projects at the local level.

#### Articles 4 and 5

- No recommendations.

#### Article 6

- Provide high-quality, appropriate and equal education, training and work opportunities to all people who are seeking employment, including those with disabilities, illness and lone parents.



- Address the high rate of youth unemployment, in particular longer-term youth unemployed, through a suite of well-resourced measures which are human rights compliant.
- Introduce the Comprehensive Employment Strategy for Persons with Disabilities along with a detailed implementation plan as a matter of urgency.
- Ensure people working in sheltered workshops are entitled to the same rights as other workers, including the right to a fair wage and compliance with best practice on working hours.
- Resource and implement a national employment strategy for Travellers and Roma in consultation with relevant civil society actors.
- Grant asylum seekers the right to work after a defined period of time if a decision has not been made on their initial application.
- Give further consideration to opting into the Recast Reception Directive (2013/33/EU).
- Ensure that women who worked in Magdalen Laundries are paid for the work they undertook and have access to the appropriate pensions, healthcare and other services they require.
- Put in place legislation to protect all victims of trafficking and forced labour.
- Implement the recommendations of GRETA (Group of Experts in Action against Trafficking in Human Beings) in the forthcoming National Action Plan to Combat Trafficking in Human Beings to ensure that the rights of victims of forced labour are upheld and that they can obtain adequate legal and financial redress.
- Accommodate victims of trafficking in appropriate single gender facilities with access to a range of necessary support services.

## Article 7

- Increase the rate of the minimum wage to ensure an adequate standard of living.
- Give due consideration to the findings of the Living Wage Technical Group and take appropriate measures to work towards the introduction of a living wage.
- Increase the amount paid to persons taking up internships under the JobBridge scheme and encourage employers to also make a contribution to the payment with a view to providing that all persons participating in the scheme are paid at least the minimum wage.
- Ensure all JobBridge placements involve a substantial element of learning and experience that will be of future benefit to those taking part in the scheme.
- Review the use of 'zero-hour' contracts and regulate the use of such contracts to ensure that fair conditions of work are observed by employers.
- Ensure the objective to close the gender pay gap as set out in the National Women's Strategy is fully supported and implemented.
- Amend the Employment Equality Acts 1998-2011 as a matter of priority to remove all forms of discrimination against employees or potential employees of religious-run institutions in the fields of education and health.
- Monitor and enforce the Employment Permits (Amendment) Bill 2014 to ensure that migrant workers do not suffer exploitation.
- Abolish the provision in the Employment Permits Act s 2003-2014 that ties an employee to a specific employer.
- Expand eligible employment categories to secure work to create regular channels of migration in line with the demand of essential skills in the labour market, such as childcare and the services industry.



## Article 8

- Enact legislation to recognise the right to collective bargaining. The State must recognise and implement the right of workers in any sector to join a trade union.

## Article 9

- Undertake a human rights and equality impact assessment on all proposed budgetary measures, make these assessments publicly available and ensure they are discussed by the Oireachtas.
- Subject the Habitual Residence Condition to a human rights and equality impact assessment, in line with the 2012 recommendation of UN Expert on Human Rights and Extreme Poverty.
- Give all workers, regardless of their immigration status, access to social security payments when they have made social insurance contributions. Applications for citizenship should not be influenced by a person exercising his or her right to claim a social security payment to which he or she is legally entitled.
- End the discriminatory practice of excluding certain groups of children living in Ireland from access to the Child Benefit payment, including those based on their or their parents' immigration status.
- Provide adequate support for one parent families to ensure they can care for their children and have access to affordable childcare arrangements.
- Revise the social security system to ensure that self-employed people can access necessary payments based on their social insurance contributions.
- Conduct a comprehensive survey on the Qualified Adults Allowance.
- Seek information and advice on the impact of budget decisions and austerity measures on those at risk of poverty from the National Human Rights Structures, including the Irish Human Rights and Equality Commission and those dealing with the protection of human rights of vulnerable groups.
- End the discriminatory practice of providing a lower rate of payment to young people under 25 years
- Collect and collate data on people with a disability in need of social security support in order to tailor payments to the particular needs of this group and make this data public.
- Ensure when recovering overpayments that a person's income is not reduced below a figure which would have a negative impact on their fundamental right to an adequate standard of living and social security.
- Monitor carefully cuts to supports for older people to ensure that older people's health and wellbeing are not impacted and that they have an adequate standard of living.
- Reverse cuts to the Household Benefits Package to reduce the risk of fuel poverty.
- Grant access for direct provision residents to necessary social security payments in order to enjoy an adequate standard of living.
- Carry out targeted training with departmental staff to improve the assistance and support provided to social welfare applicants so they can supply the requisite information at the outset of their application and thus reduce the need for appeals.
- Ensure appellants are entitled to an oral hearing and decisions of the Social Welfare Appeals Office are published routinely.
- Change the status of the Social Welfare Appeals Office to create an independent body which can ensure fairness, transparency and consistency in decision-making.



## Article 10

- Hold a referendum on the definition of the family to ensure that it protects all families and not just families based on marriage.
- Enact the Children and Family Relationships Bill as a matter of urgency to ensure that all families are afforded the widest possible protection and assistance under domestic law.
- Ensure mothers are adequately supported financially so they can avail of their full maternity leave entitlements if they so wish.
- Enact the Parental Leave Bill as soon as possible.
- Put in place a high quality and affordable system of early childcare services.
- Provide adequate resources for victims of domestic violence to ensure that they are not forced to return to violent situations and are supported to leave abusive relationships.
- Allocate resources to fund a follow-up Sexual Abuse and Violence in Ireland (SAVI) Report to establish the nature and extent of sexual abuse and violence in Ireland
- Prioritise within the work of COSC (The National Office for the Prevention of Domestic, Sexual and Gender-based Violence) the collection of disaggregated data on domestic violence.
- Introduce primary legislation to govern family reunification and an independent Immigration Appeals Tribunal to provide an inexpensive and effective process to applicants. Applicants should be supported by the Legal Aid Board where necessary.

## Article 11

- Carry out adequate social impact assessments in relation to all budgetary decisions and adopt a whole-of-government approach to tackling poverty and social exclusion.
- Introduce a food poverty indicator and update it on an annual basis to take account of current prices.
- Target resources at ensuring that people do not suffer from food poverty and are able to access affordable and nutritious food.
- Ensure alleviation measures are properly targeted at people with low incomes and provide safe drinking water without charge for all those affected by contaminated water supplies.
- Incorporate a right to adequate housing into the Constitution, as articulated by the Committee in its General Comment No. 4.
- Amend the Code of Conduct on Mortgage Arrears to allow a borrower full rights of appeal to an independent third party where a lender declines to offer an alternative repayment arrangement or offers an unsuitable arrangement.
- Provide civil legal aid to borrowers or tenants in difficulty to ensure that they receive adequate legal advice and are supported in any legal proceedings which may result in repossession or eviction.
- Ensure adequate resources are provided to implement national homelessness policy in the short, medium and longer-term. In particular, appropriate and adequate resources should be provided for families losing their homes.
- Provide adequate social housing in line with the advice given by the Housing Agency and alternatives to construction should be considered given the number of vacant houses in the State.
- Invest in Approved Housing Bodies to help meet the demand for social housing.
- Ensure migrants resident in the State can access the housing list if they have a housing need.
- Carry out further training with Local Authority staff to ensure that rules are applied correctly and consistently.
- Ensure all migrants in need regardless of their immigration status have access to homeless services.



- Revise the Rent Supplement limits to adequately reflect the rental market to prevent the need for top-up payments by tenants.
- Implement the Housing Assessment Payment to address urgent housing needs and put in place other measures to ensure that the payment does not become a long-term solution.
- Introduce a system of rent controls to ensure that rent is affordable for tenants.
- Provide adequate funding for the completion of regeneration projects and adopt a legislative framework for a National Public Housing Estates Regeneration Programme.
- Enforce regulations to maintain appropriate quality standards in rented accommodation to ensure that the accommodation is habitable.
- Provide adequate funding for Traveller-specific accommodation and spend the budget for that purpose.
- Opt into Article 31 of the Revised European Social Charter.
- Repeal Section 24 of the Housing (Miscellaneous Provisions) Act 2002.
- Implement sanctions for local authorities who fail to meet their legal obligations under the (Housing Traveller Accommodation Act 1998).
- Ensure that the Housing Adaption Grants scheme is adequate to meet the need of persons with disabilities to live in dignity in their homes.
- Provide adequate resources to the Health Information and Quality Authority (HIQA) to enable it to conduct regular inspections of conditions in residential centres. Where gross violations of rights occur ensure that these are investigated fully by the appropriate agencies and sanctions are imposed for non-compliance with quality standards.
- Introduce a single asylum procedure as a matter of urgency.
- Abolish the direct provision system as it has failed to adequately protect the social, economic and cultural rights of those seeking protection in Ireland. While it remains in place, introduce a time limit of nine months after which anyone who has not received a decision through no fault of their own should be able to leave direct provision accommodation and access relevant social security payments and the labour market.

## Article 12

- Target resources at preventative measures to reduce the rate of chronic illnesses and preventable diseases to reduce pressure on the health service.
- Provide adequate resources for acute, primary care and community-based services to ensure people can access appropriate care and treatment in a timely way.
- Provide adequate resources for mental health services including the full amount of development funding as outlined in the Programme for Government.
- Ensure no child or young person is placed in an adult facility and increase financial support for the Child and Adolescent Mental Health Service to cope with demand and ensure that no child or young person is left waiting for essential mental healthcare.
- Resource mental health supports and prioritise non-coercive forms of treatment and alternative pathways to mental health recovery, based on peer support.
- Ensure that contraception is both accessible and affordable for people on low incomes who require it.
- Set out how it intends to progress its plans for universal health care and prioritise funding to implement the system. In the meantime, ensure that no further measures are introduced to impact on the affordability of private health insurance for those on low or moderate incomes who do not qualify for a medical card.
- Ensure anyone in need of financial assistance to access medical services has access to a medical card based on their medical need.



- Conduct a review of the impact of prescription charges on low-income individuals and families, in particular for older people.
- Continue the implementation of measures to ensure greater use of generic drugs and reduce the high cost of medication in Ireland.
- Develop a new National Traveller Health Implementation Plan to address the findings of the All Ireland Traveller Health Study.
- Implement measures aimed at reducing mortality rates for Traveller children.
- Support older people to stay in their homes for as long as possible allowing them to live in dignity.
- Provide a more cost-effective alternative to nursing home care.

### **Article 13**

- Develop a long-term strategy to address educational disadvantage and ensure it is adequately resourced.
- Publish and begin action on the plan to fully implement the Education for Persons with Special Educational Needs (EPSEN) Act 2004 and reform the support allocation model to bring an end to exclusionary practices.
- Ensure that migrant children, for whom English is not their first language, receive appropriate language supports to assist with any educational difficulties they may encounter.
- Restore the Back to School Clothing and Footwear Allowance for all claimants who qualify.
- Ensure that all schools receive the necessary financial support to operate an adequate book rental scheme.
- Ensure that transport costs are affordable and will not place an onerous burden on parents of school-going children.
- Reduce the student contribution fee and ensure that third-level students are adequately supported to complete their courses.
- Restore targeted resources to ensure the participation of Travellers & Roma in education.
- Continue the divestment of schools at a faster rate to ensure greater multi and non-denominational school options are available for school-going children.
- Ensure that minority religion-schools are not disproportionately impacted by rationalisation measures.

### **Article 14**

- No recommendations.

### **Article 15**

- Ensure that disadvantaged individuals and groups are able to access and enjoy their cultural rights through targeted inclusion measures including community arts initiatives.
- Consider and adopt a Community Culture Strategy.
- Provide the Arts Council with adequate resources to implement the Cultural Diversity and the Arts Policy and Strategy.
- Adequately resource the Irish Language Commissioner's office.



- Ensure Irish speakers can avail of their constitutional and statutory rights to access services in the Irish language.
- Legislate to officially recognise Irish Sign Language.
- Recognise Traveller ethnicity as a matter of urgency and put in place long-term sustainable measures to ensure ongoing support and development of Traveller culture.
- Adequately resource the National Broadband Plan to ensure that anyone living in a rural area requiring access to broadband internet can enjoy the benefits of scientific progress and access it without difficulties.
- Strengthen the rural coverage mandate of the Communications Regulator.
- Ensure adequate state interventions where existing commercial internet service providers fail to provide rural broadband.



## A. Introduction

State Report paragraphs 3-29

FLAC (Free Legal Advice Centres) welcomes the Third Report of Ireland under the International Covenant on Economic, Social and Cultural Rights (ICESCR), required under Article 16 of the Covenant.

The State Report, submitted in 2012, covers the period from 2002 up to 31 December 2010, meaning that the information will be more than four years old at the time of Ireland's examination by the Committee, due to take place in June 2015. The State was almost five years overdue in complying with its reporting requirements under the Covenant.<sup>1</sup> The period since 2010 has been particularly important for economic, social and cultural rights in Ireland.

The State was last examined by the Committee in 2002. In the interim, Ireland experienced an unprecedented period of economic growth and a property bubble fuelling state income (the 'Celtic Tiger') followed by a devastating economic recession. In December 2010, principally as a result of the need to guarantee and stabilise Ireland's banking system, the Government entered into a European Union (EU)-International Monetary Fund (IMF) financial assistance programme under which it was granted an €85 billion bailout.<sup>2</sup> The EU-IMF bailout agreement imposed budget restrictions requiring €15 billion in savings to curtail public expenditure. It set out certain conditions including a rise in the pension age, the introduction of multi-year expenditure ceilings, a cut to the minimum wage (which was later reversed) and the introduction of water charges.

The EU-IMF bailout agreement was adjusted following a change of Government in 2011<sup>3</sup> and an Economic Management Council was established comprising four high-ranking government ministers.<sup>4</sup> This Council, with the status of a Cabinet Committee, meets in private to make decisions related to 'economic planning and budgetary matters, the economic recovery programme, including the representation of Ireland internationally in negotiations' with the Troika, made up of the EU, IMF and the European Central Bank.<sup>5</sup> This decision-making forum has a significant impact on the socio-economic rights of many people reliant on State services including healthcare, social security, housing and education. But there is little or no evidence that the human rights of those affected have been taken into account by the Council.

During her 2011 mission to Ireland, the UN Independent Expert on Extreme Poverty and Human Rights provided a more up-to-date analysis of the State's position in relation to economic, social

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1 Information obtained from the website of the UN Office of the High Commissioner for Human Rights.

2 European Union/International Monetary Fund Programme of Financial Support for (2010) *Ireland: Programme Documents*, Dublin: Merrion Street.

3 In February 2011, a new Fine Gael/Labour Government came to power. In its Programme for Government the Coalition deferred the reduction of the deficit to three per cent until 2015 with a view to eliminating it completely by 2018.

4 The Council comprises the Taoiseach (Prime Minister), Tánaiste (Deputy Prime Minister), the Ministers for Finance and Public Expenditure and Reform.

5 Taoiseach, Enda Kenny TD, Dáil Debates: Questions, [6654/11], 13 April 2011.





and cultural rights.<sup>6</sup> She noted the difficult financial situation in Ireland at the time and stressed the importance of the State's compliance with its international human rights obligations, in particular calling on Government to ensure that marginalised groups were not impacted disproportionately.<sup>7</sup>

Although the State exited the bailout on 15 December 2013, the Government has indicated that austerity measures will continue to remain in place.<sup>8</sup>

### **A.1 Incorporation of the Covenant into Domestic Law**

Article 2(1) of the Covenant requires the State to take steps to progressively realise the rights enshrined within the Covenant within its maximum available resources. In its 2002 Concluding Observations on Ireland, the Committee expressed concern that the Covenant had not been incorporated into domestic law.<sup>9</sup> To date the Government has done very little to incorporate the Covenant into Irish law.

In February 2014, the Constitutional Convention, a forum was established by the Government to consider and make recommendations to the Houses of the Oireachtas (Irish Parliament) on key constitutional issues. The Convention undertook the only substantial consideration of the inclusion of economic, social and cultural rights (ESC) in the Irish Constitution since the Committee's last examination of the State.<sup>10</sup> Overall, 85 per cent of the members of the Constitutional Convention voted in favour of incorporating ESC rights constitutionally, with 59 per cent favouring the option to insert a 'provision that the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts'.<sup>11</sup> The majority of members also favoured enumerating 'rights contained in the International Covenant on ESC Rights'.<sup>12</sup> The Convention's recommendation is a welcome development in contrast to the 1996 Constitutional Review Group recommendation against the inclusion of a 'personal right to freedom from poverty or of specific personal economic rights' in the Constitution.<sup>13</sup>

Under the Convention's terms of reference, the Government must consider and respond to its reports within four months of their publication. However, Government failed to respond to the ESC recommendation within the four-month timeline and has since indicated that it hopes to respond in autumn 2014.<sup>14</sup>

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6 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. At the time of the visit the position was that of Independent Expert but in June 2012 it was elevated to the status of Special Rapporteur.

7 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.8.

8 Government of Ireland (2014) *Programme for Government: Annual Report 2014*, Dublin: Department of Taoiseach, paragraph 12, p.7.

9 UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, p.2.

10 The Convention comprised an independent chairman with 100 members including 66 citizens drawn from the electoral register, 29 members of the Oireachtas and four members of the Northern Ireland Assembly.

11 The Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural (ESC) Rights*, Dublin: Convention on the Constitution.

12 The Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural (ESC) Rights*, Dublin: Convention on the Constitution, p.6.

13 The Constitutional Review Group (1996) *Report of the Constitutional Review Group*, Dublin: Stationery Office, p.211.

14 Taoiseach, Enda Kenny TD, Parliamentary Questions: Written Answers, [27182/14], 24 June 2014.



## A.2 The Protection Afforded to Economic, Social and Cultural Rights in Irish Law

In Ireland, while civil and political rights are justiciable, both the legislature and the judiciary have traditionally taken a conservative position on the justiciability of economic, social and cultural rights, arguing that it may have cost implications for the Exchequer or that judicial enforceability would interfere with the separation of powers.<sup>15</sup> This approach clearly conflicts with the Committee's interpretation that any distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other, is 'arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent'.<sup>16</sup> While the State has stressed its support for the universality and interrelatedness of all human rights at the international level,<sup>17</sup> at the domestic level it continues to defend itself against legal actions related to socio-economic rights. In addition, the Irish judiciary remains deferential on matters which might impinge on State resources. Some examples of the judicial approach to socio-economic issues are outlined below.

### Figure 1: Cases involving judicial approach to socio-economic issues

#### ***Jama v Minister for Social Protection [2011] IEHC 379***

Ms Jama sought back-payment of Child Benefit for her son to the date of his birth following the recognition of her refugee status as she had been denied the payment while she was an asylum seeker. She requested that relevant appeal decisions be provided to her as these are not routinely published by the Social Welfare Appeals Office. FLAC represented Ms Jama and claimed that the Social Welfare Appeals Office, under the remit of the Minister for Social Protection, should maintain a database of decisions to ensure transparency, fair procedures, equality of arms and consistency in decision-making. The High Court Judge was reluctant to impose the cost of establishing such a database on the State declaring, 'Public policy in this regard, notably in these straitened times, must surely outweigh a right of access to such information'.

#### ***O'Donnell (a minor) & Others v South Dublin County Council [2007] IEHC 204***

A Traveller family of ten, three of whom had a severe disability, claimed that the housing authority's failure to provide them with a second mobile home to prevent overcrowding was in breach of the Housing Acts and the European Convention on Human Rights (ECHR) Act 2003. The High Court Judge held that there was a breach of Article 8 of the ECHR Act 2003 (right to family life). However, she refused to interpret the Housing Acts as conferring a right on the family to be provided with a second mobile home agreeing with the argument put forward by the authority that such a finding 'would have a significant impact on social housing policy and impose a significant burden on housing authorities and their resources'. She held that the only remedy she could grant was damages; she could not order that the Council provide a new caravan.

15 Amnesty International Ireland (2014) *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, Dublin: Amnesty International Ireland, pp. 30-42.

16 UN Committee on Economic, Social and Cultural Rights (1998) *General Comment No.9: The domestic application of the Covenant*, E/C.12/1998/24, Geneva: OHCHR, para.10.

17 UN Human Rights Council documents, 'Statement by Ireland under agenda item 8 - Follow-up and implementation of the Vienna Declaration and Programme of Action', 24 June 2014.



***In re Article 26 of the Constitution and the Health (Amendment) (No.2) Bill 2004* [2005] 1 I.R. 105; [2005] 1 I.L.R.M. 401**

The State introduced legislation to charge medical card holders for in-patient services in nursing homes. It already did this on an administrative basis contrary to the express provisions in the Health Act 1970 that this care should be provided free of charge. The legislation sought to put these charges on a statutory footing and apply them retrospectively to those patients who had already unlawfully paid charges. The Supreme Court considered whether the 'normal discretion of the Oireachtas in the distribution or spending of public monies could be constrained by a constitutional obligation to provide shelter and maintenance for those with exceptional needs' but held that the Oireachtas could introduce legislation to introduce charges for medical card holders into the future as it did not consider that the fees charged would cause undue hardship. At the same time, in a positive move, it also determined that there had been a breach of property rights under Article 43 of the Constitution and it would not be constitutional to apply the provisions retrospectively.

***Sinnott v Minister for Education* [2001] 2 I.R. 545**

The Supreme Court held that there was no constitutional obligation on the State to provide free primary education for an adult with autism for as long as he or she is able to benefit from that education. This case limited the constitutional right to free primary education under Article 42 to children under 18 years. The Chief Justice stated that the Supreme Court could not find in favour of Mr Sinnott as this would 'involve the judicial arm usurping the function of the Oireachtas and the executive in the proper distribution of the resources available to the State'.

***T.D. v Minister for Education* [2001] 4 I.R. 259**

Children in need of accommodation and treatment in high-support units sought an order compelling the State to implement its own policy on accommodating children with special needs as it had failed to do so. The High Court held that the State must provide adequate accommodation in a timely manner but this decision was overturned by the Supreme Court which found that apart from the right to free primary education for children, the Constitution does not contain any 'express provisions therein cognisable by the courts which impose an express obligation on the State to provide accommodation, medical treatment, welfare or any other form of socio-economic benefit for any of its citizens, however needy or deserving'.

### **A.3 Access to Justice for People on Low Incomes**

Access to justice for people on low incomes is not only limited by the potential high cost of taking a legal action including in public interest cases,<sup>18</sup> but also by the legislative restrictions placed on the state-funded civil legal aid system.<sup>19</sup> In 2011, the UN Independent Expert on Extreme Poverty and Human Rights, during a fact-finding mission to Ireland, noted her concern that 'several areas of law that are particularly relevant for people living in poverty' were excluded from the scope of the Legal Aid Board.<sup>20</sup> The vast majority of advice and representation

<sup>18</sup> Public Interest Law Alliance (2010) *Public Interest Litigation: The Costs Barrier & Protective Costs Orders Report*, Dublin: FLAC.

<sup>19</sup> Civil Legal Aid Act 1995.

<sup>20</sup> 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.



by the Legal Aid Board relates to family law.<sup>21</sup> The Legal Aid Board is precluded from providing representation before most appellate tribunals including social security appeals, employment appeals or in repossession proceedings, all of which have become more relevant in recessionary times. The only exception to this is representation before the Refugee Appeals Tribunal, but even this is limited as civil legal aid for asylum seekers deals only with the refugee determination process.

#### **A.4 Other International Protection for Economic, Social and Cultural Rights**

FLAC welcomes the signing by the State of the Optional Protocol to ICESCR in 2012<sup>22</sup> but regrets that it has not yet ratified it.<sup>23</sup> Furthermore, the process deemed necessary for ratification to occur, namely an inter-departmental consultation has yet to be established.

The State has also committed to ratifying the UN Convention on the Rights of Persons with Disabilities, which will afford greater protection to the ESC rights of people with disabilities.<sup>24</sup> However, in order to comply with the provisions of the Convention the State must first enact the Assisted Decision-Making (Capacity) Bill 2013 and complete a review of the Mental Health Act.<sup>25</sup> An Interdepartmental Committee is working towards ratification of this Convention.<sup>26</sup>

#### ***FLAC urges the Committee to recommend that the State:***

- ***Incorporate the principles of ICESCR into domestic law, including the Constitution.***
- ***Ratify the Optional Protocol to ICESCR and ratify the Convention on the Rights of Persons with Disabilities as a matter of priority.***

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21 Legal Aid Board (2013) *Legal Aid Board Annual Report 2012*, Cahirciveen, Legal Aid Board, p.18.

22 Department of Foreign Affairs, 'Ireland to Sign the Optional Protocol to the International Covenant', [press release], 6 March 2012.

23 Amnesty International Ireland (2014) *Bringing ESC Rights Home: Ireland and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Dublin: Amnesty International Ireland, p.3.

24 Government of Ireland (2014) *Universal Periodic Review – Ireland: National Interim Report*, Dublin: Department of Justice and Equality, p.30.

25 Government of Ireland (2014) *Universal Periodic Review – Ireland: National Interim Report*, Dublin: Department of Justice and Equality, p.30.

26 Government of Ireland (2014) *Universal Periodic Review – Ireland: National Interim Report*, Dublin: Department of Justice and Equality, p.7.



## B. Article by Article Examination

The following section provides an article by article examination of each right enshrined in the Covenant. It sets out current issues interfering with the various rights including systematic failures to protect, respect and promote the particular right in question. It also highlights when an issue has a specific impact on the ability of a particular group to exercise their economic, social or cultural rights.

### Article 1

- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
- 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

State Report paragraph 30

Nothing new to report under Article 1.

### Article 2

- 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*
- 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

State Report paragraphs 31-33

In 2002, the Committee noted the 'favourable economic conditions prevailing in the State Party' and therefore did not envisage any challenges for the State in implementing the rights contained



in ICESCR.<sup>27</sup> However, as already noted, this period of economic growth was not sustained and the State went into a serious economic crisis from 2007 onwards. Its banking system was exposed as vulnerable to collapse and, to stabilise this, Ireland entered a financial bailout programme at the end of 2010. The Committee is clear that even in times of recession States must take all steps possible to progressively realise the rights enshrined in the Covenant, and where more than one option is open to it, it will be for the State Party to justify why it made certain choices.<sup>28</sup>

The State Report (para. 31) refers to the assistance it gives to other countries in relation to the progressive realisation of rights. Notably, it does not reference how it has used its resources to progressively realise ESC rights in the domestic context. The period covered by the State Report (2002-2010) preceded the financial bailout programme and therefore does not identify what principles and frameworks were adopted, if any, to protect human rights in the negotiation, and implementation of, the financial bailout programme.

## 2.1 Use of Maximum Available Resources

In 2010, the Government used the financial assistance it received from the EU-IMF bailout to recapitalise and stabilise key domestic banks.<sup>29</sup> No human rights or equality assessment was undertaken to gauge the potential impact of this decision on the most marginalised sections of society<sup>30</sup> although the Government's *National Recovery Plan* adopted in 2011 described the measures adopted as 'proportionate'.<sup>31</sup> It is clear, however, that this was not the case as austerity measures have been most detrimental to the poorest ten per cent of the population who suffered an 18 per cent reduction in 'average real income' from 2008 to 2011.<sup>32</sup>

Measures taken at EU level have also had a negative impact on the State's maximisation of its available resources in terms of Article 2(1) of the Covenant. In December 2011, the 'Six Pack' (a series of secondary legislation) supplemented the *Treaty on the Functioning of the European Union* (TFEU), which provides for a Stability and Growth Pact, by introducing expenditure benchmarks as well as new minimum standards for budgetary frameworks.<sup>33</sup>

In 2012, Ireland ratified the *Fiscal Compact Treaty*, a mechanism developed to strengthen fiscal surveillance among Member States.<sup>34</sup> Compliance with this Treaty means Ireland has to reduce its deficit to three per cent of Gross Domestic Product (GDP) by 2015, and will face sanctions if its public debt rises above 60 per cent of GDP. In 2013, the 'Two Pack Regulations' were introduced in Eurozone States to provide closer budgetary monitoring by the European

27 UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

28 Committee on Economic, Social and Cultural Rights (2007) *An Evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant*, Geneva: OHCHR.

29 European Union/International Monetary Fund Programme of Financial Support for (2010) *Ireland: Programme Documents*, Dublin: Merrion Street.

30 Address by Des Hogan, Acting Chief Executive of the IHRC, 'Human Rights and Austerity in Ireland: response to CESR paper', 12-13 June 2013.

31 Government of Ireland (2011) *National Recovery Plan 2011-2014*, Dublin: Stationery Office, p.8.

32 Callan, T. et al (2013) 'The Great Recession, Austerity and Inequality: Evidence from Ireland', *Intereconomics*, Vol. 48, Issue 6, November/December 2013, pp.335-338, Berlin: Springer.

33 Further information is available online at: <http://bit.ly/ECEconomicPact> [accessed 14 July 2014].

34 The Thirtieth Amendment of the Constitution (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) Act 2012 was passed by 60 per cent of voters and the Fiscal Responsibility Act 2012 was enacted.



Commission. These measures have led to the introduction of expenditure ceilings to reduce budget deficit. The introduction of expenditure ceilings has impacted on the level of funding available to specific Government Departments<sup>35</sup> and resulted in harsh cuts within a relatively short period of time.

Ireland has one of the lowest tax-takes in the EU, with a 28.7 per cent tax-to-GDP ratio in 2012.<sup>36</sup> If this ratio is to be maintained, then in order to achieve its budget deficit target, the Government will have to make further cuts to public spending rather than raise additional funds through taxation.

The UN Independent Expert on Extreme Poverty and Human Rights in her report on Ireland described as ‘critically important’ the need for the Irish Government to ‘adopt taxation policies that adequately reflect the need to harness all available resources’ in order for the State to meet its obligations under the Covenant and protect the most vulnerable from further harm.<sup>37</sup> Despite this recommendation, the direct taxation system in Ireland while found to be progressive,<sup>38</sup> is offset by indirect taxation which has been found to be regressive.<sup>39</sup> People on the lowest incomes pay 31 per cent of their overall income in tax while the highest earners contribute less than 30 per cent of their total income.<sup>40</sup> In addition, poorer people in Ireland are disproportionately impacted by hidden charges not considered to be direct tax measures meaning they also have less spending power to pay for basic necessities. As a result, low income individuals and families are being pushed below the poverty line.

***FLAC urges the Committee to recommend the State:***

- ***Amend the tax regime to maximise available resources to protect and promote human rights and ensure the regime does not impact disproportionately on poorer sections of society.***

## **2.2 Protection of ESC Rights without Discrimination: Human Rights and Equality Infrastructure**

Article 40 of the Irish Constitution establishes that all citizens should be ‘held equal before the law’. The Equal Status Acts 2000-2011 prohibit discrimination in accessing goods or services on nine grounds.<sup>41</sup> However, there are some general exemptions to the legislation including any action required under Irish or European legislation which allows for discrimination; different treatment of foreign nationals in certain circumstances; or refusal of services where there is a

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35 Department of Public Expenditure and Reform (2013) *Expenditure Report 2014: Part III - Ireland's Public Expenditure Framework in Comparative Perspective*, Dublin: Department of Public Expenditure, p.90.

36 Eurostat, ‘Taxation Trends in the European Union’ [press release], 16 June 2014, <http://bit.ly/EurostatTaxTrends> [accessed 9 July 2014].

37 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.8.

38 The highest earners contribute almost 24 per cent of their gross income to income tax and social insurance while the lowest earners pay less than one per cent of their overall income in direct taxes. M. Collins (2014) *Total Direct and Indirect Tax Contributions Of Households in Ireland: Estimates And Policy Simulations*, Dublin: Nevin Economic Research Institute, p.19.

39 The lowest earners pay almost 30 per cent of their gross income on indirect taxes including Value Added Tax (VAT), excise duties, levies, local taxes and charges compared to top earners who pay less than six per cent. M. Collins (2014) *Total Direct and Indirect Tax Contributions of Households in Ireland: Estimates and Policy Simulations*, Dublin: Nevin Economic Research Institute, p.19.

40 M. Collins (2014) *Total Direct and Indirect Tax Contributions Of Households in Ireland: Estimates And Policy Simulations*, Dublin: Nevin Economic Research Institute, p.19.

41 These include gender, marital or civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.



reasonable assumption that there may be a risk of criminal or disorderly conduct.<sup>42</sup> A Bill introduced by opposition legislators in 2013 to expand the nine grounds to include Irish language speakers, socio-economic status and living in rural areas was not passed.<sup>43</sup>

Since the State's last examination by the Committee in 2002, the Government in a regressive move has on three occasions amended the legislation to permit selective discrimination in response to successful cases taken by minorities including Travellers, people with disabilities and migrants.<sup>44</sup>

From 2008, Ireland's institutional framework to protect, promote and fulfil human rights and prohibit discrimination was targeted for significant cuts in a manner which a recent Minister for Justice and Equality conceded was 'disproportionate'.<sup>45</sup> In 2008, the funding of the Irish Human Rights Commission (IHRC)<sup>46</sup> was cut by 32 per cent from €2.3 million to €1.6 million<sup>47</sup> and the Equality Authority's<sup>48</sup> budget was slashed by 43 per cent from €5.9 million to €3.3 million.<sup>49</sup>

These cuts have led to a significant decrease in the capacity of these two bodies. The Irish Human Rights Commission has had to identify and implement cost-saving measures in order to continue at an 'essential' level of operation.<sup>50</sup> The following chart illustrates the drop in cases supported by the Equality Authority from 2007 to 2012.<sup>51</sup> The capacity of the Equality Authority's legal team – who had been highly effective in bringing cases on behalf of discriminated clients<sup>52</sup> – was particularly negatively impacted by the cuts with the number of cases supported falling from 68 in 2008 to just 11 in 2012.<sup>53</sup>

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42 Section 14 of the Equal Status Acts 2000-2011 (as amended).

43 Equal Status (Amendment) Bill 2013.

44 Section 7 of the Equal Status Act 2000 (discrimination on the basis of nationality when providing further and higher education grants) was amended in 2004 in response to a 2003 decision by the Equality Tribunal which decided that the refusal of further and higher education grants to non-Irish nationals constituted direct discrimination in the provision of a service. The Tribunal advised that the current scheme should be amended as it was discriminatory but instead the Government amended the Equal Status Act 2000. Section 19 of the Social Welfare (Miscellaneous Provisions) Act 2004 allows differential treatment based on sexual orientation and was introduced following a successful Equal Status case by a same-sex couple. It defined 'spouse' or 'couple' as a married or cohabiting couples of opposite sex for the purposes of accessing state social security schemes. Section 25 of the Intoxicating Liquor Act 2003 moved the jurisdiction for complaints in relation to publicans and hoteliers from the Equality Tribunal to the District Court, which has limited the right of Travellers to access a remedy when alleging discrimination in relation to access to licensed premises.

45 Department of Justice and Equality, 'Shatter publishes the Irish Human Rights and Equality Bill' [press release], 21 March 2014.

46 The Irish Human Rights Commission is an independent body established by the Irish Human Rights Commission Act 2000 to promote and protect the human rights of everyone in Ireland.

47 Irish Human Rights Commission (2009) *Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR*

48 The Equality Authority is an independent body established by the Employment Equality Act 1998 and its powers were then extended under the Equal Status Acts 2000-2011 to provide information and legal assistance to members of the public who experience discrimination.

49 Department of Finance and Department of Public Expenditure and Reform (2008) 2009 Estimates for Public Services & Summary Public Capital Programme, Dublin: DoF and DPER.

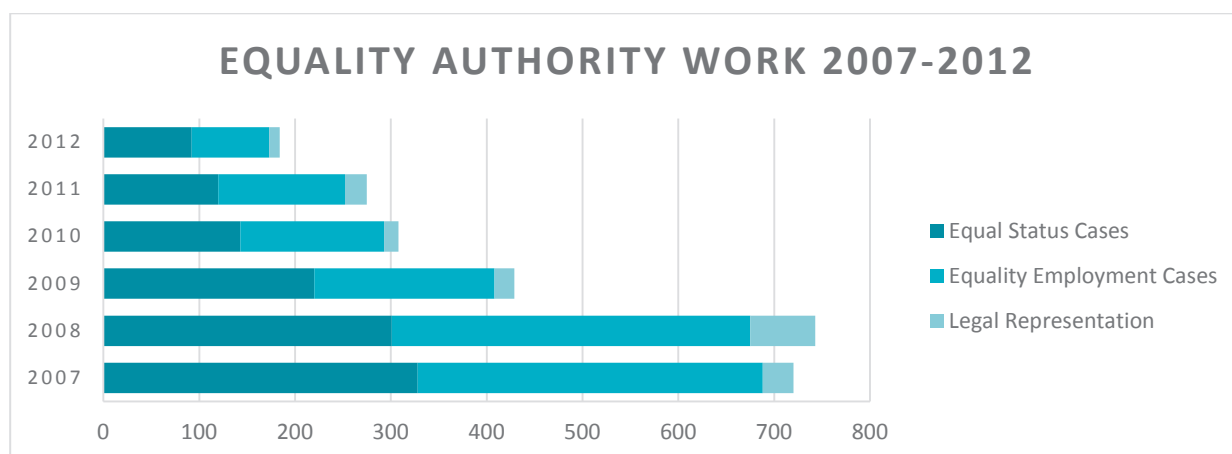
50 B. Harvey and Dr K. Walsh (2009) *Downgrading Equality and Human Rights: Assessing the Impact*, Dublin: Equality and Rights Alliance.

51 Statistics are compiled from the *Equality Authority Annual Reports 2007-2012*.

52 T. Pegram (2013) *Bridging the Divide: The merger of the Irish Equality Authority and Human Rights Commission*, Dublin: Policy Institute, University of Dublin, Trinity College Dublin, pp.75-77.

53 Statistics are compiled from the *Equality Authority Annual Reports 2007-2012*.



**Figure 2: Equality Authority Work 2007-2012**

These cuts have come at a time when, more than ever, ordinary people need a strong human rights and equality infrastructure to defend their rights. Research conducted in 2010 found that 12 per cent of people surveyed had experienced discrimination in the previous two years; seven per cent had faced discrimination when accessing services while eight per cent reported discrimination in the workplace.<sup>54</sup> In only ten per cent of the cases, victims of discrimination were aware of the equality legislation or redress mechanisms and actually took formal action.<sup>55</sup> This means that only a small percentage of the people facing discrimination know of the remedies available to them.

In 2011, the Government announced a merger of the Irish Human Rights Commission and the Equality Authority to form the Irish Human Rights and Equality Commission (IHREC). The legislation establishing the new body is due to come into force by end 2014. Under this legislation the Minister for Justice and Equality will have responsibility for the Commission's budget and the Commission will not be directly accountable to the Houses of the Oireachtas.<sup>56</sup> This is a missed opportunity as the new body will lack independence and financial autonomy. The Commission was allocated a budget of €6.3 million for 2014 which represents a €1.5 million reduction in the combined budgets of the two bodies prior to the 2009 cuts.<sup>57</sup> This reduced budget will not provide the IHREC with the necessary resources to resume the activities of the two bodies prior to 2008.

From 2008 to 2013, a number of UN and international bodies expressed concern regarding the cuts to Ireland's equality and human rights infrastructure, and the lack of independence and

<sup>54</sup> F. McGinnity, D. Watson and G. Kingston (2012) *Analysing the Experience of Discrimination in Ireland: Evidence from the QNHS Equality Module 2010*, Dublin: Economic and Social Research Institute & the Equality Authority, p.ix.

<sup>55</sup> F. McGinnity, D. Watson and G. Kingston (2012) *Analysing the Experience of Discrimination in Ireland: Evidence from the QNHS Equality Module 2010*, Dublin: Economic and Social Research Institute & the Equality Authority, p.xii.

<sup>56</sup> Equality and Rights Alliance (2014) *The Irish Human Rights and Equality Commission Bill 2014: Observations and Recommendations*, Dublin: Equality and Rights Alliance, pp.4-5.

<sup>57</sup> Equality and Rights Alliance, 'Increased Budget for Irish Human Rights and Equality Commission Welcomed', [press release], 19 December 2013.



financial autonomy<sup>58</sup> of the proposed new body, the IHREC. The Government has committed to ensuring that the new body will retain its 'A' status under the UN Paris Principles.<sup>59</sup>

**Recommendation:**

- **Take measures to ensure that the Irish Human Rights and Equality Commission is fully independent, directly accountable to the Oireachtas, and adequately resourced to effectively promote the rights of people whose rights have been breached.**

### 2.3 Government Response to Anti-Poverty and Social Inclusion Measures

In 2002, the Committee in its Concluding Observations on Ireland, called on the State to ensure that the Combat Poverty Agency,<sup>60</sup> a statutory agency which provided policy advice, research and public education on anti-poverty and social inclusion issues, was 'well-resourced and able to fulfil, in an effective manner, its statutory advisory functions'. However, in July 2009 the Combat Poverty Agency was abolished as an autonomous body<sup>61</sup> and its functions were subsumed into what is now the Social Inclusion Unit of the Department of Social Protection, despite calls to maintain its independence.<sup>62</sup>

At the same time, a number of changes affecting local programmatic responses to poverty and social exclusion were introduced by Government. These changes have had a profound impact at local level, both in terms of the funding available and the organisational capability to respond to the needs of disadvantaged communities. An example is the loss of locally-based independent Community Development Projects which successfully operated in disadvantaged communities and provided a collective voice on social inclusion issues at local level.<sup>63</sup> The Local Government (Reform) Act 2014 has put further obstacles in place for the community development network by restructuring its management and introducing bureaucratic measures for participation in local government structures. Between 2008 and 2012, significant funding cuts were made in key community development programmes, including a 35 per cent cut to the Local Community Development Programme; a 29 per cent cut to the Initiatives Against Drugs programme; and a 17 per cent cut to Family Support projects.<sup>64</sup> These measures are retrogressive in nature as they have disempowered marginalised people as well as resulting in less opportunities for participation at local level by people affected by poverty and social exclusion.

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58 Independent campaign group the Equality and Rights Alliance has compiled a summary of UN and Council of Europe recommendations to the Irish Government available online at: <http://bit.ly/ERAInternationalReports> [accessed 14 July 2014]. The IHREC Act provides that the IHREC will continue to report directly to the Minister for Justice and Equality.

59 Department of Justice and Equality, 'Shatter announces publication of General Scheme of Irish Human Rights and Equality Commission Bill', [press release], 5 June 2012.

60 The Combat Poverty Agency was a statutory agency established under the Combat Poverty Agency Act 1986 and had four general functions: policy advice, project support and innovation, research and public education on anti-poverty and social inclusion issues.

61 See <http://bit.ly/1tt7yMq> for details.

62 See for example Hugh Frazer, 'Silencing Dissent', *Irish Examiner*, 7 July 2009. Hugh Frazer was Director of the Agency from 1987 to 2001.

63 B. Harvey (2012) *Downsizing the Community sector: changes in employment and services in the voluntary and community sector*, Dublin: Irish Congress of Trade Unions, p.43.

64 B. Harvey (2012) *Downsizing the Community sector: changes in employment and services in the voluntary and community sector*, Dublin: Irish Congress of Trade Unions, p.3.



**FLAC urges the Committee to recommend that the State:**

- **Ensure an independent statutory body is mandated and adequately resourced to provide advice and guidance to Government on how to reduce poverty and promote social inclusion.**
- **Allocate adequate funding to local community development projects.**

## **2.4 Government Responses to Discrimination and Racism**

Since 2008, the State's mechanisms to monitor and combat racism have been dismantled. The National Consultative Committee on Racism and Interculturalism (NCCRI), an expert anti-racism body, was effectively abolished without warning in December 2008 when its budget was completely removed.<sup>65</sup> In addition, the State has not renewed the *National Action Plan Against Racism 2005-2008*<sup>66</sup> and has instead committed to incorporating anti-racism measures into a proposed new *Integration Strategy*.<sup>67</sup> The location of anti-racism policy solely within integration policy is problematic as it ignores other groups such as Irish Travellers and other black and ethnic minority people who experience racism.

Evidence points to a clear need for the monitoring and combating of racism and discrimination, particularly in relation to access to public services. In a 2012 survey, the Public Service Executive Union<sup>68</sup> which represents officials in the public and civil service, found that 26 per cent of its members 'witnessed racist remarks by colleagues about clients/customers' while seven per cent reported 'witnessing a client/customer being subjected to racist remarks or behaviour' by a colleague.<sup>69</sup> There have also been a high number of racist incidents – 112 in the first three months of 2014 – reported to a civil society racism monitoring mechanism which has been established in an attempt to fill the void left by the cuts.<sup>70</sup>

There is a significant gap in the availability of reliable data in relation to the socio-economic, political and legal situation of different vulnerable communities including migrants, Travellers and Roma in Ireland.<sup>71</sup> In addition, disaggregated data on ethnicity is limited because of the fact that a category on ethnicity is generally not included in official data collection systems. This lack of data hampers the development of evidence-based policies and practices to address the needs of minority ethnic communities and hinders the effective monitoring of the implementation of measures to tackle discrimination.

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65 Equality and Rights Alliance (2013) *Creating a Strategic Engagement between Civil Society and the IHREC Equality and Rights Alliance*, Dublin: ERA.

66 Department of Justice, Equality and Law Reform (2005) *Planning for Diversity: National Action Plan Against Racism*, Dublin: Department of Justice, Equality and Law Reform.

67 Minister for Equality and Justice, Frances Fitzgerald TD, Parliamentary Questions: Written Answers [21672/14] and [21744/14], 14 May 2014.

68 The Public Service Executive Union is the Trade Union for Executive Grades in the Civil Service and the wider public sector. The Union was formed in 1890 and has 10,000 members in the Civil Service, Eircom, An Post, the Irish Aviation Authority and elsewhere in the Public Service.

69 Public Service Executive Union (2012) *Let's Root Out Racism*, Dublin: PSEU & the Equality Authority, p.2.

70 S. O'Curry & Dr. L. Michael (2014) *Reports of Racism in Ireland: 3rd Quarterly*, Dublin: European Network Against Racism Ireland.

71 See Pavee Point Ethnic Data Monitoring Initiative available at: <http://bit.ly/PaveePointEthnicDataMonitoring> [accessed 17 September 2014].



**Recommendations:**

- ***Ensure the Irish Human Rights and Equality Commission is mandated and adequately resourced to independently monitor incidences of racism and discrimination.***
- ***Renew the National Action Plan against Racism and take steps to effectively tackle racism.***
- ***Collate and make publicly available disaggregated data on the basis of ethnicity, including Irish Travellers, by official data collection systems.***



## Article 3

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*

State Report paragraphs  
34-88

In both 1999 and 2002, the Committee noted in its Concluding Observations that the State had not taken steps to address the inconsistency of Article 40.1 of the Irish Constitution on equality before the law. The Article sets out that the State can ‘have due regard to differences of capacity, physical and moral, and of social function’ which conflicts with Articles 2 and 3 of the Covenant which prohibit discrimination of any kind.<sup>72</sup>

The Constitution includes provisions that perpetuate sexist stereotypes. By way of example, Article 41.2.1 provides that ‘the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved’. Article 41.2.1 also provides that ‘The State shall...endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home’.

### 3.1 National Women’s Strategy

The Government adopted the *National Women’s Strategy 2007-2016* in April 2007.<sup>73</sup> The Strategy provides a roadmap to mainstream gender equality. The implementation of the Strategy includes the introduction of the ‘Equality for Women’s Measure’ with funding provided through the European Social Fund to foster the engagement and advancement of women and gender equality in a number of economic sectors. Since 2009 more than 11,000 women have participated in the programme but the Department of Justice and Equality has revised downwards the amount of funding allocated to the measure in more recent years.<sup>74</sup> Furthermore, Government funding of the National Women’s Council of Ireland<sup>75</sup> has almost halved since 2009<sup>76</sup> and grassroots women’s organisations working at the local level have been cut by 35 per cent since 2011.<sup>77</sup>

### 3.2 Constitutional Convention

In February 2013, the Constitutional Convention considered a proposal to amend Article 40.1 to include an explicit reference to gender equality as a fundamental right – 62 per cent voted in

72 Article 40.1 states, ‘All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function’.

73 Government of Ireland (2007) *National Women’s Strategy 2007-2016*, Dublin: Stationery Office.

74 Further information is available online at: <http://bit.ly/NationalWomenStrategy> [accessed 9 July 2014].

75 National Women’s Council of Ireland (2014) *Budget Directions 2015: Pre-Budget Submission*, Dublin: NWCI.

76 Figures taken from Revised Estimates for Public Expenditure 2009 to 2014.

77 Women’s Human Rights Alliance (2013) *Suggested List of Issues to Country Report Task Force on Ireland for the 109th Session of the Human Rights Committee*, 14 October -1 November 2013, Dublin: WHRA, p.3.



favour of the change.<sup>78</sup> Eighty-nine per cent of participants supported amending the Constitution to include gender-inclusive language.<sup>79</sup>

Furthermore, 88 per cent of Constitutional Convention participants voted in favour of amending the clause in Article 41.2 on the role of women in the home.<sup>80</sup> The Convention suggested that the provision should be made gender-neutral to take account of other carers in the home and recommended extending the provision to carers outside the home. According to Census 2011, there are 187,112 people providing unpaid care or assistance, the majority of whom (61 per cent) are women.<sup>81</sup> The Government put in place a taskforce of senior civil servants from the Department of Justice and Equality to consider how best to include gender-neutral language in the Constitution. The taskforce is due to report back to the Government with recommendations by 31 October 2014.<sup>82</sup>

The position of women in the context of each of the rights outlined in the Covenant will be reviewed throughout this report.

***FLAC urges the Committee to recommend that the State:***

- ***Hold a referendum, as soon as practicable, to amend the Irish Constitution to include gender-inclusive language, in line with the recommendation of the Constitutional Convention.***
- ***Resource the full implementation of the National Women’s Strategy.***
- ***Provide adequate funding for the National Women’s Council and women’s projects at the local level.***

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78 Constitutional Convention (2013) *Second Report of the Convention on the Constitution*, Dublin: Constitutional Convention, pp.8-9.

79 Constitutional Convention (2013) *Second Report of the Convention on the Constitution*, Dublin: Constitutional Convention, pp.8-9.

80 Constitutional Convention (2013) *Second Report of the Convention on the Constitution*, Dublin: Constitutional Convention, pp.8-9.

81 Government of Ireland (2012) *Census 2011 Profile 8 – Our Bill of Health*, Dublin: Stationery Office, p.34.

82 Minister for Justice and Equality, Frances Fitzgerald TD, Parliamentary Questions: Written Answers, [26581/14], 24 June 2014.



## Article 4

*The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.*

State Report paragraph 89

Nothing to report under this Article.

## Article 5

- 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.*
- 2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

State Report paragraph 90

Nothing to report under this Article.



## Article 6

1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

State Report paragraphs 91-143

At the time of the State's last examination in 2002, the Committee 'noted with appreciation' the decline in the overall unemployment rate which stood at 4.3 per cent in 2001, with the long-term unemployment rate at approximately 1.2 per cent in the same year.<sup>83</sup> Following the economic downturn, both of these rates increased significantly, reaching highs in 2012 of 15 per cent and 9.2 respectively.<sup>84</sup> In the second quarter of 2014, the overall unemployment rate stood at 11.8 per cent while the long-term unemployment rate measured almost seven per cent.<sup>85</sup> The percentage of people aged 18 to 59 years living in jobless households in Ireland rose from nine per cent in 2008 to 16 per cent in 2012.<sup>86</sup> In real terms, this means that in the second quarter of 2014 there were 146,500 people classified as long-term unemployed and 103,600 as short-term unemployed.<sup>87</sup> The EU Country Specific Recommendations highlighted the unequal labour market participation of women' who represented only 67.2 per cent of the labour force in 2013 compared with a male participation rate of 83.4 per cent.<sup>88</sup>

### 6.1 State Response to Unemployment

While the Government allocated €1.08 billion in 2014 towards activation supports for jobseekers,<sup>89</sup> and has put in place the *2012 Action Plan for Jobs*,<sup>90</sup> the unemployment rate remains high with almost 60 per cent of people out of work classified as long-term unemployed.<sup>91</sup> There is also a continued reliance on internship schemes<sup>92</sup> and a severe shortage

83 UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, p.2.

84 Central Statistics Office (2012) *Measuring Ireland's Progress 2012*, Cork: CSO.

85 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 2 2014*, Cork: CSO.

86 Central Statistics Office (2012) *Measuring Ireland's Progress 2012*, Cork: CSO.

87 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 2 2014*, Cork: CSO.

88 European Commission (2014) *Recommendation for a COUNCIL RECOMMENDATION on Ireland's 2014 national reform programme and delivering a Council opinion on Ireland's 2014 stability programme*, Brussels: European Commission, p.5.

89 Department of Social Protection (2013) *Budget Factsheet: Main Social Welfare Changes and Rates of Payments*, Dublin: Department of Social Protection, p.2.

90 Department of Jobs, Enterprise and Innovation (2012) *Action Plan for Jobs*, Dublin: DJEI. It aims to ensure that 100,000 more people are in in work by 2016 and with two million people in work by 2020.

91 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 2 2014*, Cork: CSO.

92 Unite Trade Union, 'Unite warns that compulsory labour schemes may violate international conventions', [press release], 27 February 2014.





of job opportunities with 24 unemployed people for each job vacancy.<sup>93</sup> In addition to this, the official statistics do not represent the true scale of the unemployment crisis as the level of outward migration has increased considerably since 2006. In 2013, almost 76,000 people aged between 15 and 44 years emigrated,<sup>94</sup> compared to 30,000 in 2006.<sup>95</sup>

The *Pathways to Work Strategy* aims to ensure that at least 75,000 long-term unemployed persons would enter the workforce by 2015.<sup>96</sup> The figures for the first quarter of 2014 indicate that 46,000 long-term unemployed people had returned to work since the introduction of the strategy.<sup>97</sup> Despite these statistics, recent figures indicate that employment growth has dramatically fallen in 2014 with an average of 2500 jobs created each quarter compared to a quarterly increase of 15,000 jobs in 2013<sup>98</sup> meaning that if this trend continues, the Government will not reach its 2016 target of 100,000 more people at work. Furthermore, the exclusionary or sanction-focused approach has been criticised as resources and payments are mainly directed at people in receipt of a jobseekers payment excluding people on a disability related payment or on One Parent Family Payment.<sup>99</sup>

Particular groups of people have not benefited to the same degree from the Government's labour activation measures. For example, the unemployment rate for under 25s has risen from nine per cent in 2007 to 28 per cent in 2013.<sup>100</sup> In the second quarter of 2014, youth unemployment was recorded at 27 per cent.<sup>101</sup> In 2013, almost 35,000 young people aged between 15 and 24 emigrated compared to less than 16,000 in 2006.<sup>102</sup> These figures are mirrored by the rise in the number of young people Not in Education, Employment or Training (the NEET rate) and of the 34 OECD countries, Ireland's increase in the NEET rate was the fifth highest.<sup>103</sup>

The Youth Guarantee Scheme, a European Union funded programme commenced in 2013, seeks to ensure that 'young people receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education'.<sup>104</sup> However, the mechanism chosen to implement part of the Youth Guarantee is problematic due to its compulsory nature as a young person will be required to

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93 Nevin Economic Research Institute (2014) *Quarterly Economic Facts: Summer 2014*, Dublin: NERI, p.33.

94 Social Justice Ireland (2014) *Socio-Economic Review 2014*, Dublin: Social Justice Ireland, pp.206-208.

95 Central Statistics Office (2012) *Population and Migration Estimates: April 2012* (with revisions from April 2007 to April 2011), Cork: Central Statistics Office, p.6.

96 Government of Ireland (2012) *Pathways to Work Strategy: Government Policy Statement on Labour Market Activation*, Dublin: Government of Ireland.

97 Department of Jobs, Enterprise and Innovation (2014) *Action Plan for Jobs 2014: First Progress Report*, Dublin: DJEI, p.3.

98 T. Healy, 'Youth labour market still in recession', Nevin Economic Research Institute [blog post], 30 August 2014, <http://bit.ly/NERIBlogJobCreation> [accessed 3 September 2014].

99 Irish National Organisation of the Unemployed (2014) *INOUE Pre-Budget Submission to the Department of Social Protection*, Dublin: INOU, p.5.

100 Oireachtas Library & Research Service (2013) *Spotlight: Responding to Youth Unemployment in Europe*, Dublin: Houses of the Oireachtas, p.2.

101 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 1 2014*, Cork: CSO.

102 Central Statistics Office (2014) *Population and Migration Estimates: April 2014* Cork: Central Statistics Office.

103 Organisation for Economic Co-operation and Development (2014) *Ireland's Action Plan for Jobs: A Preliminary Review*, Paris: OECD, p.6.

104 European Council (2013) *Council Recommendation of 22 April 2013 on establishing a Youth Guarantee 2013/C 120/01*, Brussels: European Council.



take up a developmental internship<sup>105</sup> or face a penalty of the 25 per cent cut to their jobseekers payment.<sup>106</sup>

This scheme is targeting young people from disadvantaged backgrounds, many of whom will have left school early. It is absolutely critical that choice is at the heart of this intervention and that the necessary supports are in place to ensure that it will be a positive experience for the young people involved.

The unemployment rate among people with disabilities continues to be much higher than among the general population. Census 2011 figures indicated that 31 per cent of people with disabilities were unemployed compared to 19 per cent at that time for the rest of the population.<sup>107</sup> The 2011 figure demonstrated a marked increase since 2004 when it stood at eight per cent.<sup>108</sup> People with a mental health disability<sup>109</sup> are nine times more likely to be out of the labour force than those without a disability and this represents the highest rate for any disability group.<sup>110</sup> While the Department of Justice and Equality has published the *National Disability Strategy Implementation Plan 2013-2015*<sup>111</sup> and the Government is in the process of developing a *Comprehensive Employment Strategy for People with a Disability*,<sup>112</sup> these measures alone will not address the huge and growing disparities in employment rates for people with disabilities to enable them to fully realise their employment rights in an equal and inclusive way.

Travellers and Roma also face huge barriers to accessing employment in Ireland. Census 2011 revealed a Traveller unemployment figure of 84.3 per cent compared to an overall unemployment rate of 19 per cent for the general population.<sup>113</sup> There are no available statistics on the level of Roma unemployment, but significant barriers to employment exist in the form of discrimination and low levels of education, language and literacy skills amongst this group.<sup>114</sup> The only targeted training programme for Roma in Ireland which was run by Pavee Point Traveller and Roma Centre lost its funding in 2011. A Special Initiative for the employment of Travellers was introduced in 2005 and mainstreamed in 2011. In 2012, eight projects were still in operation but information is not available after this point.<sup>115</sup>

***FLAC urges the Committee to recommend that the State:***

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105 Department of Social Protection (2014) *Pathways to Work: The Implementation of the EU Council Recommendation for a Youth Guarantee Ireland*, Dublin: DSP, p.21.

106 M. Taft, 'From Youth Guarantee to Mandatory Labour', Unite's Notes on the Front, 12 March 2014.

107 Central Statistics Office (2012) *Profile 8: Our Bill of Health*, Dublin: Stationery Office, p.15.

108 D. Watson, G. Kingston and F. McGinnity (2013) *Disability in the Irish Labour Market: Evidence from the QNHS Equality Module 2010*, Dublin: Economic and Social Research Institute & the Equality Authority, p.18.

109 Mental health disability is defined by the Irish Census as having both a long-lasting psychological or emotional condition and having a difficulty with an activity of daily living.

110 D. Watson, G. Kingston & F. McGinnity (2012) *Disability in the Irish Labour Market: Evidence from the QNHS Equality Module*, Dublin: Equality Authority/Economic and Social Research Institute, p.19.

111 Department of Justice and Equality (2013) *National Disability Strategy Implementation Plan 2013-2015*, Dublin: Department of Justice and Equality.

112 Disability Federation of Ireland (2014) *Newsletter Special Edition May 2014: Update on the National Disability Strategy Implementation Plan*, Dublin: DFI, p.7.

113 Government of Ireland (2012) *Census 2011 Profile 7: Religion, Ethnicity and Irish Travellers*, Dublin: Stationery Office, p.33.

114 Health Service Executive and Pavee Point (2012) *Roma Communities in Ireland: Child Protection Considerations*, Dublin: HSE and Pavee Point.

115 Pavee Point (2013) *'Travelling with Austerity': Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point.



- ***Provide high quality, appropriate and equal education, training and work opportunities to all people who are seeking employment, including those with disabilities, illness and lone parents.***
- ***Address the high rate of youth unemployment, in particular longer-term youth unemployed, through a suite of well-resourced measures which are human rights-compliant.***
- ***Introduce the Comprehensive Employment Strategy for Persons with Disabilities along with a detailed implementation plan as a matter of urgency.***
- ***Ensure people working in sheltered workshops are entitled to the same rights as other workers, including the right to a fair wage and compliance with best practice on working hours.***
- ***Resource and implement a national employment strategy for Travellers and Roma in consultation with relevant civil society actors.***

### **6.3 Restrictions on the Right to Work**

Asylum seekers and those seeking leave to remain on other protection grounds are completely prohibited from entering paid employment regardless of circumstances.<sup>116</sup> Ireland opted out of an EU Directive which sets out minimum standards on the reception of applicants for asylum in Member States (the 'Reception Directive') and has chosen not to opt into the Recast Reception Directive which would grant an asylum seeker the right to work after nine months where a decision has not been made on his or her asylum application.<sup>117</sup>

In 2013, 68 per cent of residents in direct provision had spent three years or more in the system awaiting a decision on their application for protection.<sup>118</sup> Despite these protracted delays and repeated calls for the Government to reconsider its ban on the right to work for asylum seekers,<sup>119</sup> the Government remains steadfast in its view that such a move would 'almost certainly have a profoundly negative impact on application numbers'.<sup>120</sup> This work ban has had a detrimental effect on the mental health of asylum seekers and is resulting in their deskilling. Both issues have been highlighted as barriers to integration.<sup>121</sup> Female asylum seekers have reported that the ban on work coupled with inadequate payments and lack of access to the wider social security system has forced them into prostitution in order to provide for their basic needs and those of their children.<sup>122</sup>

#### ***FLAC urges the Committee to recommend that the State:***

- ***Grant asylum seekers the right to work after a defined period of time if a decision has not been made on their initial application.***
- ***Give further consideration to opting into the Recast Reception Directive.***

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116 Section 9(4)(b) of the Refugee Act 1996.

117 European Parliament and Commission (2013) *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast)*, Brussels: Official Journal of the European Union.

118 Reception & Integration Agency (2014) *Annual Report 2013*, Dublin: Department of Justice and Equality, p.4.

119 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.21; European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, p.25.

120 Alan Shatter TD, Minister for Justice and Equality, Parliamentary Question No.236, Written Answers, 27 March 2013.

121 S. Conlan (2014) *Counting the Cost: Barriers to employment after direct provision*, Dublin: Irish Refugee Council.

122 S. Connolly, 'Women asylum seekers forced into prostitution', *Irish Examiner*, 3 September 2014.



#### 6.4 Forced Labour and Trafficking of Migrants

Forced labour is both an historical and a contemporary problem in Ireland today. In February 2013, the Government issued a State apology to survivors of Ireland's Magdalen Laundries, where well over 10,000 girls and women<sup>123</sup> were forced into unpaid labour between 1922 and 1996. The apology was preceded by an Inter-departmental Committee report detailing widespread State involvement with the Magdalen Laundries' operations.<sup>124</sup> The Irish Human Rights Commission in its 2013 follow-up report on the Laundries determined that the State's culpability in terms of 'forced or compulsory labour and/or servitude in the Laundries' appeared to extend to a failure

'to outlaw and police against such practices, [...] the State or its agents placed girls and women in the Laundries knowing that such girls and women would be obliged to provide their labour in those institutions, and [...] the State further supported these practices by benefitting from commercial contracts with the Laundries'.<sup>125</sup>

In June 2013, the Government promised to implement in full all recommendations by Mr Justice John Quirke for an *ex gratia* restorative justice scheme,<sup>126</sup> but women are still waiting to be recompensed for the work that they carried out.

The current situation of migrants being forced to work under severe exploitative conditions in Ireland remains unquantified. This is due to the lack of formal identification procedures that result in victims of forced labour being unable to escape from exploitative situations. The Government has taken some measures to address the issue of forced labour including the enactment of legislation<sup>127</sup> and the establishment of an anti-human trafficking unit.<sup>128</sup> In 2013, 44 potential trafficking victims were identified of which eight were subjected to forced labour of whom the majority were victims of trafficking for sexual exploitation.<sup>129</sup> Sixteen of these victims were children, including 11 Irish national children who were trafficked for sexual exploitation.<sup>130</sup> However, this is considered to be a significant underestimate of the actual problem.<sup>131</sup> Thirty-nine people were also identified as victims of sex trafficking; 23 of those were children.<sup>132</sup> The US Department of State has described Ireland as a 'destination, source, and transit country for women, men, and children subjected to sex trafficking and forced labor'.<sup>133</sup> This US e-report noted cases of potential forced labour of domestic workers employed by foreign diplomats who

123 See Executive Summary of the Report of the Interdepartmental Committee to establish the facts of State involvement with the Magdalen Laundries, <http://bit.ly/MagdalenExecSummary> [accessed 29 September 2014].

124 Department of Justice and Equality (2013) The Magdalen Commission Report: Report of Mr Justice John Quirke, Dublin: Department of Justice and Equality.

125 Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, Dublin: IHRC, p.90.

126 Department of Justice and Equality, 'Restorative Justice Scheme for former Magdalen Residents announced - Government accepts all recommendations of Quirke Report', [press release], 26 June 2013.

127 The Criminal Law (Human Trafficking) Act 2008.

128 For information see: <http://www.blueblindfold.gov.ie/> [accessed 8 July 2014].

129 US Department of State (2014) *Trafficking in Persons Report 2014*, Washington DC: US Department of State, p.213.

130 US Department of State (2014) *Trafficking in Persons Report 2014*, Washington DC: US Department of State, p.213.

131 Migrant Rights Centre of Ireland (2014) *MRCI's Submission to the Shadow Report to the Irish State's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Dublin: Migrant Rights Centre of Ireland, p.4.

132 Anti-Human Trafficking Unit (2013) *Annual Report of Trafficking in Human Beings in Ireland for 2012*, Dublin: Department of Justice and Equality, p.11.

133 US Department of State (2014) *Trafficking in Persons Report 2014*, Washington DC: US Department of State, p.213.



enjoy diplomatic immunity and the prosecution of people involved in cannabis production living in slave-like conditions that have not been investigated as potential victims of trafficking.<sup>134</sup> Changes to the law in 2013 included a definition of forced labour in line with the International Labour Organisation's (ILO) definition.<sup>135</sup>

The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) conducted an official visit to Ireland in November 2012. It highlighted positive measures taken by the Irish Government to combat trafficking, but recommended that the protection of the rights of victims of trafficking should be placed on a statutory footing and expanded to replace the present administrative arrangements which only extend to non-EEA migrants without permission to remain in Ireland.<sup>136</sup> EU citizens, asylum seekers and other people who are considered to be 'documented' in the State are precluded from being formally identified by the authorities as victims of trafficking and are not dealt with under existing administrative arrangements.<sup>137</sup>

Access to remedies such as compensation for victims of trafficking are not considered to be effective, accessible or adequate.<sup>138</sup> Existing avenues, provided through the Criminal Injuries Compensation Tribunal and through a Court Order, remain irrelevant in many cases. The Tribunal is confined to out-of-pocket expenses and does not extend to pain and suffering suffered by victims of trafficking. GRETA noted that there have been no cases of compensation from offenders awarded to victims of trafficking in criminal trials<sup>139</sup> and recommended that the authorities put in place measures to ensure victims of trafficking can easily access adequate compensation.<sup>140</sup>

GRETA was concerned that victims of trafficking, including victims of trafficking for sexual exploitation, are also accommodated by the State in mixed-gender Direct Provision centres where they risk retaliation, grooming, further sexual exploitation and trauma.<sup>141</sup>

**FLAC urges the Committee to recommend that the State:**

- **Ensure that women who worked in Magdalen Laundries are paid for the work they undertook and have access to the appropriate pensions, healthcare and other services they require.**
- **Put in place legislation to protect all victims of trafficking and forced labour.**

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134 US Department of State (2014) *Trafficking in Persons Report 2014*, Washington DC: US Department of State, p.213.

135 Migrant Rights Centre of Ireland (2014) *Submission to the Shadow Report to the Irish State's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Dublin: MRCI, p.3.

136 GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, Strasbourg: Council of Europe.

137 Immigrant Council of Ireland (2013) *Human Trafficking Shadow Report Co-ordinated by the Immigrant Council Gets International Endorsement*, Dublin: ICI, p.3.

138 GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, Strasbourg: Council of Europe, pp.52-53.

139 Immigrant Council of Ireland (2013) *Human Trafficking Shadow Report Co-ordinated by the Immigrant Council Gets International Endorsement*, Dublin: ICI, p.8.

140 GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, Strasbourg: Council of Europe, p.53.

141 GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, Strasbourg: Council of Europe, p.46.



- ***Implement the recommendations of GRETA in the forthcoming National Action Plan to Combat Trafficking in Human Beings to ensure that the rights of victims of forced labour are upheld and that they can obtain adequate legal and financial redress.***
- ***Accommodate victims of trafficking in appropriate single gender facilities with access to a range of necessary support services.***



## Article 7

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

*(a) Remuneration which provides all workers, as a minimum, with:*

*(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

*(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

*(b) Safe and healthy working conditions;*

*(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

*(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

State Report paragraphs 144-165

### 7.1 Fair Wages

In its 2002 Concluding Observations, the Committee expressed concern over the inadequacy of the minimum wage introduced in 2000. The national minimum wage is set at €8.65 per hour for experienced workers over 18 and a lower rate of €6.06 is paid to workers under 18.<sup>142</sup> Workers without experience in their first year of employment are entitled to €6.92 per hour increasing to €7.79 for the second year meaning that many young adults will earn below the national minimum wage despite having the same living costs. The National Employment Rights Authority (NERA) is tasked with enforcing the payment of the national minimum wage;<sup>143</sup> in 2013, there were seven prosecutions under the National Minimum Wage Act 2000 where a court imposed a sanction.<sup>144</sup> NERA's policy is 'to seek voluntary compliance where breaches of employment law are detected' and to work with employers to allow them 'every reasonable opportunity to rectify breaches in preference to prosecution'.<sup>145</sup> This means that although there were other instances of non-compliance in relation to minimum wage, comprehensive data is not available to demonstrate the prevalence of the problem.

#### *Minimum wage*

The current level of the minimum wage was first set in 2007 and following a cut of €1 under the initial Troika agreement, the Government reinstated it to €8.65 in 2011.<sup>146</sup> However, the adequacy of the minimum wage has been undermined by a number of measures. The impact of austerity budgetary policies between 2009 and 2014 resulted in a 12.5 per cent reduction in the

142 National Minimum Wage Act 2000 (Section 11) (No. 2) Order 2011 (SI 331/2011).

143 NERA was set up on an interim basis in 2007 as an office of the Department of Jobs, Enterprise and Innovation but will now form part of the Workplace Relations Commission when the legislation is enacted later in 2014. NERA comprises Inspection Services which monitors breaches of employment law.

144 National Employment Rights Authority (2014) *Annual Review 2013*, Carlow: NERA, pp.15-30.

145 National Employment Rights Authority (2014) *Annual Review 2013*, Carlow: NERA, p.8.

146 National Minimum Wage Act 2000 (Section 11) (No. 2) Order 2011 (SI 331/2011).



disposable income of the poorest households.<sup>147</sup> These measures include changes in direct taxation including a Universal Social Charge on all annual incomes above €10,036, changes to social welfare rates and the introduction of other charges such as a Carbon Tax and increases in Value Added Tax (VAT) from 21 to 23 per cent.

Despite having a relatively high minimum wage in comparison to other EU Member States,<sup>148</sup> Eurostat found that one in five workers in Ireland were classified as low-wage earners or in other words earning less than the low-wage income of €12.20 per hour.<sup>149</sup> Even though some of these workers may be earning more than the basic minimum wage, in 2013 earnings overall declined by 0.7 per cent while inflation rose by 0.5 per cent resulting in a loss of real wages for many low-income earners. This reflects the 'significant cumulative reduction in real wages' since the beginning of the recession.<sup>150</sup> Workers in low-wage sectors find it difficult to cope on minimum wage salaries.

In 2014, 16 per cent of working adults fell below the poverty line.<sup>151</sup> An adequate living wage for Ireland has been calculated to be €11.45 per hour (€446 per week) 'based on the concept that work should provide an adequate income to enable individuals to afford a socially acceptable standard of living'.<sup>152</sup> The minimum wage is not sufficient to address the needs of many workers and in particular is insufficient for low-paid lone parent households or single people living alone even with the person receiving any social welfare or tax entitlements.<sup>153</sup>

The JobBridge National Internship Scheme – a scheme providing work experience placements for interns for a six or nine month period – has been the subject of criticism as interns receive their weekly basic social welfare payment and an additional €50 from the Department of Social Protection. By the end of 2012, some 27 per cent of participants were under 25 years of age;<sup>154</sup> from January 2014, interns of this age are receiving a combined weekly payment of €150, meaning that the rate of pay would equate to €5.00 per hour for those working the minimum of 30 hours a week or €3.75 per hour for those working the maximum 40 hours per week, much less than minimum wage. The main issues centre on potential employers attempting to exploit the scheme so as to avoid paying fair wages, and the question mark over the quality or nature of some internships on offer, where the intern would end up stacking shelves,<sup>155</sup> for example, or where highly qualified candidates are sought for a skilled position.<sup>156</sup> Both the Minister for Education & Skills and the Minister for Social Protection have expressed concern at the use of the JobBridge scheme by schools seeking teaching staff and Special Needs Assistants as this

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147 T. Callan, C. Keane, M. Savage and J.R. Walsh (2014) *Distributional Impact of Tax, Welfare and Public Service Pay Policies: Budget 2014 and Budgets 2009-2014*, Dublin: Economic and Social Research Institute, p.8.

148 L. Kelleher, 'Ireland has the 7th highest minimum wage pay', *Irish Examiner*, 28 April 2014.

149 Eurostat Press Office, 'One out of six employees in the EU27 was a low-wage earner in 2010' [press release], 20 December 2012, <http://bit.ly/EurostatLow-wageEarners> [accessed 25 August 2014].

150 Nevin Economic Research Institute (2014) *NERI Quarterly Economic Facts: Summer 2014*, Dublin/Belfast: NERI, p.56.

151 Social Justice Ireland (2014) *Policy Briefing: Poverty and Income Distribution*, Dublin: Social Justice Ireland, p.1.

152 A Living Wage Technical Group has been established by a number of organisations including the Vincentian Partnership for Social Justice, the Nevin Economic Research Institute, Tasc, Social Justice Ireland, Unite Trade Union and the Services Industrial Professional and Technical Union. See [www.livingwage.ie](http://www.livingwage.ie) for details [accessed on 8 July 2014].

153 Vincentian Partnership for Social Justice (2014) *Minimum Essential Standard of Living 2014 Update*, Dublin: Vincentian Partnership for Social Justice, pp.9-12.

154 Indecon International Economic Consultants (2013) *Indecon's Evaluation of JobBridge: Final Evaluation Report*, Dublin: Department of Social Protection, p.24.

155 A. Barry, 'Tesco stands behind JobBridge advert', *TheJournal.ie*, 16 September 2011.

156 B. Byrne and J. Fagan, 'Wanted: PhD grad to work for €50', *Irish Independent*, 17 January 2014.





could lead to job displacement while noting that advertisements for school cleaners do not constitute a quality internship.<sup>157</sup> It is also notable that the highest number of placements is in the services, retail and sales industry.<sup>158</sup>

### **People with disabilities**

In paragraph 15 of its 2002 Concluding Observations, the Committee raised concerns about the status of people with disabilities working in sheltered workshops, as they were not deemed to be employees and therefore could not qualify for the minimum wage; where they did receive minimum wage, then they were not entitled to free medical care<sup>159</sup> under special arrangements for people on disability-related payments. In 2009, the National Disability Authority (NDA) published a policy advice paper reiterating the need for the progressive closure of sheltered workshops and recommended that they be replaced with alternative opportunities for persons with disabilities.<sup>160</sup> It noted that the absence of legislation meant that people in sheltered workshops continued to be treated as service users and lacked the legal protections afforded to employees such as regulated working hours and proper rates of pay.<sup>161</sup> There are different types of sheltered workshops in Ireland, including those used for therapeutic reasons, commercial workshops where a person may be in receipt of a social welfare payment but may also receive a discretionary top-up payment, or sheltered ‘work-like’ work where the service-user is given a top-up payment.<sup>162</sup> In 2010, there were 1521 people with a disability working in commercial sheltered workshops.<sup>163</sup>

### **Zero-hour contracts**

A ‘zero-hour’ contract is a type of employment contract where the employee is available for work but does not have specified hours of work, resulting in a precarious employment situation as well as insecurity of income.<sup>164</sup> Employees working part-time hours are more prone to experience in-work poverty as well as being less likely to have access to non-pay related employee benefits, training opportunities or social protection coverage.<sup>165</sup> While there are no official statistics indicating the number of people working on zero-hour contracts in Ireland, statistics released by the Central Statistics Office on the number of ‘underemployed’ persons give a good indication of the extent of the issue. Since 2008, the percentage of persons recorded as ‘underemployed’ has risen by 50.5 per cent compared to the EU average increase of 31.9 per cent in the same period.<sup>166</sup> In Ireland, 53 per cent of employers with at least ten employees

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157 RTÉ News Online, ‘Burton: cleaning work not suitable for JobBridge’, 18 September 2014, <http://bit.ly/1qjKLeW> [accessed 19 September 2014].

158 Indecon International Economic Consultants (2013) *Indecon’s Evaluation of JobBridge: Final Evaluation Report*, Dublin: Department of Social Protection, p.16.

159 UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para. 26.

160 National Disability Authority (2009) *From Sheltered Employment to Open Employment for People with Disabilities in Ireland*, Dublin: NDA, p.4.

161 National Disability Authority (2009) *From Sheltered Employment to Open Employment for People with Disabilities in Ireland*, Dublin: NDA, p.9.

162 Department of Health (2012) *Value for Money and Policy Review of Disability Services in Ireland*, Dublin: Department of Health, pp.264-265.

163 Inclusion Ireland (2013) *Submission on the Comprehensive Employment Strategy for People with a Disability*, Dublin: Inclusion Ireland, p.4.

164 For information see Citizens Information note: <http://bit.ly/zerohourscontract> [accessed 5 August 2014].

165 International Labour Organisation (2011) *Working time in the twenty-first century: Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements*, Geneva: ILO, p.56.

166 E. Lynch (2014) *Regulating for Decent Work: Combatting Unfair Terms in (Zero-Hour) Employment Contracts*, Dublin: Irish Congress of Trade Unions.



require at least part of their workforce to work fifteen hours or less a week and to be flexible with their availability.<sup>167</sup> The Minister for Jobs, Enterprise and Innovation when questioned about zero-hour contracts stressed that employees should enter into such contracts voluntarily<sup>168</sup> but this may not be an option for someone without other employment options. Zero-hour contracts can often impose unfair conditions of work such as inadequate notice, a lack of transparency and terms of employment placing an unfair burden on the employee that he or she feels compelled to accept, rather than have his or her contract terminated.<sup>169</sup>

The Organisation of Working Time Act 1997 specifically allows for zero-hour contracts and requires a person to ‘make himself or herself available to work for the employer in a week’ for a specified number of hours or when required.<sup>170</sup> This means that a person may be provided with insufficient paid work to cover their financial outgoings while at the same time being unable to make other necessary arrangements or engage in other activities such as training or other available casual work.

In a behaviour and attitudes survey conducted by Mandate Trade Union in 2012,<sup>171</sup> it found that the majority of its members were working on part-time contracts for an average of 22 hours per week; more than half of its members work these hours over a five-day period.<sup>172</sup> It also found that more than half of part-time workers had their hours changed at least once a month, while only one-third had stable working hours. Twenty-five per cent of the workers expressed a desire to have greater certainty in their working hours. While there has been some media focus in relation to this issue, the State should collate statistics on the number of zero-hour contracts in operation.

***FLAC urges the Committee to recommend that the State:***

- ***Increase the rate of the minimum wage to ensure an adequate standard of living.***
- ***Give due consideration to the findings of the Living Wage Technical Group and take appropriate measures to work towards the introduction of a living wage.***
- ***Increase the amount paid to persons taking up internships under the JobBridge scheme and encourage employers to also make a contribution to the payment with a view to providing that all persons participating in the scheme are paid at least the minimum wage.***
- ***Ensure all JobBridge placements involve a substantial element of learning and experience that will be of future benefit to those taking part in the scheme.***
- ***Review the use of ‘zero-hour’ contracts and regulate the use of such contracts to ensure that fair conditions of work are observed by employers.***

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167 International Labour Organisation (2011) *Working time in the twenty-first century: Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements*, Geneva: ILO, p.54.

168 Richard Bruton TD, Minister for Jobs, Enterprise and Innovation, Parliamentary Questions: Written Answers, [3086/14], 22 January 2014.

169 E. Lynch (2014) *Regulating for Decent Work: Combatting Unfair Terms in (Zero-Hour) Employment Contracts*, Dublin: Irish Congress of Trade Unions.

170 Section 18(1) of the Organisation of Working Time Act 1997.

171 Mandate Trade Union represents over 40,000 members working in bar, retail and administrative work.

172 Mandate Trade Union (2012) *Decent Work? The Impact of the Recession on Low-Paid Workers*, Dublin: Mandate, p.4.



## 7.2 Gender Pay Gap

Women continue to earn less than men. In 2014, the gender pay gap for Ireland was calculated at 14.4 per cent, below the EU average of 16.4 per cent.<sup>173</sup> Addressing this important gender equality issue is one of the primary objectives of the *National Women's Strategy 2007 to 2016*. However, the gap has increased since the introduction of the Strategy when it stood at 11 per cent<sup>174</sup> meaning that its initiatives have failed to bring equal pay for men and women any closer.<sup>175</sup> Lower female participation rates in the labour market, less stable contractual arrangements and the prevalence of segregated employment in different sectors all play a part in the continuance of a pay gap.<sup>176</sup> In 2010, the gender pay gap in the public sector was much lower at 12 per cent than the 21 per cent experienced in the private sector.<sup>177</sup> Furthermore, more than 50 per cent of women earn €20,000 or less annually while less than ten per cent of women earn €50,000 or more compared to nearly 20 per cent of men.<sup>178</sup>

There are no statistics available at a domestic level to monitor the gender pay gap in 2011 and 2012, as the National Employment Survey (NES) was discontinued in 2009, and the new Earnings, Hours and Employment Costs Survey (EHECS) does not record the gender of employees.<sup>179</sup> In 2012, almost 60 per cent of women were employed and almost a third of these women worked part-time compared to a male employment rate of almost 70 per cent of whom fewer than ten per cent worked part-time.<sup>180</sup> Since the beginning of the recession there has been an increase in involuntary part-time work and reduction in hours for both women and men but participation rates demonstrate that women 'have been accepting shorter working hours rather than withdrawing' from the workforce.<sup>181</sup> Even when the statistics are adjusted to take account of the average number of hours worked per week, women's income is only 94 per cent that of men's income.<sup>182</sup>

### ***FLAC urges the Committee to recommend that the State:***

- ***Ensure the objective to close the gender pay gap as set out in the National Women's Strategy is fully supported and implemented.***

## 7.3 Discrimination and Exploitation in the Workplace

Discrimination in the workplace is a consistent problem which the State does not adequately address. Migrants, in particular, experience higher rates of discrimination in looking for work and

173 European Commission (2014) *Tackling the Gender Pay Gap in the European Union*, Luxembourg: Publications Office of the EU, p.10.

174 Government of Ireland (2007) *National Women's Strategy 2007-2016*, Dublin: Stationery Office, p.27.

175 SIPTU, 'Being a mother doesn't pay', [press release] 28 February 2013.

176 European Commission (2014) *Tackling the Gender Pay Gap in the European Union*, Luxembourg: Publications Office of the EU, p.?

177 H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Dublin: Equality Authority & the Economic Social Research Institute, p.33.

178 Central Statistics Office (2014) *Women and Men in Ireland 2013*, <http://bit.ly/1pBcTtA> [accessed 29 September 2014].

179 H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Dublin: Equality Authority & the Economic Social Research Institute, p.33.

180 European Commission (2012) *Report on Progress on equality between women and men in 2012*, Brussels: European Commission, p.33.

181 H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Dublin: Equality Authority & the Economic Social Research Institute, p.35.

182 Central Statistics Office (2011) *Women and Men in Ireland*, Cork: CSO, p.28.



in the workplace, partly due to recruitment practices.<sup>183</sup> The Employment Appeals Tribunal, an independent quasi-judicial body established to deal with discrimination in the workplace is not considered to provide an effective remedy due to considerable delays; in 2014, it took 76 weeks on average to get a hearing in one particular region.<sup>184</sup>

Employment Equality legislation does not adequately protect workers against discrimination in workplaces with a religious ethos or religious patron where their sexual orientation, civil/marital status or gender identity is considered to conflict with the ethos of the institution. Current legislation contains an exemption for certain educational and medical institutions to discriminate on religious grounds<sup>185</sup> which presents difficulties for teachers of no religion or minority religions, and for teachers who are single parents, as well as those who identify as gay, lesbian, bisexual, or transgender. Ninety-six per cent of all primary schools are run by a religious patron, the majority of which are Roman Catholic.<sup>186</sup>

While Government has recognised this difficulty and committed to take action to ensure that ‘people of non-faith or minority religious backgrounds and publicly identified LGBT people should not be deterred from training or taking up employment as teachers in the State’,<sup>187</sup> employees in religious-run organisations continue to face a ‘chill factor’ and have concerns for their job security.<sup>188</sup> The newly established Irish Human Rights and Equality Commission has reviewed the legislation and recommended reform of the provision to prevent discrimination in the workplace.<sup>189</sup> In July 2014 the UN Human Rights Committee called on the State to amend the legislation.<sup>190</sup>

Government policy continues to focus on attracting high skilled workers to the labour market despite a growth in demand for workers with essential skills.<sup>191</sup> The Work Permit system needs to respond to these demands otherwise gaps in the labour market will be filled through exploitative employment practices. One example is the clear demand for childcare workers which has led to a growth in recruitment of au pair workers who are subject to exploitative rates of pay.<sup>192</sup> In 2014, there were 58,985 people registered and eligible to apply for a work permit.<sup>193</sup> The Employment Permits Act 2006 broadened the work permit system allowing either the employee or the employer to apply for a permit or renewal but difficulties remain. A

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183 P. J. O’Connell and F. McGinnity, The Equality Authority (2008) *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*, Dublin: Equality Authority and Economic and Social Research Institute, p.34.

184 Minister for Jobs, Enterprise and Innovation, Richard Bruton TD, Parliamentary Questions: Written Answers [10037/14], 27 February 2014.

185 Section 37(1) of the Employment Equality Acts 1998 – 2011.

186 Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: DES, pp.5-6.

187 Department of Education, ‘Minister Quinn welcomes Committee Stage of the Employment Equality Bill’, [press release], 9 April 2014.

188 Gay and Lesbian Equality Network (2013) *Submission to the Equality Authority on Section 37(1) of the Employment Equality Acts 1998 – 2011*, Dublin: GLEN, pp.3-5.

189 Irish Human Rights and Equality Commission (Designate) (2014) Recommendation Paper on the Review of Section 37(1) of the Employment Equality Acts 1998-2011.

190 UN Human Rights Committee (2014) *Concluding Observations under the International Covenant on Civil and Political Rights: Ireland*, Geneva: Office of the High Commissioner for Human Rights, para. 21.

191 J. Behan, J.McNaboe, C. Shally and N. Burke (2014) *National Skills Bulletin 2014*, Dublin: SOLAS Further Education and Training Authority and Expert Group on Further Skill Needs, p.63.

192 Migrant Rights Centre of Ireland (2014) *Au Pairs: Briefing Paper and Recommendations*, Dublin: MRCI.

193 Migrant Rights Centre of Ireland, *Submission to the Joint Committee on Jobs, Enterprise and Innovation on the Employment Permits (Amendment) Bill 2014*, Dublin: MRCI, p.2.



worker's immigration status is tied to a specific employer, so unless he or she is aware of how to change employer and is willing to engage in the complex administrative procedures, he or she may end up being exploited.<sup>194</sup> Even after five years' residence in the State, a worker is not automatically granted permanent or long-term residence status which would afford them freedom of movement within the labour market. This status is only granted on a discretionary basis by the Minister for Justice and Equality and until it is granted they remain locked into the employment permit system. The State has not opted into the Long Term Residence Directive.<sup>195</sup> The European Committee on Social Rights has found that work permit fees in Ireland - which range between €500 and €2250 - are excessive and violate Article 18 (right to engage in gainful occupation) of the European Social Charter.<sup>196</sup>

In 2013, the National Employment Rights Authority detected 453 possible breaches of the Employment Permits Acts resulting in 48 successful prosecutions against employers, with 100 prosecution cases pending for processing in 2014.<sup>197</sup> Legislation enacted to deal with anomalies in the work permit system will come into force in September 2014. This follows a 2012 High Court decision which found that a migrant worker who had been exploited over a prolonged period could not enforce a favourable Labour Court judgment as he had not held a valid work permit for the duration of his employment.<sup>198</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Amend the Employment Equality Acts 1998-2011 as a matter of priority to remove all forms of discrimination against employees or potential employees of religious-run institutions in the fields of education and health.***
- ***Monitor and enforce the Employment Permits (Amendment) Bill 2014 to ensure that migrant workers do not suffer exploitation.***
- ***Abolish the provision in the Employment Permit Act 2003-2014 that ties an employee to a specific employer.***
- ***Expand eligible employment categories to secure work to create regular channels of migration in line with the demand of essential skills in the labour market, such as childcare and the services industry.***

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194 Migrant Rights Centre of Ireland (2014) *MRCI's Submission to the Shadow Report to the Irish State's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Dublin: Migrant Rights Centre of Ireland, p.3.

195 Long Term Residence Directive 2003/109/EC sets out the rights of non-EEA citizens living legally and continuously in an EU Member State for more than five years.

196 European Committee on Social Rights (2013) *European Social Charter (Revised): Conclusions 2012 Ireland*, Strasbourg: Council of Europe, p.28.

197 National Employment Rights Authority (2014) *Annual Review 2013*, Dublin: NERA.

198 *Hussein v Labour Court and Another* [2012] 2 I.R. 704; [2012] 2 I.L.R.M. 508; [2012] E.L.R. 293



## Article 8

1. *The States Parties to the present Covenant undertake to ensure:*
  - (a) *The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
  - (b) *The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*
  - (c) *The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
  - (d) *The right to strike, provided that it is exercised in conformity with the laws of the particular country.*
2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.*

State Report paragraphs 166-167

### 8.1 Restrictions on the Right to Collective Bargaining

Collective bargaining is not constitutionally or legally recognised in Irish law. In 2002, the Committee expressed concern at the continued impediments imposed by the State with respect to trade unions and collective bargaining. During its examination under the Universal Periodic Review in 2011, the State accepted a recommendation to enact legislation to recognise the right to collective bargaining through trade unions in compliance with Ireland's international commitments.<sup>199</sup>

In 2013, the Supreme Court struck down an existing mechanism, in force for more than 70 years, which had facilitated informal collective bargaining<sup>200</sup> as the term 'collective bargaining' had not been defined in legislation.<sup>201</sup> While the Government has committed to introduce legislation to give effect to collective bargaining following consultations with trade unions and employer

<sup>199</sup> Office of the High Commissioner for Human Rights (2011) *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, p.21.

<sup>200</sup> *McGowan & Ors v Labour Court Ireland & Ors* [2013] 2 I.L.R.M. 276

<sup>201</sup> Industrial Relations Act 2001. For further information see Irish Congress of Trade Unions (2014) *Interim Report Regarding the Implementation of Recommendation 107.46 Received by Ireland: Universal Periodic Review*, Dublin: ICTU, pp. 6-7.



groups, the draft legislation has not yet been published.<sup>202</sup> This is at a time when wages have stagnated but productivity has increased nationally, meaning that people are working longer hours for less money and do not have the power to negotiate collectively in order to improve and standardise conditions of work.

Members of An Garda Síochána (the Irish police force) are prohibited from joining a trade union by law.<sup>203</sup> The European Social Committee upheld a collective complaint taken under the European Social Charter by the European Confederation of Police (EuroCOP) on behalf of its Irish member the Association of Garda Sergeants and Inspectors (AGSI).<sup>204</sup> The Committee found that there had been a breach of Articles 5 (right to organise) and 6 (right to collective bargaining) of the Revised European Social Charter. The Minister for Justice and Equality submitted a response to the Committee in June 2014 indicating that she favoured the right of Gardaí to join a trade union but that the right to strike raised 'significant and sensitive issues' and would have to be considered further.<sup>205</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Enact legislation to recognise the right to collective bargaining. The State must recognise and implement the right of workers in any sector to join a trade union.***

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202 Irish Congress of Trade Unions (2014) *Interim Report Regarding the Implementation of Recommendation 107.46 Received by Ireland: Universal Periodic Review*, Dublin: ICTU, p.1.

203 An Garda Síochána Act 2005.

204 *European Confederation of Police (EuroCOP) v Ireland*, Complaint No. 83/2012.

205 Department of Justice and Equality, 'Report to the Committee of Ministers of the Council of Europe', 19 June 2014.



## Article 9

*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*

State Report paragraphs 168-216

The Department of Social Protection's budget has more than doubled in the last ten years and in 2014, it was allocated €19.6 billion. While this represents 39 per cent of projected overall government expenditure,<sup>206</sup> it was a drop of three per cent from the departmental budget in 2013.<sup>207</sup> Further reductions are expected in 2015 and 2016.<sup>208</sup> Changes in overall expenditure since 2008 take account of the transfer of other schemes to the Department as well as the changing demographics of the population.

In 2013, almost 1.5 million people received a social welfare payment benefitting almost 2.3 million people in total.<sup>209</sup> This figure also includes recipients of Child Benefit but the level of those who receive only this payment and no other payment cannot be extracted from the overall statistics. The State Report acknowledges the high level of unemployment experienced from 2007 onwards, resulting in a higher number of people becoming reliant on the social welfare system;<sup>210</sup> in fact, the number of recipients in 2013 represented a 57 per cent increase on the 2003 figure.<sup>211</sup>

The social protection system plays a vital role in ensuring that people are supported by the State where necessary and appropriate. In 2013, government sources stated that social transfers reduced the 'at-risk-of-poverty rate from 55 per cent to 16 per cent in 2011'<sup>212</sup> yet despite this important safety-net, the at-risk-of poverty figure rose from 14.4 per cent in 2008<sup>213</sup> to 16.5 per cent in 2012.<sup>214</sup>

In relation to contributory payments for the unemployed, from 2013 the duration of Jobseeker's Benefit was reduced from 12 to 9 months for recipients with 260 or more contributions since entering insurable employment while it was reduced from 9 to 6 months for those with less than 260 contributions.<sup>215</sup> This was done as a cost-saving measure despite the growth of long-term

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206 Department of Public Expenditure (2013) *Revised Estimates for Public Services*, Dublin: Stationery Office, p.9.

207 Department of Social Protection (2014) *Annual Report 2013*, Dublin: Government of Ireland, p.6. This represents a 3.2 per cent compared to the €20.23 billion spent in 2013.

208 Government of Ireland (2013) *2014 Expenditure Report*, Dublin: Stationery Office.

209 In 2013, 611,366 recipients received a monthly Child Benefit payment, paid in respect of 1,168,582 children but as the data does not indicate how many of these were also in receipt of another social welfare payment, these figures cannot be deducted from the total number of recipients and beneficiaries.

210 UN Committee on Economic, Social and Cultural Rights (2013) *Third periodic reports of States parties due in 2007: Ireland*, Geneva: OHCHR.

211 Department of Social Protection (2014) *Annual Report 2013*, Dublin: DSP,

212 Department of Social Protection (2014) *Social impact assessment of the main welfare and tax measures for 2014*, Dublin: DSP, p.2.

213 Central Statistics Office (2009) *Survey on Income and Living Conditions (SILC) 2008*, Dublin: Stationery Office, p.6.

214 Central Statistics Office (2014) *Survey on Income and Living Conditions (SILC) 2012*, Cork: CSO, p.1.

215 Department of Social Protection (2013) *Budget Factsheet 2013*, Dublin: Department of Social Protection.





unemployment; almost 60 per cent of all unemployed people have been out-of-work for a year or more.<sup>216</sup>

**FLAC urges the Committee to recommend that the State:**

- **Undertake a human rights and equality impact assessment on all proposed budgetary measures, make these assessments publicly available and ensure they are discussed by the Oireachtas.**

## 9.1 Accessibility

### Migrants

Since the State's last examination, the Government has engaged retrogressive measures which have impacted on the accessibility of the social security system particularly in relation to immigration concerns. For example, many people who would otherwise be eligible are regularly denied different forms of social protection, including Child Benefit, because of the application of the Habitual Residence Condition.<sup>217</sup> The Condition is not defined in legislation but it has been interpreted to mean that you must be able to prove a close link to Ireland.<sup>218</sup> The State Report refers to the introduction of the Habitual Residence Condition following EU enlargement in May 2004 as an extra qualifying criteria'.<sup>219</sup> Between May 2004 and September 2005, some 133,258 Personal Public Services Numbers (PPSN) were issued to migrants from the ten EU accession states. While the Government was initially concerned about potential 'welfare tourism', this turned out to be unwarranted as checks carried out by the then Department of Social and Family Affairs (now Department of Social Protection) indicated that in 70 per cent of cases, these PPSN holders were paying tax while the outward migration flow indicated that many came to Ireland for a short period of time and left again.<sup>220</sup> Furthermore, only 3.4 per cent of workers between May 2004 and July 2005 applied for social welfare payments (including Child Benefit).<sup>221</sup>

Despite the evidence that the majority of new migrants came to work rather than claim social protection, in 2009 a 'right to reside' test was introduced to supplement the existing Habitual Residence Condition test.<sup>222</sup> The Habitual Residence Condition has been found to have a disproportionate impact on non-Irish nationals;<sup>223</sup> these include amongst others, asylum seekers who can never be deemed habitually resident,<sup>224</sup> victims of domestic violence,<sup>225</sup> EU migrants,<sup>226</sup>

216 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 2 2014*, Cork: CSO.

217 Section 246 of the Social Welfare (Consolidation) Act 2005 as amended.

218 There are five criteria contained in Social Welfare and Pensions Act 2007 to determine habitual residence: 1) The length and continuity of living in the State or another country; 2) The length and reasons for any absence from the State; 3) The nature and pattern of the person's employment; 4) The person's main centre of interest; and 5) The future intentions of the person applying for the social welfare scheme.

219 State Report, para.180.

220 E. Quinn, (2006) *Policy Analysis Report on Asylum and Migration: Ireland Mid-2004 to 2005*, Dublin: European Migration Network, p.26.

221 Migrant Rights Centre of Ireland (2005) *Social Protection Denied: the Impact of the Habitual Residency Condition on Migrant Workers*, Dublin: MRCI, p.30.

222 Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 amends s.246 of the Social Welfare Consolidation Act 2005 by inserting s.246(5), which provides that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State.

223 In a response by Minister Joan Burton TD to a Parliamentary Question on 23 March 2011, she replied that out of 9693 refusals on the basis of the Habitual Residence Condition, 650 were in relation to Irish nationals whereas the remaining 9043 refusals related to non-Irish nationals.

224 FLAC (2009) *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system, ten years on*, Dublin: FLAC, pp.57-62.



and Roma.<sup>227</sup> Irish applicants, most notably Travellers<sup>228</sup> and returning Irish emigrants<sup>229</sup> are affected to a lesser extent but have also been refused payments on the basis that they do not satisfy the condition. Both the European Commission against Racism and Intolerance (ECRI)<sup>230</sup> and the UN Independent Expert on Human Rights and Extreme Poverty<sup>231</sup> noted the detrimental impact of the Condition on marginalised groups.

**Figure 3: Case study – Failures of the social protection system to safeguard the rights and entitlements of a family seeking asylum**

In 2013, the Ombudsman published an investigation into the circumstances of an asylum-seeking woman who had applied for a social welfare payment.<sup>232</sup> The case highlighted a number of failures and weaknesses at different levels of the social protection system. The applicant applied for asylum in 2007 with her two teenage daughters and lived in Direct Provision. In 2008, the youngest daughter, who had suffered mental health difficulties, attempted suicide. The family left direct provision accommodation and the mother applied for a payment as the small direct provision allowance had been withdrawn and the family had no money. Initially she was refused any payment on the basis that she had left direct provision but the Social Welfare Appeals Office held this was not a valid reason for refusal. Following this successful appeal, the initial decision-maker refused to implement the Appeals Officer’s decision and instead reopened the case and found that the mother did not satisfy the Habitual Residence Condition following a recent change in the law to exclude all asylum seekers. In the meantime, the youngest daughter was placed in foster care while the mother and eldest daughter had no choice but to return to Direct Provision meaning that the social work team could not reunite the family as conditions in the hostel were not deemed adequate. She could not apply for civil legal aid and was instead assisted by FLAC (the Free Legal Advice Centres). The mother lodged a complaint with the Ombudsman who launched an investigation into the case.

The entire process from the initial social welfare application in 2008 took almost five years to complete due to delays at the initial decision-making level, the backlog of social welfare appeals and the incorrect decision-making at the outset. Although the woman received a back-payment of arrears as well as compensation, her daughter turned 18 in foster care and could not be reunited with her family interfering with the right to family as well as other fundamental rights.

225 Women’s Aid (2014) *Women’s Aid input into FLAC Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: Women’s Aid; Crosscare, Doras Luimni & Nasc (2012) *Person or Number? Issues Faced by Immigrants Accessing Social Protection*, Limerick: Crosscare, Doras Luimni & Nasc, p.37.

226 Social Welfare Appeals Office (2012) *Annual Report 2011*, Dublin: SWAO.

227 Health Service Executive and Pavee Point (2012) *Roma Communities in Ireland: Child Protection Considerations*, Dublin: HSE and Pavee Point; Nasc (2013) *In From the Margins – Roma in Ireland: Addressing the Structural Discrimination of the Roma Community in Ireland*, Cork: Nasc.

228 Pavee Point (2011) *Irish Travellers and Roma Shadow Report: Response to Ireland’s Third and Fourth Combined Report under the International Covenant on the Elimination of All Forms of Discrimination (CERD)*, Dublin: Pavee Point.

229 Crosscare Migrant Project (2014) *Review of Ireland’s Engagement with the Diaspora: Submission to the Department of Foreign Affairs and Trade*, Dublin: Crosscare.

230 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, pp.28-29.

231 Office of the High Commissioner for Human Rights (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland, 17 May 2011*, Geneva: OHCHR, pp.11-12.

232 Office of the Ombudsman (2013) *Appeal Overruled: A failure to provide a basic income for a family seeking asylum*, Dublin: Office of the Ombudsman.



Migrant workers who have paid social insurance contributions also experience difficulties in accessing social security payments due to their immigration status. These include international students, undocumented migrants and those registered as family dependents of employment permit holders who have worked and paid both tax and social insurance contributions but cannot avail of social security payments including Maternity Benefit, Illness Benefit, Disability Allowance as required as their contributions are deemed illegal.<sup>233</sup> Migrant workers in this situation can claim a refund of the contributions but there is no mechanism for ensuring that these can be validated at any point even when a person's immigration status has later been regularised.

Furthermore, some legally resident migrants do not claim social security payments to which they are entitled because they fear that it will negatively impact their application for Irish citizenship. As citizenship applications are decided at the discretion of the Minister for Justice and Equality, reliance on social security, even for a short period of time, has been used to refuse applications. This has happened even where someone has had to avail of social security due to a situation of domestic violence, becoming unemployed, or falling ill and claiming a payment while unable to work.<sup>234</sup>

### **Child and Family Supports**

Child Benefit is a social welfare payment intended to support parents with the cost of raising a child. In April 2014, it was paid in respect of more than 1.174 million children.<sup>235</sup> Despite the fact that Child Benefit is described as a 'universal' payment,<sup>236</sup> as it is subject to the Habitual Residence Condition, certain groups of children are denied social protection because of their parents' immigration status or migration history. This has particularly impacted on the children of asylum seekers,<sup>237</sup> other migrants,<sup>238</sup> Travellers<sup>239</sup> and Roma.<sup>240</sup>

A state-commissioned 2013 report on child and family income supports noted that while expenditure on cash benefits to families with children was high, Ireland still had a higher child poverty rate than the average rate in other member states of the Organisation for Economic Cooperation and Development (OECD).<sup>241</sup> Furthermore, the Department of Social Protection's own analysis of Budget 2013 found that households with children were most negatively impacted by the changes to welfare rates and eligibility criteria.<sup>242</sup> The cumulative impact of

233 Migrant Rights Centre of Ireland (2007) *Life in the Shadows: An Exploration of Irregular Migration in Ireland*, Dublin: MRCI, p.53.

234 C. Cosgrave (2011) *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland*, Dublin: Immigrant Council of Ireland, pp. 26, 44, 58 and 75.

235 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [22458/14], 27 May 2014.

236 See <http://bit.ly/DSPChildBenefit> for information [accessed 3 September 2014].

237 S. Arnold (2012) *State sanctioned child poverty and exclusion: the case of children in accommodation for asylum-seekers*, Dublin: Irish Refugee Council.

238 Crosscare, Doras Luimni & Nasc (2012) *Person or Number? Issues Faced by Immigrants Accessing Social Protection*, Limerick: Crosscare, Doras Luimni & Nasc; Immigrant Council of Ireland (2014) *ICI Response to FLAC Questionnaire for Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: ICI; Barnardos (2014) *Submission to Shadow Report for Ireland on the International Covenant on Economic, Social and Cultural Rights*, Dublin: Barnardos.

239 Pavee Point (2011) *Position Paper: The Impact of the Habitual Residence Condition on Travellers and Roma*, Dublin: Pavee Point; End Child Poverty Coalition (2014) *Pre Budget Submission 2015*, Dublin: ECPC.

240 Nasc (2013) *In From the Margins – Roma in Ireland: Addressing the Structural Discrimination of the Roma Community in Ireland*, Cork: Nasc.

241 Advisory Group on Tax and Social Welfare (2013) *First Report: Child and Family Income Supports*, Dublin: Department of Social Protection, p.11.

242 Department of Social Protection (2013) *Social impact assessment of the main welfare and direct tax measures in Budget 2013*, Dublin: Department of Social Protection, p.1.



successive cuts to child income supports since 2008 has resulted in a monthly reduction of almost €100 for families with three or more children.<sup>243</sup> Reforms to Child Benefit and targeted supports for low income families have been recommended but have not yet been implemented by the Government. The denial of Child Benefit to some migrant families amounts to indirect discrimination based on immigration or residence status, placing certain minority children at a social and economic disadvantage.

New rules for one parent families have restricted their access to social protection. According to Census 2011, there are more than 215,000 lone parent families living in Ireland, mostly headed by mothers.<sup>244</sup> One Parent Family Payment (OPFP) is a social welfare payment to support single mothers or fathers on low incomes who are parenting alone. Prior to April 2011, a lone-parent could receive the payment if he or she met the qualifying criteria until his or her youngest child reached the age of 18 years. However, in 2012 new measures were introduced to reduce the age threshold of the youngest child for new recipients to 14 years in 2012, 12 years in 2013, 10 years in 2014 and to seven years in 2015.<sup>245</sup> The aim of this policy was to bring more lone parents back into the workforce. This move was criticised<sup>246</sup> on the basis that many lone parents could not afford the limited and privatised child care available in Ireland; the Minister for Social Protection responded by giving an undertaking that she would postpone the implementation of the amended legislation until the Government was in a position to offer a 'Scandinavian model' of childcare.<sup>247</sup> However, the Minister has since stated that as the estimated cost of the proposed model is approximately €1 billion per year, funding is not available for this standard of childcare in the current economic climate.<sup>248</sup> The changes have gone ahead without any changes to the childcare system with the result that more than 9000 recipients lost their entitlement to the payment in 2012 and 2013.<sup>249</sup> The Department of Social Protection estimates that the changes will culminate in a further 50,000 people leaving the scheme over the course of 2014 and 2015.<sup>250</sup>

Furthermore, recipients of One Parent Family Payment were previously allowed to earn up to €146.50 per week in 2011 which would not be included in the means-test for the payment; this was reduced to €90 in 2014.<sup>251</sup> The aim is to reduce it to €60 per week in 2016 for both new and existing recipients. This is viewed as both a challenge and a potential disincentive for lone parents wishing to engage in part-time employment during the time when they are not actively involved in child care.<sup>252</sup>

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243 Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, p. 79.

244 Government of Ireland (2012) *Census 2011 Profile 5: Households and Families*, Dublin: Stationery Office, p.22.

245 Section See also Department of Social Protection (2012) *Changes to the One-Parent Family Payment in 2011- Frequently Asked Questions*, <http://bit.ly/OPFPchangesFAQ> [accessed 7 August 2014].

246 Three organisations including the One Parent Exchange Network (OPEN), the National Women's Council of Ireland (NWC) and Barnardos established the 'Seven is too young' campaign.

247 Minister for Social Protection, Joan Burton TD, Parliamentary Debates, Social Welfare and Pensions Bill 2012: Second Stage Speech, 18 April 2012.

248 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [51045/13], 27 November 2013.

249 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [9207/14], 25 February 2014.

250 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [9207/14], 25 February 2014.

251 One Family (2014) *One-Parent Family Payment & Income Disregards*, Dublin: One Family, p.1.

252 One Family (2014) *One-Parent Family Payment & Income Disregards*, Dublin: One Family, p.1.



### **Self-Employed People**

A self-employed person faces a number of difficulties in accessing social security supports, particularly when he or she cannot work due to unemployment or sickness. In the first quarter of 2014 there were more than 318,000 self-employed people in Ireland, the vast majority of whom are male.<sup>253</sup> The current social welfare system does not allow self-employed people to access contribution-based payments such as Jobseekers Benefit and Illness Benefit.<sup>254</sup> Furthermore, self-employed people are less likely to make voluntary social insurance contributions therefore it is expected that a significant number of formerly self-employed persons will not be able to access a State Pension (Contributory) upon retirement.<sup>255</sup> In addition, they risk inadequate income in times of unemployment, underemployment or illness. However, a review carried out by the Advisory Group on Tax and Social Welfare in 2013 found that there self-employed persons were not aware of their entitlements.<sup>256</sup> The current means-tested Jobseekers Allowance is available to self-employed people in the majority of cases although the report recognised that the assessment process may be more complex than that for employees so it recommended simplifying it.<sup>257</sup> The report also found that self-employed persons face difficulties in accessing social welfare payments when they are found to be permanently incapable of work because of a long-term illness or incapacity.<sup>258</sup>

### **Women**

Measures such as the Qualified Adult Allowance<sup>259</sup> compromise economic independence, security and opportunity for many women. More than 90 per cent of Qualified Adults are women who do not have independent entitlement to social protection payments in their own right but receive a derived payment paid to their spouse or partner on their behalf.<sup>260</sup> Qualified adults can be invisible and may face significant obstacles in entering or re-entering the labour market.

#### **FLAC urges the Committee to recommend that the State:**

- **Subject the Habitual Residence Condition to a human rights and equality impact assessment, in line with the 2012 recommendation of UN Expert on Human Rights and Extreme Poverty.**
- **Give all workers, regardless of their immigration status, access to social security payments when they have made social insurance contributions. Applications for citizenship should not be influenced by a person exercising his or her right to claim a social security payment to which he or she is legally entitled.**
- **End the discriminatory practice of excluding certain groups of children living in Ireland from access to the Child Benefit payment, including those based on their or their parents' immigration status.**

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253 Central Statistics Office (2014) *Quarterly National Household Survey: Quarter 1 2014*, see table 5.

254 Citizens Information Board (2012) *Hard Times for the Self-Employed*, Dublin: CIB, p.29.

255 Citizens Information Board (2012) *Hard Times for the Self-Employed*, Dublin: CIB, p.29.

256 Advisory Group on Tax and Social Welfare (2013) *Third Report: Extending Social Insurance Coverage for the Self-Employed*, Dublin: DSP, p.60.

257 Advisory Group on Tax and Social Welfare (2013) *Third Report: Extending Social Insurance Coverage for the Self-Employed*, Dublin: DSP, p.58.

258 Advisory Group on Tax and Social Welfare (2013) *Third Report: Extending Social Insurance Coverage for the Self-Employed*, Dublin: DSP, pp.55-6.

259 A qualified adult is a person in respect of whom a recipient of a social security payment receives a dependent's allowance.

260 National Women's Council of Ireland (2014) *Budget Directions 2015: Pre-Budget Submission*, Dublin: NWCI, p.11.



- **Provide adequate support for one-parent families to ensure they can care for their children and have access to affordable childcare arrangements.**
- **Revise the social security system to ensure that self-employed people can access necessary payments based on their social insurance contributions.**
- **Conduct a comprehensive survey on the Qualified Adults Allowance.**

### 9.3 Adequacy

Since the recession the social protection system has been put under more pressure due to an increase in recipients and the requirement under the Troika agreement to reduce state expenditure.<sup>261</sup> Cuts to rates since the beginning of the recession have had a cumulative impact meaning that from 2008 to 2014, households reliant on social welfare have experienced a fall in income of between five and eight per cent.<sup>262</sup> In addition, the current rate of social welfare payments is not sufficient to ‘meet the cost of a Minimum Essential Standard of Living’ for the majority of households living in urban areas.<sup>263</sup> The current weekly rate of Supplementary Welfare Allowance (SWA) or the ‘basic minimum income’ standard set by the State is €186 per week.<sup>264</sup> However, this amount falls significantly short of the minimum weekly disposable income required to avoid poverty calculated to be €202.21.<sup>265</sup>

#### Young People

However, apart from the general overview, there are particular groups who suffer from less than adequate social security payments. For example, since January 2014, the rate of Jobseekers Allowance (JA) and Supplementary Welfare Allowance (SWA) for a primary claimant aged between 18 and 24 years (with no dependent children) is €100 while the payment for claimants aged 25 years is €144. This means that unemployed young people under the age of 26 years are expected to live on an income much less than that considered by the Government to be the minimum acceptable ‘basic weekly allowance’.

In May 2014, there were 55,137 applications from under 25s on the Live Register for Jobseekers Allowance.<sup>266</sup> These reductions in rates for younger claimants assume that they live with their parents or family and because they do not live independently they do not require an equal rate of payment to older recipients. However, there is evidence to suggest that the number of young people living with their parents has actually decreased since before the recession.<sup>267</sup> There are concerns that age-related social welfare cuts increase the vulnerability of those under the age of 26 to homelessness, particularly for those who are already disadvantaged and without family

261 European Union/International Monetary Fund (2010) *Programme of Financial Support for Ireland: Programme Documents*, Dublin: Merrion Street, p.17.

262 Vincentian Partnership for Social Justice (2014) *Minimum Essential Standard of Living Update 2014*, Dublin: VSPJ.

263 Vincentian Partnership for Social Justice (2014) *Minimum Essential Standard of Living Update 2014*, Dublin: VSPJ.

264 Information available at: <http://bit.ly/SWAinfo> [accessed 6 August 2014].

265 Social Justice Ireland (2014) *Social Justice Ireland Policy Briefing: Budget Choices*, Dublin: Social Justice Ireland, p.1.

266 The Live Register provides a monthly series of the numbers of people (with some exceptions) registering for Jobseekers Allowance/ Jobseekers Benefit or for various other statutory entitlements at local offices of the Department of Social Protection. It does not measure unemployment as it also includes part-time, casual and seasonal workers. See <http://bit.ly/LiveRegisterMay14> [accessed 30 June 2014].

267 Eurofound (2014) *Social situation of young people in Europe*, Luxembourg: Publications Office of the European Union, p.8.



supports.<sup>268</sup> The Government has not provided any clear or cogent grounds for applying this distinction and discriminating against under-25s.

### **Recovery of Social Security Overpayments**

There is concern also that individuals and families can be pushed below the poverty line because of the system for recovering social security overpayments. In 2012, the Government amended the primary social welfare legislation to allow for increased powers of recovering overpayments.<sup>269</sup> The Department defines an overpayment as money paid to a recipient which he or she was not entitled to receive. In 2012, overpayments arose due to an error on the part of the client (37 per cent), on the part of the Department (8 per cent), in cases where the person is deceased (13 per cent) or caused by fraud or suspected fraud (42 per cent).<sup>270</sup> Where fraud is involved the Department can also instigate criminal proceedings.

Prior to the change in law, the Department could not recover an amount which would result in a person receiving less than the basic social welfare rate of Supplementary Welfare Allowance which was deemed appropriate to his or her circumstances. The change in law 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. In cases where the person gives written consent they can recover a greater amount. The Department can also contact a person's employer if he or she is in work and arrange for money to be deducted directly from his or her wages. Regardless of the cause of the overpayment, this approach to recovering a debt may push some social welfare recipients below the level which the Government itself considers to be a basic minimum income.<sup>271</sup> There are also plans to set up a central debt collection agency which would incorporate the collection of social welfare debts.<sup>272</sup>

### **Older People**

Older people, in particular older women and those living alone, are reliant on social security to ensure an adequate standard of living. In 2013, 12 per cent of the population was aged 65 or over and this figure is due to double by 2050.<sup>273</sup> In 2014, a third of the total Department of Social Protection budget will be spent on pensions including old-age pensions and those for surviving spouses or civil partners.<sup>274</sup> A thematic report on older people based on EU SILC data found that in 2011, income redistribution and poverty alleviation measures (social transfers) accounted for 63 per cent of total income for people aged 65 years or older.<sup>275</sup> Older people living in rural areas were more likely to be dependent on social transfers (70 per cent) compared to those

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268 Saint Vincent de Paul (2013) *Analysis of budget 2014*, Dublin: SVP, p.4. The Public Interest Law Alliance has set up an under-25's working group to challenge the social welfare cuts made in January 2014. The aim of the group is to reverse the cuts made through collective action by the group.

269 Section 3 of the Social Welfare Act 2012 amended s.341 of the Social Welfare (Consolidation) Act 2005.

270 Comptroller and Auditor General (2013) *Report on the Accounts of the Public Services 2012*, Dublin: Comptroller and Auditor General, pp.194-204.

271 For further details see *FLAC and NCLC: Submission on Social Welfare Bill 2012* and *FLAC Pre-Budget 2014 Submission*.

272 Bearing Point (2014) *Debt Management Review for the Department of Public Expenditure and Reform: Final Report*, Dublin: Department of Public Expenditure and Reform.

273 Department of Social Protection (2014) *Annual Report 2013*, Dublin: Government of Ireland, p.27.

274 Department of Social Protection (2014) *Annual Report 2013*, Dublin: Government of Ireland, p.6.

275 Central Statistics Office (2013) *Survey on Income and Living Conditions (SILC): Thematic Report on the Elderly 2004, 2009, 2010 (revised) and 2011*, Cork: CSO, p.3.



living in urban areas (58 per cent) while 72 per cent of women were more reliant on social transfers in contrast to 52 per cent of men.<sup>276</sup>

In 2013, the Organisation for Economic Co-operation and Development (OECD) published a *Review on the Irish Pension System* and recommended that either a means-tested payment or a universal basic pension should replace the current system of contributory or non-contributory pensions.<sup>277</sup> Since 2012, to obtain a full State Pension (Contributory), a person must have made 520 full-rate social insurance contributions (equivalent to ten years), double the number of contributions required up until 2012. Those with fewer contributions receive a proportionately smaller pension. Contributory State Pension is a social insurance payment which is paid, regardless of whether a person has an occupational pension or not. The increased contribution requirement particularly impacts women as the statistics show that fewer women have an occupational pension and women are more likely to have an interrupted work pattern and not have the requisite number of contributions to obtain the full contributory State Pension. In 2011, only 27 per cent of those receiving the maximum contributory state pension were women.<sup>278</sup> While the State has introduced a limited homemakers disregard in relation to calculation of pension entitlement,<sup>279</sup> it has not yet fulfilled its promise to transition to a more positively framed 'Homemaker's Credit' due to the expected cost of the measure.<sup>280</sup> These credits could potentially serve as a useful 're-entry' credit allowing women to access employment support in their own right following a period of care in the home.

While State pension rates have been maintained, in January 2014, the State Pension age was raised from 65 to 66 years and the State Pension (Transition), payable between age 65 and 66, was abolished. Many employers in Ireland require their workers to retire aged 65. Anyone who reaches the age of 65 and leaves work after 1 January 2014 will have to apply for an unemployment/ Jobseekers payment for income until they can apply for the State Pension when they reach 66.<sup>281</sup> The State Pension age will rise to 67 in 2021 and to 68 in 2028. Also in Budget 2014, the €850 Bereavement Grant, a payment made to cover expenses related to the death of a spouse or child could be paid to a person who had sufficient social insurance contributions. This payment was ended in 2014 and there are concerns that this will have a disproportionate impact on older people who are more likely to experience the death of a spouse or partner.<sup>282</sup>

One of the objectives of the *National Positive Ageing Strategy* published by the Government in 2013 is to 'provide income and other supports to enable people as they age to enjoy an

276 Central Statistics Office (2013) *Survey on Income and Living Conditions (SILC): Thematic Report on the Elderly 2004, 2009, 2010 (revised) and 2011*, Cork: CSO, p.6.

277 There are two types of State Pension, one based on social insurance contributions and the other standard pension which is means-tested. Organisation for Economic Cooperation and Development (2014), *OECD Reviews of Pensions Systems: Ireland*, Paris: OECD Publishing.

278 N. Duvvury et al (2012) *Older Women Workers' Access to Pensions: vulnerabilities, perspectives and strategies*, Galway: National University of Ireland Galway.

279 A homemaker, for the purposes of the Homemaker's Scheme (which was introduced from 6 April 1994), is a man or woman who provides full-time care for a child under age 12 or an ill or disabled person aged 12 or over. See Citizen's Information at: <http://bit.ly/HomemakersDisregard> [accessed 30 September 2014].

280 C. Ryan, 'Women bear brunt of pension changes', *Irish Examiner*, 17 March 2014.

281 If the claimant in receipt of Jobseekers Benefit is aged between 65 and 66 years then he or she will continue to receive the payment until the age of 66 even if the period of entitlement would usually end at if he or she meets the PRSI requirements

282 Age Action (2014) *Submissions to FLAC Shadow Report on the International Covenant on Economic, Social and Cultural Rights*, Dublin: Age Action, p.3.





acceptable standard of living’.<sup>283</sup> However, older people who live alone and are dependent on the State Pension (Non-Contributory) have a much lower income and experience a ‘shortfall of approximately €18 per week’ which is not adequately supplemented by the Living Alone Allowance, as it is worth only €7.70 per week.<sup>284</sup>

The reduction in the Household Benefits Package has also been widely criticised due to its impact on older people. In 2012, 25 per cent of people at risk of poverty had gone without heating at some point in the previous year and almost one in ten older people fall into that category.<sup>285</sup> Since Budget 2012, recipients receive the weekly Winter Fuel Allowance of €20 for 26 instead of 32 weeks.<sup>286</sup> In 2011, the value of the electricity and gas allowance was reduced to 2007 rates and in 2013 it was standardised at €35 per month<sup>287</sup> despite an increase of nine per cent in household energy prices between 2011 and 2012 alone.<sup>288</sup> Older people are more likely to suffer from fuel poverty due to ‘poor housing condition, energy inefficient housing, rising fuel prices and low incomes’ and the electricity/gas allowance coupled with the winter fuel allowance helped to offset the ‘potential health and social harm’ caused by a lack of heating or poor insulation during cold winter conditions.<sup>289</sup> Initial research has found that increased hospital admissions for respiratory diseases and the deaths of older people in the winter months may be linked to fuel poverty.<sup>290</sup> The Government has taken some steps to address energy and fuel poverty including an *Affordable Energy Strategy*, the publication of a *Green Paper on Energy Policy* and the Warmer Homes Scheme but it must take care that in its drive for reduced costs and greater energy efficiency, vulnerable households do not fall through the cracks.

### **Persons with Disabilities**

In 2014, €3.3 million was allocated to disability, illness and carer supports. Income supports for persons with disabilities were cut by an average of 4.1 per cent for recipients in 2011.<sup>291</sup> In May 2014, more than 108,000 people were in receipt of Disability Allowance, 53,000 were in receipt of Invalidity Pension while almost 58,500 received Illness Benefit.<sup>292</sup> In 2013, almost 73,000 carers of people with disabilities received the Respite Care Grant but this was reduced by 19 per cent in Budget 2013.<sup>293</sup> Furthermore, the rate of Disability Allowance – set at the same rate as Jobseekers Allowance – fails to take into account the additional cost of living with a disability in Ireland.<sup>294</sup>

283 Department of Health (2013) *The National Positive Ageing Strategy*, Dublin: Department of Health, p.54.

284 Vincentian Partnership for Social Justice (2014) *Minimum Essential Standard of Living Update 2014*, Dublin: Vincentian Partnership for Social Justice.

285 Central Statistics Office (2014) *Survey on Income and Living Conditions (SILC) 2012*, Cork: Central Statistics Office, p.20.

286 Minister for Social Protection, Joan Burton TD, Dáil Debates: Priority Questions, [11710/13], 5 March 2013.

287 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [11457/13], 5 March 2013.

288 Department of Communications, Energy and Natural Resources (2014) *Green Paper on Energy Policy in Ireland*, Dublin: DCENR, p.16.

289 Professor P. Goodman et al (2011) *Fuel poverty, older people and cold weather: An all-island analysis*, Dublin: Dublin Institute of Technology, p.11.

290 Dr A. O’Farrell and Dr D. De La Harpe, ‘Excess winter mortality and morbidity in the elderly in Ireland: has a change in the fuel allowance the potential to affect it’ [presentation], Dublin: Health Service Executive.

291 Disability Federation of Ireland (2013) *Pre-Budget Submission 2014*, Dublin: DFI. These payments include Disability Allowance, Blind Pension, Invalidity Pension and Carer’s Allowance.

292 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [26734/14], 24 June 2014.

293 Department of Social Protection, ‘€110.6 million has been provided to pay Respite Care Grants to full time carers this year’, [press release], 5 June 2013.

294 Disability Federation of Ireland (2014) *Pre-Budget Submission 2014*, Dublin: DFI.



A 2012 value-for-money report published by the Advisory Group on Tax and Social Welfare highlighted the need for better data on Disability Allowance and Domiciliary Care Allowance to be collated and made available. The group recommended the development of profile data to better understand and identify the needs of claimants of disability related payments.<sup>295</sup> Legal challenges in relation to accessing carer-related payments have been successful due to the lack of fair procedures.<sup>296</sup> No such provision has been put in place by the end of August 2014.

### **Asylum Seekers**

Asylum seekers' right to social protection is severely restricted as they only receive a weekly social welfare payment of €19.10 for an adult or €9.60 for a child alongside room and board. It is the only social welfare payment which has not increased at all since its introduction in April 2000. Furthermore, access to other social welfare payments has been severely limited through the prohibition on access to Rent Supplement as well as legislative changes to completely exclude asylum seekers from accessing Child Benefit and mean-tested payments through the application of the Habitual Residence Condition. In April 2014, a High Court challenge was taken against the direct provision system as it was established on an administrative rather than a statutory basis.<sup>297</sup> In particular, the creation of the direct provision allowance without any legislation to underpin it would appear to fall outside the scope of existing social welfare legislation.<sup>298</sup> The judgment has not yet been delivered.

#### **FLAC urges the Committee to recommend that the State:**

- **Seek information and advice on the impact of budget decisions and austerity measures on those at risk of poverty from the National Human Rights Structures, including the Irish Human Rights and Equality Commission and those dealing with the protection of human rights of vulnerable groups.**
- **End the discriminatory practice of providing a lower rate of payment to young people under 25 years.**
- **Collect and collate data on people with a disability in need of social security support in order to tailor payments to the particular needs of this group and make this data public.**
- **Ensure when recovering overpayments that a person's income is not reduced below a figure which would have a negative impact on their fundamental right to an adequate standard of living and social security.**
- **Monitor carefully cuts to supports for older people to ensure that older people's health and well-being are not impacted and that they have an adequate standard of living.**
- **Reverse cuts to the Household Benefits Package to reduce the risk of fuel poverty.**
- **Grant access for direct provision residents to necessary social security payments in order to enjoy an adequate standard of living.**

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295 Advisory Group on Tax and Social Welfare (2012) *Second Report: Review of Budget 2012 Proposals Regarding Disability Allowance and Domiciliary Care Allowance*, Dublin: DSP, p.36.

296 *A.M. v Minister for Social Protection* [2013] IEHC 524 and *B. v Minister for Social Protection* [2014] 2 I.L.R.M. 290

297 *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (Record No. 2013/751/JR).

298 For a more in-depth discussion on the issue see Liam Thornton, 'The Rights of Others: Asylum Seekers and Direct Provision in Ireland' DRAFT, available online at <http://bit.ly/ThorntonAsylumSeekersandDP> [accessed on 30 June 2014].



#### 9.4 Accountability and Remedies

The right to social protection is often infringed due to poor decision-making by welfare officers on initial applications. The social welfare appeals system has come under considerable strain since the beginning of the recession. The number of live appeals has trebled since 2007, rising from 19,568 in that year<sup>299</sup> to almost 59,000 live appeals in 2013.<sup>300</sup> Probably due to the surge in volume, processing times have also increased significantly over the same period and appellants experience long delays in having their claim decided. In 2013, appellants had to wait an average of 34 weeks for an oral hearing and 26 weeks for a decision on the written evidence only<sup>301</sup> although the waiting times for oral hearings did fall from the 2011 peak of 52.5 weeks.<sup>302</sup> Furthermore, the consistently high rate of success at appeal<sup>303</sup> indicates that often appellants have to endure unacceptable delays to get a payment to which they were entitled where better first instance-decision making and better information to applicants would be a better use of limited resources.

The success rate for oral hearings is consistently much higher than the rate for summary decisions – in 2013, 48 per cent for oral hearings compared to 25 per cent for summary decisions<sup>304</sup> – but despite this consistent outcome, appellants are not automatically granted an oral hearing. The Social Welfare Appeals Office is not an independent appellate body but is instead a division of the Department of Social Protection and Appeals Officers remain employees of the Department. It has also been criticised for its lack of transparency because it publishes only a handful of decisions making it difficult for appellants to understand the basis for those decisions or for consistency in decision-making to be maintained. In addition, representation for social welfare appellants is excluded from the remit of civil legal aid.<sup>305</sup> The decision in the *Jama*<sup>306</sup> case demonstrates that recourse to the courts to ensure greater access to information and facilitate greater access to justice has not proved an effective remedy thus far for social welfare appellants.

***FLAC urges the Committee to recommend that the State:***

- ***Carry out targeted training with departmental staff to improve the assistance and support provided to social welfare applicants so they can supply the requisite information at the outset of their application and thus reduce the need for appeals.***
- ***Ensure appellants are entitled to an oral hearing and decisions of the Social Welfare Appeals Office are published routinely.***
- ***Change the status of the Social Welfare Appeals Office to create an independent body which can ensure fairness, transparency and consistency in decision-making.***

299 Social Welfare Appeals Office (2008) *Annual Report 2007*, Dublin: SWAO, p.4.

300 Minister for Social Protection, Joan Burton TD, Written Answers, Dáil Éireann unrevised, 29 May 2014.

301 Social Welfare Appeals Office (2014) *Annual Report 2013*, Dublin: SWAO, p.6. Waiting times peaked in 2011 when an oral hearing took 53 weeks on average and 25 weeks for a summary/written decision.

302 Social Welfare Appeals Office (2012) *Annual Report 2011*, Dublin: SWAO, p.3.

303 In 2013, 55 per cent of appeals were decided in favour of the appellant while 21 per cent of the total number of appeals did not go to an Appeals Officer but were instead revised by the original decision-maker once an appeal was lodged. Social Welfare Appeals Office (2014) *Annual Report 2013*, Dublin: SWAO, p.8.

304 Social Welfare Appeals Office (2014) *Annual Report 2013*, Dublin: SWAO, p.5.

305 FLAC (2012) *Not Fair Enough: Making the case for the reform of the social welfare appeals system*, Dublin: FLAC.

306 *Jama v Minister for Social Protection* [2011] IEHC 379. See case study on pp.3-4.



## Article 10

*The States Parties to the present Covenant recognize that:*

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

State Report paragraphs 217-264

### 10.1 Families in Ireland and Legal Protection

The Irish Constitution affords protection to the family based on marriage but does not recognise or provide legal protection against discrimination for a wide range of different family forms including unmarried cohabiting couples, grand-parents' parenting, blended families, lone parent families or same-sex couples and their children. This is despite family forms being more diverse; according to Census 2011, there were 834,396 families living with children, comprising: 522,959 married couples; 54,911 unmarried cohabiting couples; 186,284 lone mothers, 29,031 lone fathers<sup>307</sup> and 230 same-sex couples rearing children.<sup>308</sup>

An increasing number of children are being cared for by step-parents, civil partners and others in *loco parentis*. Nonetheless, the law does not provide a mechanism whereby their relationship with the child is recognised. In the main, legal guardianship is confined to biological parents, either automatically through marriage, or for unmarried fathers through an administrative or legal process, or through testamentary guardianship.<sup>309</sup> This position impacts on their day-to-day parenting role, for example consenting to medical treatment. This lack of legal clarity can be particularly detrimental to a child in the context of family breakdown or the death of a person whom is or whom the child regards as a parent. These issues have become especially acute in recent times due to the increase in cohabiting parents and children born outside marriage.

<sup>307</sup> Government of Ireland (2012) *Census 2011 Profile 5 Households and Families – Living Arrangements in Ireland*, Dublin: Stationery Office.

<sup>308</sup> Marriage Equality (2013) *Love, Commitment, Family, Equality - The case for Marriage Equality in Ireland. Marriage Equality's submission to the Constitutional Convention*, Dublin: Marriage Equality.

<sup>309</sup> A testamentary guardian is appointed by a child's parent or guardian in his or her will in case he or she dies.



Cohabiting opposite-sex and same-sex couples cannot apply to adopt a child together. Only married couples have this right. However, individuals can adopt a child on their own regardless of sexual orientation. This has resulted in situations where adopted children are being raised by two parents but only one has the legal relationship to the child.

Over 1500 lesbian and gay couples have entered a civil partnership,<sup>310</sup> which provides almost all the rights and obligations of marriage. However, lesbian and gay couples cannot marry, and therefore do not have the same constitutional status and protection for their relationships. Children being parented by civil partners are mostly unrecognised in civil partnership, and thus do not have the protections including maintenance, inheritance and family home protections afforded to children in other families.<sup>311</sup> Civil partners cannot adopt as a couple and there is no mechanism to extend guardianship to non-biological parents except in very limited circumstances.<sup>312</sup> The Ombudsman for Children has noted the lack of 'robust protections for the children of civil partners' warning that this would have 'real consequences for the young people concerned'.<sup>313</sup>

There is currently no provision for legal recognition of transgender persons in their preferred gender. The Government has recently published draft Gender Recognition legislation<sup>314</sup> which would require transgender persons who are already married to divorce as a pre-condition for recognition. Under Irish law this would require the spouses to live apart for four years and to state to a court that their marriage has irretrievably broken down. This would cause great hardship to couples who wish to stay together and to their children.

At present there is no statute law regulating assisted human reproduction in Ireland.<sup>315</sup> There is also no law regulating surrogacy.<sup>316</sup> The failure to clarify the law in both instances has resulted in significant litigation, often creating a legal limbo around the parentage of the child and leading to custody battles.<sup>317</sup>

In 2014, the Government published draft legislation which will extend certain legal protection to and recognise different family forms. These include lone parent families, blended families, families headed by civil partners as well as to children born of Assisted Human Reproduction.<sup>318</sup>

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310 Gay and Lesbian Equality Network (2014) *Submission to Joint Oireachtas Committee on Justice, Defence and Equality on the Heads of the Children and Family Relationship Bill 2014*, Dublin: GLEN, p.1.

311 P. Fagan (2011) *Missing Pieces: A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained from civil marriage in Ireland*, Dublin: Marriage Equality, pp.25-28.

312 Irish Council for Civil Liberties & Gay and Lesbian Equality Network (2012) *Know Your Rights: The Rights and Obligations of Civil Partners and other Same-Sex Couples*, Dublin: ICCL & GLEN, p.41.

313 Ombudsman for Children's Office (2010) *Advice of the Ombudsman for Children on the Civil Partnership Bill 2009*, Dublin: OCO, p.2.

314 (Revised) General Scheme of Gender Recognition Bill 2014.

315 Department of Health and Children (2005) *Report of the Commission on Assisted Reproduction*, Dublin: DOHC.

316 Currently, if a child is born to a surrogate in Ireland, the surrogate is legally considered the mother of the child, irrespective of any genetic link. If the surrogate mother is married, then under Section 46 of the Status of Children Act 1987, the surrogate mother's husband is presumed by law to be the father of the child, unless the contrary is proven. If she is not married, she is the sole guardian. Some intending parents have adopted the child in order to have a legal relationship with it. If the child is being adopted, this must be done through the Adoption Authority of Ireland, and there is no guarantee that the child of a surrogate mother would be placed with the intending parents as private adoptions are prohibited in Ireland.

317 *McD v L* [2010] 2 I.R. 199; [2010] 1 I.L.R.M. 461; *MR & Anor v An tArd Chlaraitheoir & Ors* [2013] 1 I.L.R.M. 449 – judgment in the Supreme Court challenge is expected.

318 The Children and Family Relationships Bill 2014.



The proposed legislation is a welcome development and is considered to reflect many of the rights enshrined in the UN Convention on the Rights of the Child.<sup>319</sup>

The Government has pledged to hold a referendum on same-sex marriage in 2015 following a recommendation by the Constitutional Convention. However, the Government has no plans to hold a referendum on the definition of the family in the Constitution and this continues to be a gap.

**FLAC urges the Committee to recommend that the State:**

- **Hold a referendum on the definition of the family to ensure that it protects all families and not just families based on marriage.**
- **Enact the Children and Family Relationships Bill as a matter of urgency to ensure that all families are afforded the widest possible protection and assistance under domestic law.**

## 10.2 Maternity Protection Measures and Parental Leave

In general Ireland provides good maternity protection but recent decisions have weakened this support and paternity leave remains inadequate. Maternity leave is paid for 26 weeks. In addition, a mother may avail of a further 16 weeks of unpaid maternity leave. Previously there were two rates of state Maternity Benefit, but since January 2014, the rate has been standardised to €230 per week for new claimants.<sup>320</sup> This resulted in a cut of €32 per week (12 per cent) for an estimated 16,500 women (76 per cent of all claimants) and an increase of €12.20 per week for the remainder.<sup>321</sup> The payment had already become taxable in July 2013. The Department of Social Protection has indicated that a decision was made to reduce the rate of payment rather than reduce the 26-week duration of the benefit.<sup>322</sup> The cut to the payment has been described as 'anti-women and anti-families'<sup>323</sup> and there are concerns that it will force mothers of young babies back to work early due to financial necessity.<sup>324</sup>

A 2011 survey found that while the majority of women were satisfied with how they were treated in the workplace during their pregnancy, almost a third reported unfair treatment and experienced problems in relation to maternity leave.<sup>325</sup> The study also found that 92 per cent of women availed of paid maternity leave and Maternity Benefit although the uptake of unpaid maternity leave was much less as this was found to be dependent on a number of factors, including the mother's level of education and occupational background as well as financial and family support.<sup>326</sup>

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319 Children's Rights Alliance (2014) *Initial Submission on the Children and Family Relationships Bill 2014*, Dublin: Children's Rights Alliance.

320 Department of Social Protection (2013) *Budget Factsheet: Main Social Welfare Changes and Rates of Payments*, Dublin: DSP, p.3.

321 Joan Burton TD, Minister for Social Protection, Parliamentary Debates: Written Answers, [46913/13], 5 November 2013.

322 Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, p.79.

323 National Women's Council of Ireland, 'Cuts to maternity benefit are anti-women and anti-families' [press release], 15 October 2013.

324 Children's Rights Alliance (2013) *Analysis of Budget 2014*, Dublin: Children's Rights Alliance, p.3.

325 Helen Russell, Dorothy Watson & Joanna Banks (2011) *Pregnancy at Work: A National Survey*, Dublin/Roscrea: Health Service Executive Crisis Pregnancy Programme and Equality Authority, p.90.

326 Helen Russell, Dorothy Watson & Joanna Banks (2011) *Pregnancy at Work: A National Survey*, Dublin/Roscrea: Health Service Executive Crisis Pregnancy Programme and Equality Authority, p.93.



There is no statutory paid paternity leave in Ireland. Unpaid parental leave<sup>327</sup> was increased from 14 weeks in 2013 to 18 weeks in 2014 for each parent for each child.<sup>328</sup> The Government has agreed in principle to legislate for ‘paternity leave on a shared basis’ where the mother chooses to share the leave<sup>329</sup> but proper safeguards must be put in place to ensure that a woman is not pressured into returning to work early by her employer. The State has ruled out increasing maternity leave by two weeks given the additional estimated cost to the Exchequer of €11.4 million per year.<sup>330</sup> Any changes to the way in which maternity leave is granted must ensure that a woman is not coerced by an employer into signing over ???A draft of the Parental Leave Bill to consolidate provisions relating to maternity, adoptive, parental and carer’s leave is promised before the end of 2014.<sup>331</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Ensure mothers are adequately supported financially so they can avail of their full maternity leave entitlements if they so wish.***
- ***Enact the Family Leave Bill as soon as possible.***

### 10.3 Affordability of Childcare

Statistics published by the Organisation for Economic and Development Cooperation (OECD) indicate that childcare costs for families with two young children where both parents are working amount to 35 per cent of the family’s net income or in the case of a lone parent it can amount to 40 per cent of net income.<sup>332</sup> Eurostat has found that childcare fees in Ireland are amongst the most expensive in the European Union.<sup>333</sup> Annual fees for crèche range from €8500 to more than €15,000 for a single child depending on where the family lives.<sup>334</sup> Furthermore, the difference in the employment rate between women with and without children was almost 30 per cent higher for those without children whereas the employment rate of men with children remains more or less consistent regardless of whether or not they have children.<sup>335</sup> The lack of affordable formal childcare arrangements is one of the principal reasons that women with young children are likely to work fewer hours or not at all.<sup>336</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Put in place a high quality and affordable system of early childcare services.***

327 Parental leave is an entitlement to 18 working weeks unpaid leave until the child reaches 8 years of age.

328 Frances Fitzgerald TD, Minister for Justice and Equality, Parliamentary Debates: Written Answers, [29427/14], 8 July 2014.

329 Kathleen Lynch TD, Minister of State with responsibility for Disability, Older People, Equality & Mental Health, Speech on Parental Leave Bill 2013, 10 July 2013.

330 Kathleen Lynch TD, Minister of State with responsibility for Disability, Older People, Equality & Mental Health, Speech on Parental Leave Bill 2013, 10 July 2013.

331 Frances Fitzgerald TD, Minister for Justice and Equality, Parliamentary Debates: Written Answers, [29427/14], 8 July 2014.

332 Organisation for Economic Co-operation and Development (2014) *Benefits and Wages Statistics* available online at <http://bit.ly/OECDBenefitsWages> [accessed 14 July 2014]. For an accessible summary of the statistics see Start Strong (2014) *Policy Brief – The Double Dividend: Childcare that’s affordable and quality*, Dublin: Start Strong, p.2.

333 European Commission/EACEA/Eurydice/Eurostat (2014) *Key Data on Early Childhood Education and Care in Europe:2014 Edition. Eurydice and Eurostat Report*, Luxembourg: Publications Office of the European Union.

334 A. Sheehan, B. Heffernan & P. Melia, ‘Crippling cost of childcare forces mums to give up jobs’, *The Irish Independent*, 25 May 2013.

335 Central Statistics Office (2013) *Women and Men in Ireland*, Cork: CSO, <http://bit.ly/CSOgenderstats2013> [accessed 26 August 2014].

336 European Commission (2012) *Report on Progress on equality between women and men in 2012*, Brussels: European Commission, p.



## 10.4 Victims of Domestic Violence<sup>337</sup>

Despite Government reforms aimed at combatting domestic violence,<sup>338</sup> many victims remain in abusive situations because they simply have nowhere to go to escape an abusive partner. A European Union Fundamental Rights Agency survey on violence against women found that 14 per cent of women in Ireland have experienced physical violence by a current or ex-partner, six percent have experienced sexual violence while 31 per cent have experienced psychological violence.<sup>339</sup> Between 2008 and 2012, domestic violence service-providers reported an average fall in core funding from the Health Service Executive of 14 per cent while at the same time they experienced a 36 per cent increase in demand for their services.<sup>340</sup> In 2012, Women’s Aid received 16,200 disclosures of abuse<sup>341</sup> and almost 8500 women and 3600 children received support from a domestic violence service.<sup>342</sup> However, it is estimated that 3470 requests could not be met as the required spaces were not available.<sup>343</sup> There are 20 women’s refuges in the State providing 138 spaces, falling far short of the 459 refuge places recommended to Ireland by the Council of Europe Taskforce to Combat Violence Against Women.<sup>344</sup> Financial barriers also persist in relation to access to longer-term accommodation, social welfare and civil legal aid.

Currently, people in dating relationships are not eligible for protection or safety orders under the Domestic Violence Act in 2011.<sup>345</sup> There has been a year-on-year increase in the number of domestic violence applications coming before the courts since 2010.<sup>346</sup> In 2013, there were 13,275 applications under domestic violence legislation, up 5 per cent since 2012.<sup>347</sup>

In its 2002 Concluding Observations, the Committee asked specifically for an update on the domestic violence pilot intervention project. Paragraph 638 of the State report refers to the operation of the pilot project until 2007 and that Cosc - The National Office for the Prevention of Domestic, Sexual and Gender-based Violence – is using a report on the project to inform its work. The project lost its funding in 2007 and ceased operating despite its success and widespread support from frontline services.<sup>348</sup>

The baseline prevalence study on sexual violence, the Sexual Abuse and Violence in Ireland (SAVI) Report was published in 2002; although it has informed policy in relation to sexual

337 Paragraph 30 of the Committee’s 2002 Concluding Observations requests the State to outline the measures taken in response to the review of the Domestic Violence Act 1996.

338 This includes the establishment in 2007 of COSC, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence; the development of a National Strategy; and the publication of a number of high-level policy documents. However, the State has not ratified the Council of Europe Convention on Violence Against Women (known as the Istanbul Convention).

339 EU Fundamental Rights Agency, ‘Physical, sexual and psychological violence visualisation: At a glance, country : Ireland, compare with : EU average - FRA gender-based violence against women survey dataset, 2012’ available at: <http://bit.ly/EUfraGBVsurvey2012> [accessed 26 August 2014].

340 Safe Ireland (2014) *Safety in a time of crisis: Priorities for protecting women and children impacted by domestic violence*, Dublin: Safe Ireland, p.6.

341 Women’s Aid (2013) *Annual Report 2012*, Dublin: Women’s Aid, p.9.

342 Safe Ireland (2014) *Safety in a time of crisis: Priorities for protecting women and children impacted by domestic violence*, Dublin: Safe Ireland, p.6.

343 Safe Ireland (2014) *Safety in a time of crisis: Priorities for protecting women and children impacted by domestic violence*, Dublin: Safe Ireland, p.6.

344 Women Against Violence Europe (WAVE) (2014) *Country Report 2013*, Vienna: WAVE, p.113.

345 Women’s Aid (2014) *Women’s Aid input into FLAC Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: Women’s Aid, p.6.

346 Figures taken from Courts Service Annual Reports 2009-2013 available at: <http://bit.ly/CourtsServiceAnnualReports> [accessed 26 August 2014].

347 Courts Service (2013) *Annual Report 2012*, Dublin: Courts Service, p.28.

348 Women’s Aid (2014) *Women’s Aid input into FLAC Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: Women’s Aid, p.6.





violence, it is considerably out of date. In order to develop clear comparative analysis, a SAVI II Report is required to evaluate changes over the past decade and provide an evidence base to inform contemporary responses to the issue of sexual violence. There is also a clear need for more data on the nature and extent of domestic violence in Ireland.

***FLAC urges the Committee to recommend that the State:***

- ***Provide adequate resources for victims of domestic violence to ensure that they are not forced to return to violent situations and are supported to leave abusive relationships.***
- ***Allocate resources to fund a follow-up Sexual Abuse and Violence in Ireland (SAVI) Report to establish the nature and extent of sexual abuse and violence in Ireland.***
- ***Prioritise within the work of COSC (The National Office for the Prevention of Domestic, Sexual and Gender-based Violence) the collection of disaggregated data on domestic violence.***

### **10.5 Family Reunification**

Irish law does not provide sufficiently wide protection to families for migrants and refugees. Ireland is the only European Union Member State that does not have rules for family reunification for refugees and long-term migrants (including EEA migrant workers) set out in law and it has opted out of the EU Directive on the Right to Family Reunification (2003/86/EC). Currently applications are processed by the Irish Naturalisation and Immigration Service (INIS), and the decision is made at the discretion of the Minister for Justice and Equality. If an application for family reunification is refused, there is no independent appeals mechanism and the only available way to seek redress is to judicially review the decision in the High Court. This is expensive and does not represent an adequate remedy as the judge cannot decide on the substantive issue. Furthermore, civil legal aid is not routinely available for these proceedings.<sup>349</sup> The *Policy Document on Non-EEA Family Reunification* published by the Department of Justice and Equality in 2013 does not address many of the issues faced by families seeking to reunite in Ireland.<sup>350</sup> One of the main concerns is the requirement to meet a high income threshold and the disproportionate impact on particular groups seeking to reunite with their immediate family members.<sup>351</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Introduce primary legislation to govern family reunification and an independent Immigration Appeals Tribunal to provide an inexpensive and effective process to applicants. Applicants should be supported by the Legal Aid Board where necessary.***

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349 Immigrant Council of Ireland (2013) *Family Reunification: a barrier or facilitator of Integration? Ireland Country Report*, Brussels: European Commission, p.44.

350 Immigration and Naturalisation Service (2013) *Policy Document on Non-EEA Family Reunification*, Dublin: Department of Justice and Equality.

351 Immigrant Council of Ireland, 'New Family Reunification Guidelines Fail to Resolve Many Issues', [press release], 8 January 2014.



## Article 11

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
  - (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*
  - (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

State Report paragraphs 265-311

### 11.1 Poverty and Social Exclusion

Household incomes have fallen by €1800 per person since 2008, 64 per cent more than the average drop in income in the other Eurozone countries.<sup>352</sup> Data from the 2012 EU Survey on Income and Living Conditions (EU SILC) indicates that 16.5 per cent of the population are at risk of poverty while 7.7 per cent are living in consistent poverty. Deprivation rates have more than doubled since 2007 meaning that 26.9 per cent of the population cannot afford very basic items.<sup>353</sup> Children, unemployed people, lone parents and individuals not at work due to disability or illness had the highest rates of consistent poverty.<sup>354</sup>

The *National Action Plan for Social Inclusion 2007-2016* aimed to reduce consistent poverty to between two and four per cent by 2012 and eliminate it entirely by 2016.<sup>355</sup> However, the national poverty target was revised in 2012 in light of the recession with the aim to reduce the consistent poverty rate to four per cent by 2016 and to two per cent or less by 2020 in line with the Government's commitments under the EU 2020 Strategy.<sup>356</sup> The Government has also set a specific target to lift 70,000 children out of poverty by 2020.<sup>357</sup>

#### ***FLAC urges the Committee to recommend that the State:***

352 Organisation for Economic Development and Co-operation (2014) *Society at a Glance 2014 Highlights: Ireland the crisis and its aftermath*, Paris: OECD, p.1.

353 Central Statistics Office (2014) *Survey on Income and Living Conditions (SILC)*, Cork: CSO, p.1.

354 Central Statistics Office (2014) *Survey on Income and Living Conditions (SILC)*, Cork: CSO, p.6.

355 Office for Social Inclusion (2007) *National Action Plan for Social Inclusion 2007-2016*, Dublin: Stationery Office.

356 Department of Social Protection (2012) *National Social Target for Poverty Reduction: Policy Briefing on the Review of the National Poverty Target*, Dublin: Department of Social Protection, p.3.

357 Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The national policy framework for children & young people 2014-2020*, p.12.



- **Carry out adequate social impact assessments in relation to all budgetary decisions and adopt a whole-of-government approach to tackling poverty and social exclusion.**

## 11.2 Accessibility and Adequacy of Food

Food poverty has increased in Ireland since the beginning of the recession with almost ten per cent of the population reporting that they do not have enough money to buy food.<sup>358</sup>

Households headed by one parent or larger families with three or more children are more likely to experience food poverty as are people with low incomes or who have never worked.<sup>359</sup>

Existing food banks or charitable organisations that provide meals have reported an increase in the amount of food needed to cope with demand. In 2014, the Capuchin Daycare Centre in Dublin is providing approximately 4000 meals each week in addition to distributing 1000 food parcels.<sup>360</sup> Other food banks are being established outside Dublin to deal with the estimated 600,000 people in need of support.<sup>361</sup>

The right to food includes the right to have access to an adequate amount of available and nutritious food. However, the high cost of healthy food choices presents a major barrier to ensuring that people on low incomes can afford and access a nutritious diet, as foods high in fat, sugar and salt have been found to be up to ten times cheaper than healthier food options.<sup>362</sup> In 2012, fresh fruit and vegetables in Ireland cost 38 per cent more than the EU average while dairy products cost 19 per cent more.<sup>363</sup> Value Added Tax (VAT) does not apply to most basic foods<sup>364</sup> including milk, butter, meat and bread meaning the real cost of food may be even higher.<sup>365</sup> Food represents one of the biggest expenses for families, particularly those with small infants and/or adolescents as the cost is higher due to types and amounts of food required by these groups of children.<sup>366</sup> Furthermore, disadvantaged children are more likely to be overweight or suffer from obesity<sup>367</sup> as families on lower incomes are more likely to rely on cheaper foods which often provide ‘the most energy for the lowest cost’ and live further away from shops selling healthy food at affordable prices.<sup>368</sup>

Asylum seekers in particular face difficulties in accessing adequate food because they are accommodated in direct provision centres where they are not allowed to cook for themselves or

358 Organisation for Economic Development and Co-operation (2014) *Society at a Glance 2014 Highlights: Ireland the crisis and its aftermath*, Paris: OECD, p.3.

359 C. Carney and B. Maitre (2012) *Social Inclusion Technical Paper No. 3 Constructing a Food Poverty Indicator for Ireland using the Survey on Income and Living Conditions*, Dublin: Department of Social Protection, p.34.

360 Information available online at: <http://bit.ly/CapuchinDayServices> [accessed 15 July 2014].

361 S. O’Riordan, ‘Food Banks to Tackle Poverty Crisis’, *Irish Examiner*, 4 April 2014, <http://bit.ly/ExaminerFoodBanks> [accessed 15 July 2014].

362 Food Safety Authority of Ireland (2011) *Scientific Recommendations for Healthy Eating in Ireland*, Dublin: FSAI, p. 41.

363 Central Statistics Office (2013) *Price Level Indices for Food, Beverages and Tobacco in Europe 2012*, Cork: CSO.

364 Information available online at: <http://bit.ly/RevenueFoodDrink> [accessed 16 July 2014].

365 European Commission [2014] *VAT Rates Applied in the Member States of the European Union: Situation at 1st July 2014*, Brussels: European Commission, p.4.

366 Dr. B. MacMahon, G. Weld, R. Thornton and Dr. M. Collins (2012) *The Cost of a Child: A consensual budget standards study examining the direct cost of a child across childhood*, Dublin: Vincentian Partnership for Social Justice, pp.32-33.

367 R. Layte and C. McCrory (2011) *Growing up in Ireland - Overweight and obesity among 9-year olds*. Dublin: Stationery Office.

368 R. Layte and C. McCrory (2011) *Growing Up in Ireland – Overweight and obesity among 9 year olds, report 2*, Dublin: Department of Children and Youth Affairs.



store food in their rooms as all meals are provided on a full-board basis.<sup>369</sup> The number of self-catering centres was reduced from six in 2009 to two by 2011 on foot of a policy decision taken by the Government Reception and Integration Agency.<sup>370</sup> Residents have routinely criticised the food provided in direct provision centres as ‘inedible, of poor quality, monotonous, bland, and culturally inappropriate’.<sup>371</sup> Issues have also been raised about the lack of nutritional food available for residents in particular for those with dietary requirements<sup>372</sup> and the lack of autonomy in relation to food choices.<sup>373</sup> Parents of young children experience a lack of parental control over when they can wean their babies from formula milk onto solid food.<sup>374</sup>

**FLAC urges the Committee to recommend that the State:**

- **Introduce a food poverty indicator and update it on an annual basis to take account of current prices.**
- **Target resources at ensuring that people do not suffer from food poverty and are able to access affordable and nutritious food.**

### 11.3 Right to Water

As part of the initial bailout in December 2010, the Government agreed to introduce charges for water services by 2012/2013<sup>375</sup> but this was postponed until October 2014 with payment to begin in 2015. Government intends to impose household water charges for drinking water as well as waste water services. While there is no right under the Covenant to free drinking water or sanitation for everyone, water must be adequate, accessible and affordable to all;<sup>376</sup> in relation to water charges, the State must include ‘appropriate pricing policies such as free or low-cost water’ which will not impact disproportionately on poorer people.<sup>377</sup> In July 2014, the Commission for Energy Regulation announced that water charges for a person living alone would come to €176 or to €278 for two people and allowances will be made for children under 18 so that the average bill for households with children will not exceed €240.<sup>378</sup> There are concerns about whether the allowances for people with medical needs will be adequate but a list of exempt conditions will not be drawn up before water charges come into force.<sup>379</sup> The extra charge may put additional financial pressure on low income households.<sup>380</sup> The Commission also recommended that customers who receive water which is unfit for human consumption would still be required to pay 50 per cent of the waste services portion of the bill for three months but

369 Reception and Integration Agency (2011) *RIA House Rules & Procedures*, Dublin: RIA, p.14.

370 Information available online at: <http://bit.ly/RIASelfcateringinfo> [accessed 21 July 2014].

371 K. Barry (2014) *What’s Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision*, Cork: Nasc, the Irish Immigrant Support Centre, p.7.

372 S. Arnold (2012) *State Sanctioned Poverty and Social Exclusion: The case of children in state accommodation for asylum seekers*, Dublin: Irish Refugee Council, pp.20-22.

373 C. Breen (2008) *The policy of Direct Provision in Ireland: a violation of asylum seekers’ right to an adequate standard of housing*, Oxford: Oxford University Press.

374 FLAC (2009) *One Size Doesn’t Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, Dublin: FLAC, p.104.

375 Government of Ireland (2010) *Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding*, Dublin: Government of Ireland, p.30.

376 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11.

377 Office of the High Commissioner for Human Rights, UN Habitat & the World Health Organisation (2010) *The Right to Water: Factsheet No. 35*, Geneva: United Nations, p.12.

378 Commission for Energy Regulation (2014) *Response Paper on Domestic Water Tariff Principles and Proposals*, Dublin: Commission for Energy Regulation, p.3.

379 P. Melia & F. Sheahan, ‘Irish Water won’t seek proof of illness when capping bills’, *Irish Independent*, 18 September 2014.

380 Society of St Vincent de Paul, ‘Water proposals have serious implications for low-income households as alleviation measures not targeted’ [press release], 31 July 2014.



there would be a complete exemption if the problem was not rectified within that timeframe.<sup>381</sup> However, in some areas, up to 20,000 residents have had to boil tap water in their area over a number of years and while Irish Water has promised to rectify this situation, changes are not due to be completed until the end of 2015.<sup>382</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Ensure alleviation measures are properly targeted at people with low incomes and provide safe drinking water without charge for all those affected by contaminated water supplies.***

## 11.4 Right to Housing

While Article 43 of the Irish Constitution enshrines a right to private property subject to the requirements of the common good, there is no constitutional provision for a right to housing although the Constitutional Convention voted in 2014 to include it as an explicit right.

The recession has had a devastating impact on people’s right to a home given the current shortage in affordable, habitable and adequate housing. The unprecedented economic growth in Ireland during the ‘Celtic Tiger’ years was fuelled by an excessive property market and unregulated and reckless lending practices on the part of financial institutions which resulted in unsustainable mortgages, over-indebtedness and the ultimate loss of family homes. The recession also highlighted inadequate housing provision in terms of social and private housing<sup>383</sup> at a time when huge numbers of people are in need of state assistance. Prior to the recession there had been a move away from the provision of publicly funded housing to the effective privatisation of the housing market through a culture of home-ownership at any cost. During the economic boom, the State failed to maximise its resources which could have led to considerable progress in realising the right to housing for those most in need. The emergence of the everyday reality of family homelessness<sup>384</sup> lends a startling new dimension to the recession.

In 2014, the Government allocated €271 million to expenditure on social housing,<sup>385</sup> more than €344 million to the Rent Supplement scheme,<sup>386</sup> €68 million over two years to a local authority home building initiative<sup>387</sup> and an additional €20 million for the construction of mainstream social housing in local authority areas with the largest housing need.<sup>388</sup> However, despite this financial commitment by Government, it is not enough to address the urgent and overwhelming need for appropriate housing solutions. Furthermore, those who are fortunate enough to have a roof over their head may be at risk of losing it due to rising rents, reductions in Rent Supplement

381 Commission for Energy Regulation (2014) *Response Paper on Domestic Water Tariff Principles and Proposals*, Dublin: Commission for Energy Regulation, p.3.

382 RTE News Online, ‘Irish Water promises to eliminate boil notices’, 13 May 2014, <http://bit.ly/RTEWaterBoilNotices> [accessed 27 August 2014].

383 B. Jordan (2014) ‘Addressing Housing as a Human Rights Issue’ Presentation made at A Human Rights Approach to Tackling Poverty and Social Inequality conference, Newry, 16 May 2014.

384 Focus Ireland, ‘Focus Ireland calls on Minister Burton to raise Rent Supplement in Budget to prevent more families and individuals from losing their homes’ [press release], 4 July 2014.

385 Department of Public Expenditure (2013) *Revised Estimates for Public Services*, Dublin: Stationery Office, p.101.

386 Department of Public Expenditure (2013) *Revised Estimates for Public Services*, Dublin: Stationery Office, p.168.

387 Department of Environment, Community and Local Government ‘O’Sullivan launches €68m Local Authority Construction Initiative’ [press release], 11 March 2014.

388 Department of Environment, Community and Local Government ‘€50m boost to housing capital budget a significant investment’ [press release], 13 May 2014.



rates, mounting mortgage arrears or even eviction. The continuing lack of action on the part of the State means that a huge number of people do not 'live in security, peace and dignity' as outlined in the guiding principles on security of tenure recently published by the UN Special Rapporteur on adequate housing.

**FLAC urges the Committee to recommend that the State:**

- **Incorporate a right to adequate housing into the Constitution, as articulated by the Committee in its General Comment No. 4.**

**Insecurity of Tenure**

The mortgage arrears crisis has been one of the most striking aspects of the recession resulting in thousands of people either losing – or at risk of losing – their homes and finding themselves in significant debt. At the end of 2010, 145,400 properties were estimated to be in negative equity as a result of the overall decline in the property market.<sup>389</sup>

By the end of March 2014, a total of 132,217 mortgages on private homes were in arrears with eight per cent of those – more than 60,500 – in arrears for more than 360 days.<sup>390</sup> Although the overall number of these mortgages in arrears continued to decrease in this period, the number in long-term arrears over 720 days rose by five per cent.<sup>391</sup> During the first quarter of 2014, 3093 applications were made to repossess family homes.<sup>392</sup>

In 2010, the Central Bank of Ireland introduced a Code of Conduct on Mortgage Arrears (CCMA) to address the growing problem of mortgage arrears. While the Code outlined how lenders are expected to deal with clients already in mortgage arrears, or at risk of falling behind on mortgage payments, through a Mortgage Arrears Resolution Process (MARP),<sup>393</sup> it was never placed on a statutory footing. Therefore, it is not clear to what extent a borrower can rely on a breach of the Code by the lender as a defence in repossession proceedings.<sup>394</sup> In 2013, following what many consumer advocates described as an unsatisfactory consultation process, the Code was revised to the detriment of borrowers as it strengthened the lender's ability to unilaterally determine whether the borrower is considered to be cooperative and if the mortgage is considered sustainable.<sup>395</sup> The revised Code does not provide a fair and transparent decision-making process or appeals system to assist borrowers in arrears to successfully negotiate an equitable arrangement to address their arrears situation.

Borrowers in mortgage arrears find it difficult to access supports and, in particular, legal advice through the Legal Aid Board. In 2013, the Money Advice and Budgeting Service (MABS),<sup>396</sup> a service to assist people in debt, dealt with 24,377 cases of which almost 10,000 related directly

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389 G. Kennedy and T. McIndoe-Calder, 'The Irish Mortgage Market: Stylised Facts, Negative Equity and Arrears', *Quarterly Bulletin* 01, January 2012, Dublin: Central Bank of Ireland, p.31.

390 Central Bank of Ireland (2014) *Residential Mortgage Arrears and Repossessions Statistics: Q1 2014*, Dublin: CBI, pp.1-2.

391 Central Bank of Ireland (2014) *Residential Mortgage Arrears and Repossessions Statistics: Q1 2014*, Dublin: CBI, p.2.

392 Central Bank of Ireland (2014) *Residential Mortgage Arrears and Repossessions Statistics: Q1 2014*, Dublin: CBI, p.5.

393 Central Bank (2010) Code of Conduct on Mortgage Arrears, Dublin: Central Bank.

394 FLAC (2014) *Presentation to Joint Oireachtas Committee on Finance, Public Expenditure & Reform on Resolution Process for Mortgage Arrears*, Dublin: FLAC, p.19.

395 Free Legal Advice Centres (2014) *Annual Report 2013*, Dublin: FLAC, p.18.

396 MABS is funded by the Department of Social Protection through the Citizens Information Board.



to mortgages.<sup>397</sup> However, it is under significant pressure and requires further resources. Difficulties in accessing the state-funded civil legal aid scheme due to long waiting lists, a restrictive means-test and a narrow application of the merits test – the chances of your case being successful – for the purposes of a repossession case has resulted in people in mortgage arrears being denied legal advice and/or representation both in negotiations with lenders on loan restructures and in court proceedings for repossession of their family homes.<sup>398</sup>

The Mortgage Arrears Information and Advice Service, established in 2012, is an inadequate response to address the crisis as it provides only a limited service consisting of an information helpline and a consultation with an accountant who can explain the implications of a revised offer made by a lender but who cannot work with a borrower in difficulty to amend or improve the offer.<sup>399</sup> Some landlords who have fallen into mortgage arrears have had their properties taken into receivership by the lender. This poses a number of risks to the tenant, namely insecurity of tenure, as the tenant is not protected by the Residential Tenancies Act 2004 in these circumstances.<sup>400</sup> The tenant pays rent to the receiver, but is not afforded any legal protections by the receiver in return; for private rented tenants, these protections would include the return of the rental deposit, maintenance and repairs and appropriate notice periods.<sup>401</sup> The Private Residential Tenancies Board (PRTB) is the designated government agency supporting those with difficulties - tenants and landlords alike - in the private rented markets. The PRTB provides a dispute resolution mechanism for landlords and tenants and issues determination orders on these disputes, without the need to go to court (except to implement orders). It too is hampered by budgetary and staff cuts which delay and can even deny access to a fair redress system if there have been any failures to comply with tenancy agreements.<sup>402</sup>

Unlike private tenants, tenants in social housing provided by local authorities do not have access to an independent complaints mechanism akin to the PRTB and cannot make a complaint to the Ombudsman as local authority housing falls outside of its remit. The Committee is clear that a person cannot be forcibly evicted from his or her home without appropriate legal protections and access to an adequate legal remedy.<sup>403</sup> In 2012, the Supreme Court found that this lack of an independent review mechanism for a local authority tenant facing eviction was incompatible with the European Convention on Human Rights.<sup>404</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Amend the Code of Conduct on Mortgage Arrears to allow a borrower full rights of appeal to an independent third party where a lender declines to offer an alternative repayment arrangement or offers an unsuitable arrangement.***

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397 Money Advice and Budgeting Service (2013) *National Statistics Report: 2013 Quarter 4* available online at: <http://bit.ly/MABS2013Q4> [accessed 18 July 2014].

398 FLAC (2014) *Presentation to Joint Oireachtas Committee on Finance, Public Expenditure & Reform on Resolution Process for Mortgage Arrears*, Dublin: FLAC, p.21.

399 FLAC (2014) *Presentation to Joint Oireachtas Committee on Finance, Public Expenditure & Reform on Resolution Process for Mortgage Arrears*, Dublin: FLAC, p.19.

400 Threshold (2014) *Pre-Budget Submission 2015 to the Department of Finance*, Dublin: Threshold, p. 11.

401 Threshold (2014) *Pre-Budget Submission 2015 to the Department of Finance*, Dublin: Threshold.

402 Northside Community Law Centre (2012) *Submission on Residential Tenancies Bill (No.2) 2012*, Dublin: NCLC, p.3.

403 Office for the High Commissioner for Human Rights & UN Habitat (2014) *The Right to Housing: Fact Sheet No. 21 (Rev.1)*, Geneva: United Nations, p.4.

404 *Donegan v Dublin City Council* [2012] 3 I.R. 600; [2012] 2 I.L.R.M. 233.



- **Provide civil legal aid to borrowers or tenants in difficulty to ensure that they receive adequate legal advice and are supported in any legal proceedings which may result in repossession or eviction.**

### **Access and Availability of Housing**

The economic crisis and the impact of austerity measures have resulted in increased levels of homelessness. Official figures from May 2014 estimated that there were 2,663 people homeless in Ireland<sup>405</sup> but organisations working with the homeless estimate that the true figure is almost double that.<sup>406</sup> The number of families with children becoming homeless has increased consistently in recent years and in the first eight months of 2014 over 300 families in Dublin alone lost their home and were accommodated in hotel or guesthouse accommodation for extended periods.<sup>407</sup> In September 2014, Dublin City Council suggested erecting prefabricated buildings on derelict sites as a short-term measure to address the housing shortage but homeless advocacy groups are concerned that this may end up being a longer-term solution if other action is not taken.<sup>408</sup>

The severe shortage of social housing is evident; in 2013, 89,872 households were assessed as needing housing support, almost twice as many as in 2005.<sup>409</sup> Of these almost 90,000 households, there are estimates that approximately 30,000 households are in ‘high need’ of housing, with the remaining 60,000 households having difficulty affording the rent.<sup>410</sup> The level of investment in social housing plummeted from €1.48 billion in 2008 to €235 million in 2013, these sums of social housing investment can be reflected in a social housing output of 8,700 units in 2007 and 767 units in 2013 which can explain to a great extent the current social housing crisis in Ireland.<sup>411</sup> Significant delays in accessing social housing have only compounded the problem – 56 per cent of eligible households were waiting between one and five years with a further 17,769 households waiting more than five years to be accommodated.<sup>412</sup> The Government’s *Construction Plan 2020* estimates that approximately 5,000 new social housing units will be provided in 2014 through leasing and existing capital programmes<sup>413</sup> but this falls far short of the Housing Agency’s annual requirement of 16,000 to satisfy demand in urban areas.<sup>414</sup> Despite the obvious demand, capital funding allocated to the voluntary co-operative sector, which provides approximately 27,000 housing units,<sup>415</sup> was reduced from €55.5 million to

405 Department of Environment, Community and Local Government (2014) *Implementation Plan on the State’s Response to Homelessness May 2014 to December 2016*, Dublin: DECLG, p.6.

406 Peter McVerry Trust, ‘Statistics for 2013’ available online at: <http://www.pmvtrust.ie/news-media/facts-and-figures/>.

407 Focus Ireland, ‘Focus Ireland reports crisis continuing as new figures show 40 families became homeless in August alone’, [press release], 8 September 2014.

408 K. Holland, ‘Prefabs may be used to tackle housing crisis in Dublin’, *Irish Times*, 15 September 2014.

409 Housing Agency (2013) *Social Housing Assessment Report 2013*, Dublin: Housing Agency, p.7. A Housing Needs Assessment takes place every three years to identify the number of households who require social housing under Section 9 of the Housing Act 1988.

410 Clúid Housing Association (2014) Presentation to the Society of Chartered Surveyors Ireland, 30 September 2014.

411 Clúid Housing Association (2014) Presentation to the Society of Chartered Surveyors Ireland, 30 September 2014; see also M. Norris & T. Fahey, ‘From Asset Based Welfare to Welfare Housing? The Changing Function of Social Housing in Ireland’, *Housing Studies* 26/3, pp. 459-469.

412 Housing Agency (2013) *Social Housing Assessment Report 2013*, Dublin: Housing Agency, p.11.

413 Government of Ireland (2014) *Construction 2020: A Strategy for a Renewed Construction Sector*, Dublin: Stationery Office.

414 Housing Agency (2014) *Housing Supply Requirements in Ireland’s Urban Settlements 2014-2018: Overview*, Dublin: Housing Agency &

Future Analytics.

415 Irish Council for Social Housing (2013) *Pre-Budget Submission 2014*, Dublin: ICSH, p.1.





€40.925 million in 2014<sup>416</sup> as these not-for-profit entities are increasingly expected to be reliant on private borrowing.<sup>417</sup>

Rent Supplement is paid by the State towards the private-sector rent of people eligible for social housing where none is available. At the end of April 2014, there were approximately 77,000 Rent Supplement recipients; more than 42,000 were in receipt of the payment for 18 months or more.<sup>418</sup> Rent limits are only reviewed every 18 months so they do not keep pace with an ever-changing rental market and due to rising rent costs, the maximum Rent Supplement limits are not sufficient.<sup>419</sup>

Rules introduced in 2011 made it more difficult for non-EU migrants to access the housing list, by requiring them to prove they can account for five years of being legally resident in Ireland with permission to remain (Stamp 4 residence permit) and are entitled to work without a permit. Migrants without a Stamp 4 are barred from accessing the housing list.<sup>420</sup> This has led to problems when accessing homeless services. However, despite a revision of these rules in 2012, there are concerns that they are misapplied, leading to inconsistency and incorrect decisions by local authorities.<sup>421</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Ensure adequate resources are provided to implement national homelessness policy in the short, medium and longer-term. In particular, appropriate and adequate resources should be provided for families losing their homes.***
- ***Provide adequate social housing in line with the advice given by the Housing Agency and alternatives to construction should be considered given the number of vacant houses in the State.***
- ***Invest in Approved Housing Bodies to help meet the demand for social housing.***
- ***Ensure migrants resident in the State can access the housing list if they have a housing need.***
- ***Carry out further training with Local Authority staff to ensure that rules are applied correctly and consistently.***
- ***Ensure all migrants in need regardless of their immigration status have access to homeless services.***

***Affordability***

In 2014, mainly due to a limited supply of housing, average rents had increased nationally by almost nine per cent and by 13 per cent in Dublin over the space of a year.<sup>422</sup> The Rent Supplement payment has not been increased to keep pace with the increasing cost of rented property. The gap between actual rents and the limited Rent Supplement rate results in some tenants making undeclared and unlawful ‘top-up’ payments to their landlords in order to secure

416 Department of Public Expenditure (2013) *Revised Estimates for Public Services*, Dublin: Stationery Office, p.101.

417 Respond! Housing Association (2014) *Submission to Joint Oireachtas Committee on Community, Environment, Culture and the Gaeltacht: 15 April 2014*, Dublin: Respond! Housing Association, p.4.

418 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [20587/14, 20588/14], 7 May 2014.

419 Focus Ireland (2012) *Out of Reach: The Impact of Changes in Rent Supplement*, Dublin: Focus Ireland.

420 Migrant Rights Centre of Ireland (2014) *MRCI’s Submission to the Shadow Report to the Irish State’s obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Dublin: Migrant Rights Centre of Ireland, p.7.

421 Nasc (2014) *Submission to FLAC for ICESCR Shadow Report*, Cork: Nasc, pp.13-14.

422 Daft.ie (2014) *The Daft.ie Rental Report: An analysis of recent trends in the Irish rental market, 2014 Q1*, Dublin: Daft Media Ltd, p.5.



a place to live.<sup>423</sup> It also results in some people being unable to afford rented accommodation at all. Despite evidence that people may fall into debt or rent arrears or may ultimately lose their accommodation,<sup>424</sup> the Government has ruled out the introduction of rent limits instead favouring social housing construction.<sup>425</sup>

A new Housing Assistance Payment (HAP) to replace Rent Supplement for social welfare recipients with a long-term housing need is being introduced on a pilot phase. It will remove any disincentives to work for recipients moving back into the labour force. The new scheme, if implemented correctly, will be more sustainable for those with an immediate housing need, but this scheme alone cannot tackle the housing crisis for those in need of adequate, affordable and accessible housing, which the Government is obliged to provide under this Covenant does not address the current difficulty that rented property in Dublin and other parts of Ireland is unaffordable to those on low incomes or social welfare.

***FLAC urges the Committee to recommend that the State:***

- ***Revise the Rent Supplement limits to adequately reflect the rental market to prevent the need for top-up payments by tenants.***
- ***Implement the Housing Assessment Payment to address urgent housing needs and put in place other measures to ensure that the payment does not become a long-term solution.***
- ***Introduce a system of rent controls to ensure that rent is affordable for tenants.***

***Quality of Available Housing***

Regeneration of social housing estates in disadvantaged areas first began in 1997 supported by Dublin City Council. The regeneration model (which purported to address social and economic as well as physical improvement) was promoted and developed in other areas through the use of Public-Private Partnerships meaning that the Government relied on property developers to refurbish or regenerate housing in local authority estates.<sup>426</sup> By 2006, €1 billion had been spent 'on regeneration and remedial works for local authority housing'<sup>427</sup> but even with this level of investment in infrastructure it is not clear that the aim to improve living and social conditions in local authority estates was achieved.<sup>428</sup> As well as very little progress in physical regeneration, in many cases, poor education and employment levels and issues of community safety remain unaddressed.<sup>429</sup> The decline in local authority regeneration projects was exacerbated by the property crash when private developers completely withdrew from the partnerships as they were no longer considered to be 'economically viable'<sup>430</sup> and many of the developers were themselves in financial difficulty. Furthermore, government funding for National Regeneration

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423 Simon Communities in Ireland (2013) *Submission to the Review of Rent Supplement Limits: April 2013*, Dublin: Simon Communities in Ireland, p.2.

424 Focus Ireland (2012) *Out of Reach: The Impact of Changes in Rent Supplement*, Dublin: Focus Ireland, p.10.

425 H. McGee, 'Kelly rules out rent controls and says new homes are answer', *Irish Times*, 23 July 2014.

426 D. Redmond and R. Hearne (2013) *Starting Afresh: Housing Associations, Stock Transfer and Regeneration*, Dublin: Clúid Housing Association, p.11.

427 Department of the Environment, Heritage and Local Government (2005) *Housing Policy Framework: Building Sustainable Communities*, Dublin: Department of the Environment, Heritage and Local Government, p.2.

428 R. Hearne (2009) *Origins, Development and Outcomes of Public Private Partnerships in Ireland: The Case of PPPs in Social Housing Regeneration*, Dublin: Combat Poverty Agency, p.66.

429 Rialto Rights in Action (2014) Report on the Fourth Monitoring of Housing Conditions in Dolphin House Rialto Dublin 8, Dublin: Rialto Rights in Action, pp.8-10.

430 D. Redmond and R. Hearne (2013) *Starting Afresh: Housing Associations, Stock Transfer and Regeneration*, Dublin: Clúid Housing Association, p.22.



Projects was reduced from €121 million in 2008 to €80 million in 2013.<sup>431</sup> In 2014, it was reduced again to €79.4 million, with only €11.6 million of this capital funding spent by June 2014.<sup>432</sup> Only one of the designated regeneration projects has been completed to date with another at an advanced stage.<sup>433</sup> Following her 2011 visit, the UN Independent Expert on Extreme Poverty and Human Rights called on the Government to consider ‘adopting a legislative framework for a National Public Housing Estates Regeneration Programme’.<sup>434</sup>

In July 2014, FIDH (the International Federation of Human Rights), on behalf of a number of Irish organisations,<sup>435</sup> lodged a Collective Complaint under the Revised European Social Charter, claiming that the quality of social housing available in Ireland is sub-standard.<sup>436</sup> Tenants in local authority estates in 20 different communities used human rights indicators to collect evidence of sub-standard conditions including the presence of mould<sup>437</sup> and waste-water/sewerage backup.<sup>438</sup> Residents also reported some of the negative impacts that these conditions had on their overall health and well-being, including a high rate of respiratory illnesses, skin rashes and depression.<sup>439</sup>

Despite the introduction of regulations in 2008<sup>440</sup> and 2009<sup>441</sup> to ensure quality standards in rented accommodation, sub-standard accommodation and failure to carry out repairs in private rented accommodation remains a problem.<sup>442</sup> In 2011, local authorities inspected 16,759 rented properties, of which one-third were found not to comply with minimum standards; however, legal action was initiated in just eight cases.<sup>443</sup> The most common problems for tenants include broken or ineffective heating systems, poor ventilation and condensation and dampness, all of which often have a severe impact on their quality of life as well as making utility bills unaffordable and rendering accommodation uninhabitable.<sup>444</sup> Research also demonstrates that poorer migrants are at risk of living in poor quality housing in the private rented sector with overcrowding, insecurity of tenure, damp conditions and housing in a state of disrepair.<sup>445</sup>

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431 D. Redmond and R. Hearne (2013) *Starting Afresh: Housing Associations, Stock Transfer and Regeneration*, Dublin: Clúid Housing Association, p.23.

432 Minister for Environment, Community and Local Government, Alan Kelly TD, Parliamentary Questions: Written Answers [32184/14], 17 July 2014.

433 D. Redmond and R. Hearne (2013) *Starting Afresh: Housing Associations, Stock Transfer and Regeneration*, Dublin: Clúid Housing Association, p.21.

434 Office of the High Commissioner for Human Rights (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland, 17 May 2011*, Geneva: OHCHR, p.20.

435 This process was facilitated through FLAC using its Public Interest Law Alliance (PILA) project. Members of the Working Group that initiated the complaint include the Centre for Housing Law, Rights and Policy at the National University of Ireland Galway, Ballymun Community Law Centre, Community Action Network, Dr. Rory Hearne of National University of Ireland Maynooth and the Irish Traveller Movement.

436 International Federation of Human Rights (FIDH), ‘Social housing: FIDH takes Ireland before the European Committee of Social Rights’ [press release], 14 July 2014.

437 E. Thomas (2011) *Mould Analysis Report*, Dublin: Mould Busters Ltd.

438 Tobin Consulting Engineers (2010) *Assessment of Wastewater Backup into Residential Dwellings at Dolphin House, Dublin 8*, Dublin: Community Action Network.

439 Rialto Rights in Action (2012) *Report on the Third Monitoring of Housing Conditions in Dolphin House Rialto Dublin 8*, Dublin: Rialto Rights in Action. The Rialto Rights in Action Project is a collaboration of Rialto Residents, Dolphin House Alliance, The Dolphin and Fatima Health Projects, Community Response, Community Action Network and Participation and Practice of Rights Project, Belfast, and is funded by Joseph Rowntree Charitable Trust.

440 Housing (Standards for Rented Houses) Regulations 2008 (SI 534/2008).

441 Housing (Standards for Rented Houses) (Amendment) Regulations 2009 (SI 462/2009).

442 Threshold (2013) *Threshold Annual Report 2012*, Dublin: Threshold, p.2.

443 Threshold (2013) *Threshold Annual Report 2012*, Dublin: Threshold, p.2.

444 Threshold (2013) *Threshold Annual Report 2012*, Dublin: Threshold, p.28.

445 Focus Ireland and Immigrant Council of Ireland (2012) *Making a Home in Ireland: Housing Experiences of Chinese, Indian, Lithuanian & Nigerian Migrants in Blanchardstown*, Dublin: ICI, p.9



**FLAC urges the Committee to recommend that the State:**

- **Provide adequate funding for the completion of regeneration projects and adopt a legislative framework for a National Public Housing Estates Regeneration Programme.**
- **Enforce regulations to maintain appropriate quality standards in rented accommodation so that the accommodation is habitable.**

**Travellers and Housing**

In 2002, the Committee expressed concern at the number of Traveller families living by the roadside without access to basic facilities and at risk of eviction.<sup>446</sup> The Independent Expert on Extreme Poverty and Human Rights reiterated this concern following her 2011 mission to Ireland.<sup>447</sup> However, despite repeated calls for improvements in this area, budgetary allocations for Traveller-specific accommodation have instead been significantly reduced, with capital spending falling from €40 million in 2008 to just €4 million in 2013.<sup>448</sup> This decline in funding is compounded by the consistent underspending by local authorities on Traveller Accommodation allocations; between 2007 and 2012, local authorities failed to spend more than €50 million of allocated funding on these schemes.<sup>449</sup>

The Housing (Traveller Accommodation) Act 1998 requires each local authority to prepare and adopt a five-year plan for the provision of Traveller accommodation in their area but these plans have consistently failed to meet their targets.<sup>450</sup> The National Traveller Accommodation Consultative Committee monitors progress but does not have the power to implement the targets or impose sanctions if these targets are not met. The Housing (Miscellaneous Provisions) Act 2002 makes it illegal for Travellers to set up a ‘temporary dwelling’ on either private or public land without permission. A person can be prosecuted with trespass under this legislation introduced at a time when more than 1000 families were living on the roadside.<sup>451</sup>

Although statistics indicate a significant increase in the number of Traveller families living in private rented accommodation - from 162 families in 2002 to 2829 families in 2012 - this is to the detriment of culturally appropriate alternatives and is contrary to the requirements outlined in the Housing (Traveller Accommodation) Act 1998.<sup>452</sup> Advocacy groups have expressed concern that increased use of private rented accommodation interferes with the traditional pattern of Traveller families living in close proximity to their extended families, leading to social isolation and mental health difficulties.<sup>453</sup>

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446 UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.

447 Office of the High Commissioner for Human Rights (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland, 17 May 2011*, Geneva: OHCHR, p.18.

448 Pavee Point, (2013) *‘Travelling with Austerity’: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p.25

449 Irish Traveller Movement (2013) *Fact sheet on accommodation*, <http://bit.ly/ITMfactsheet> [accessed 7 August 2014].

450 In its 2009-2013 plan, Dublin City Council committed to build 118 new units of Traveller-specific accommodation but only built one. Fingal County Council’s 2009-2013 programme stated that it would provide between 79 and 91 new units; it provided 30 units.

451 See Irish Traveller Movement information on evictions available at: <http://itmtrav.ie/keyissues/myview/23>

452 Irish Traveller Movement (2013) *Fact sheet on accommodation*, <http://bit.ly/ITMfactsheet> [accessed 7 August 2014].

453 Pavee Point (2013) *‘Travelling with Austerity’: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p.26.



A collective complaint to the European Committee on Social Rights has been submitted against the State alleging violations of Article 16 (the right of the family to social, legal and economic protection), Article 17 (the right of children and young persons to social, legal and economic protection) and Article 30 (the right to protection against poverty and social exclusion) of the European Social Charter.<sup>454</sup> Ireland has opted out of Article 31 on the right to housing. The complaint refers to the Government's failure to deliver on legislative provisions to provide adequate accommodation for Travellers while at the same time introducing and enforcing 'increasingly regressive evictions legislation'.<sup>455</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Provide adequate funding for Traveller-specific accommodation and spend the budget for that purpose.***
- ***Opt into Article 31 of the Revised European Social Charter.***
- ***Repeal Section 24 of the Housing (Miscellaneous Provisions) Act 2002.***
- ***Implement sanctions for local authorities who fail to meet their legal obligations under the Housing Traveller Accommodation Act 1998.***

***People with Disabilities and Housing***

In 2011, the Government adopted the National Housing Strategy for People with a Disability 2011-2016 but thousands of people with disabilities continue to have unmet housing needs.<sup>456</sup> More than 106,000 persons with disabilities live alone and are aged 65 or over.<sup>457</sup> Almost a quarter of people with disabilities living in private households did not have access to private transport to enable them to access amenities.<sup>458</sup> The abolition in 2013 of the Mobility Allowance and Motorised Transport Grants - payments to cover transport costs for persons with disabilities - was seen as a disproportionate and unfair response to the Ombudsman's finding that placing an upper age restriction on the payment was discriminatory.<sup>459</sup> Research has found that the Personal Assistants Service, a service for people with significant physical and sensory disabilities mainly funded by the Health Service Executive, is 'vulnerable to funding cuts and inappropriate forms of regulation'.<sup>460</sup> In 2014, the HSE is expected to maintain the number of Personal Assistant hours at 1.3 million quarterly with 2.4 million Home Support hours delivered to people with disabilities.<sup>461</sup>

Since 2010, Housing Adaptation Grant Schemes have been cut by 42 per cent.<sup>462</sup> In 2014, reforms to three grants paid by Local Authorities to make necessary changes to the homes of people with disabilities were restricted.<sup>463</sup> The means-test was extended to include the income of all adults living in the house including adult children who may not be able to afford to move

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454 *European Roma Rights Centre v Ireland*, Complaint No. 100/2013.

455 *European Roma Rights Centre v Ireland*, Complaint No. 100/2013, p.9, para.22.

456 Disability Federation of Ireland (2013) *Promises, Commitments and Delivery: Mid-Term Review of the Programme for Government*, Dublin: DFI, p.6.

457 Government of Ireland (2012) *Census 2011 Profile 8 – Our Bill of Health*, Dublin: Stationery Office, p.11.

458 Government of Ireland (2012) *Census 2011 Profile 8 – Our Bill of Health*, Dublin: Stationery Office, p.16.

459 Office of the Ombudsman, 'Discontinuation of Mobility Allowance and Motorised Transport Grant', [press release], 26 February 2013.

460 Disability Federation of Ireland (2014) *Access to Life: Personal Assistant Services in Ireland and Independent Living by People with Physical and Sensory Disabilities*, Dublin: DFI, p.6

461 Health Service Executive (2013) *Health Service National Service Plan 2014*, Dublin: HSE, p.66.

462 Disability Federation of Ireland (2013) *Pre-Budget Submission 2014*, Dublin: DFI.

463 The grants are Housing Adaptation Grant for People with a Disability (HAG), Housing Aid for Older People (HOPs) and the Mobility Aids Grant (MAG).



out of home. The changes were made even though a review by the Housing Agency in 2013 highlighted that the total number of grants awarded had fallen from 13,910 in 2010 to 9,190 in 2012 despite increased need.<sup>464</sup> The Review Group also found that in 2012 the maximum amount of the grant was paid in a very small number of cases: six per cent in the case of Housing Adaptation for People with a Disability grants, 16 per cent of Mobility Aid grants and 11 per cent of Housing Aid for Older People grants.<sup>465</sup>

Living conditions and the treatment of people with disabilities in some residential centres has been found to be substandard and not person-centred. While it is a matter of concern that prior to 2013, these centres were not monitored by the State, the regulated inspections of these centres by the Health Information and Quality Authority (HIQA), since October 2013, is a welcome development. HIQA is now responsible for inspecting all residential centres for people with intellectual disabilities in accordance with legislation,<sup>466</sup> regulations<sup>467</sup> and standards.<sup>468</sup> In 2014, only three of 190 registered centres were found to fully comply with the regulatory framework on inspection while 20 per cent of centres were found not to fulfil any of the required regulations and standards.<sup>469</sup> In some centres there were concerns about general living standards including residents' access to their own money and concerns related to food and nutrition. During an inspection of one particular centre with almost 100 residents, the inspectors noted issues arising around residents' access to food: a number of residents presented as underweight, some residents had to wait up to 15 hours between meals and mealtimes were described as 'distressing'.<sup>470</sup> While a follow-up inspection did note 'significant improvements',<sup>471</sup> the same centre is under police investigation following the death of a resident where dehydration and malnutrition were 'severe contributory factors'.<sup>472</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Ensure that the Housing Adaption Grants scheme is adequate to meet the need of persons with disabilities to live in dignity in their homes.***
- ***Provide adequate resources to the Health Information and Quality Authority (HIQA) to enable it to conduct regular inspections of conditions in residential centres. Where gross violations of rights occur ensure that these are investigated fully by the appropriate agencies and sanctions are imposed for non-compliance with quality standards.***

464 Housing Agency (2013) *Review of the Housing Grants for Older People and People with a Disability*, Dublin: Housing Agency, p.5.

465 Housing Agency (2013) *Review of the Housing Grants for Older People and People with a Disability*, Dublin: Housing Agency, p.5.

466 Part 8 of the Health Act 2007.

467 The Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI 367/2013), also known as the 'care and support regulations' and the Health Act 2007 (Registration of Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 (SI 366/2013), also known as the 'registration regulations'.

468 Health Information and Quality Authority (2013) *National Quality Standards: Residential Services for Children and Adults with Disabilities*, Dublin: HIQA.

469 P. Duncan, 'Less than 2% of disability centres pass Hiqa test', *Irish Times*, 4 August 2014.

470 Health Information and Quality Authority Regulation Directorate (2014) *Compliance Monitoring Inspection Report: Centre 11215 [25-26 February 2014]*, Dublin: Health Information and Quality Authority, pp.4-6.

471 Health Information and Quality Authority Regulation Directorate (2014) *Compliance Monitoring Inspection Report: Centre 11215 [26-27 May 2014]*, Dublin: Health Information and Quality Authority, p.10.

472 C. O'Brien and P. Duncan, 'Dehydration and malnutrition 'factors' in death at HSE home', *Irish Times*, 28 July 2014.

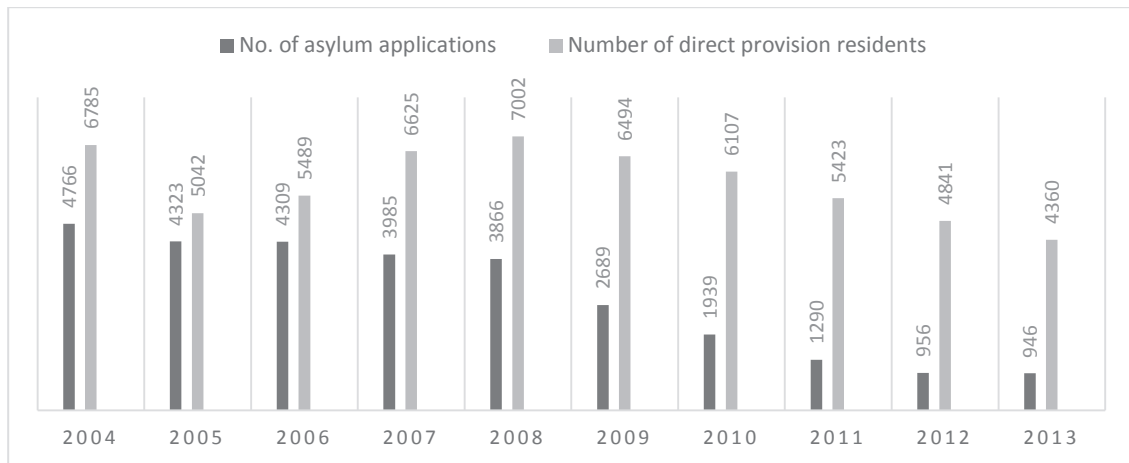


**Direct Provision Accommodation for Asylum Seekers**

The conditions in which direct provision residents live has repeatedly come to the attention of both UN and Council of Europe human rights bodies and representatives as failing to provide an adequate standard of living.<sup>473</sup> At the end of 2013, there were 34 direct provision centres operating in 16 counties. The Reception and Integration Agency (RIA), the section of the Department of Justice and Equality which is responsible for administering the direct provision and dispersal, contracts out the running of the accommodation centres to private contractors.<sup>474</sup> In 2013, the Government spent over €55 million on these centres.<sup>475</sup>

The State has accommodated almost 52,000 residents in this system since it was introduced in April 2000.<sup>476</sup> As the chart below indicates, despite the dramatic decrease in the number of people seeking asylum in Ireland since 2008, the number of people accommodated in direct provision has not fallen at the same rate and remains comparatively high.<sup>477</sup>

**Figure 4: Number of asylum applications/number of direct provision residents 2004-2013**



One of the main criticisms of the system is the excessive length of time residents have to live in inadequate accommodation while they await a decision on their claim for protection. When the system was first introduced, it was envisaged that a person would spend no longer than six months in this type of accommodation. Access to Rent Supplement was completely removed from asylum seekers in 2003.<sup>478</sup> In December 2013, the average length of time a resident spent in direct provision accommodation based on his or her initial asylum application was four years and four months although 68 per cent of residents had lived in direct provision accommodation for more than three years with 15 per cent living there for more than seven years.<sup>479</sup> The

473 For a summary of some of the recommendations from UN and Council of Europe bodies see: <http://bit.ly/DPIInternationalHR> [accessed 7 August 2014].

474 FLAC (2009) *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, Dublin: FLAC, pp.26-30.

475 Reception and Integration Agency (2014) *RIA Annual Report*, Dublin: Department of Justice and Equality, p.31.

476 Reception and Integration Agency (2014) *December 2013: Monthly Statistics Report*, Dublin: Department of Justice and Equality, p.8.

477 The statistics used to compile this chart were taken from the Reception and Integration Agency (2014) *RIA Annual Report*, Dublin: Department of Justice and Equality.

478 Section 13 Social Welfare (Miscellaneous Provisions) Act 2003.

479 Reception and Integration Agency (2014) *December 2013: Monthly Statistics Report*, Dublin: Department of Justice and Equality, p.19.



Government's standard response, when questioned about the delays in the asylum process, is that these will be reduced following the reform of protection legislation to introduce a single procedure to determine protection applications. Preparations for this legislative reform have been ongoing since 2001<sup>480</sup> with an initial draft of the Bill published in 2008. A revised version has been further delayed and awaits publication and enactment in 2015.<sup>481</sup> Following protests by residents<sup>482</sup> and increased pressure from advocacy groups, as well as criticism by the newly appointed Minister for Equality, New Communities and Culture who described the system as 'inhumane',<sup>483</sup> the Department of Justice and Equality has established a working group to review the system.<sup>484</sup>

Overcrowding is defined in the Housing Act 1966 as a sleeping area where a person has 'less than four hundred cubic feet'<sup>485</sup> or where two people of opposite sex over the age of ten have to sleep in the same room when they are not 'living together as husband and wife'.<sup>486</sup> RIA has stated that it acts in accordance with the relevant legislation<sup>487</sup> but in many cases parents have to share bedrooms with their adolescent children leading to a lack of privacy and overcrowding.<sup>488</sup>

The UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) in its 2011 Concluding Observations called on the Government to carry out a review of the direct provision system recommending that the State 'take all necessary measures to improve the living conditions of asylum- seekers by providing them with adequate food, medical care and other social amenities'.<sup>489</sup> The European Commission against Racism and Intolerance (ECRI) echoed this recommendation following a country visit in 2012.<sup>490</sup>

**FLAC urges the Committee to recommend that the State:**

- ***Abolish the direct provision system as it has failed to adequately protect the social, economic and cultural rights of those seeking protection in Ireland. While it remains in place, introduce a time limit of nine months after which anyone who has not received a decision through no fault of their own should be able to leave direct provision accommodation and access relevant social security payments and the labour market.***

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480 Department of Justice, Equality and Law Reform, 'Launch of new Immigration Bill' [press release], 29 January 2008.

481 Minister for State with responsibility for Equality, New Communities and Culture, 'Response by Minister of State to Seanad Private Member's motion on Direct Provision', [speech given in Seanad], 17 September 2014.

482 E. English, 'Asylum seekers' protest extends to fifth centre', *Irish Examiner*, 19 September 2014.

483 Minister for State with responsibility for Equality, New Communities and Culture, 'Response by Minister of State to Seanad Private Member's motion on Direct Provision', [speech given in Seanad], 17 September 2014.

484 RTÉ News Online, 'Direct provision review group 'could make rapid progress'', <http://bit.ly/RTÉdirectprovisionreview> [accessed 24 September 2014].

485 Section 63(b) Housing Act 1966.

486 Section 63(a) Housing Act 1966.

487 C. Joyce and E. Quinn (2014) *The Organisation of Reception Facilities for Asylum Seekers in Ireland*, Dublin: European Migration Network & the Economic and Social Research Institute, p.18.

488 FLAC (2009) *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, Dublin: FLAC, pp.89-92

489 UN Committee on the Elimination of all forms of Racial Discrimination (2011) *Concluding Observations of the Committee to Eliminate all forms of Racial Discrimination: Ireland*, Geneva: OHCHR, para.20.

490 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, p.26.





## Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

State Report paragraphs 312-387

The Irish health system is under severe financial pressure. In 2014, Irish national health service, the Health Service Executive (HSE), was allocated €13.1 billion.<sup>491</sup> Despite an overall reduction of €3.3 billion since 2008 and coupled with a significant financial deficit, Government plans to achieve additional savings of €619 million in 2014 to achieve further fiscal consolidation.<sup>492</sup> The OECD has noted that most of the savings to date have been achieved through cutbacks in wages and fees as well as a nine per cent reduction in the number of health workers.<sup>493</sup> The level of health spending in Ireland equates to 8.9 per cent of Gross Domestic Product, less than the OECD average of 9.3 per cent.<sup>494</sup> While initial cuts produced greater efficiencies in the health service, continuing austerity measures have resulted in rising waiting lists, fewer public beds and increased costs for patients.<sup>495</sup>

There has been a significant increase in the ageing population as life expectancy increases to 80.6 years although people in disadvantaged areas continue to have the lowest life expectancy.<sup>496</sup> High rates of chronic diseases account for 76 per cent of deaths in Ireland.<sup>497</sup> While there have been significant reductions in the mortality rates for cancer patients and those with cardiovascular disease, 'the mortality burden...remains high and further gains can be made'.<sup>498</sup> The Government hopes to reduce the rate of preventable diseases as well as reducing expenditure on 'the prospect of unaffordable future health costs' by channelling resources into 'cost-effective prevention programmes'.<sup>499</sup> Excessive alcohol use is one example of where the State could maximise its resources to prevent unnecessary deaths and illness as well as achieving

491 Health Service Executive (2013), *National Service Plan 2014*, Dublin, HSE, p.2.

492 Health Service Executive (2013), *National Service Plan 2014*, Dublin, HSE, p.2.

493 Organisation for Co-operation and Economic Development (2014) *OECD Health Statistics 2014: How does Ireland compare?* Paris: OECD, p.1.

494 Organisation for Co-operation and Economic Development (2014) *OECD Health Statistics 2014: How does Ireland compare?* Paris: OECD, p.1.

495 S. Thomas, S. Burke & S. Barry, 'The Irish health-care system and austerity: sharing the pain', *The Lancet*, 383 (3), 3 May 2014, pp.1545-6.

496 Central Statistics Office (2010) *Mortality Differentials in Ireland*, Cork/Dublin: CSO, p.1.

497 Health Service Executive (2013), *National Service Plan 2014*, Dublin, Health Service Executive, p.4.

498 Organisation for Economic Co-operation and Development (2013) 'Prevention and value-for-money in health spending must remain a priority for Ireland, says OECD' [press release], available at <http://www.oecd.org/ireland/Health-at-a-Glance-2013-Press-Release-Ireland.pdf> (last accessed 29 September 2014).

499 Department of Health (2013) *Healthy Ireland: A framework for improved health and wellbeing 2013-2025*, Dublin: Department of Health, pp.11-12.



greater savings in the long-term. Alcohol abuse is estimated to result in 90 deaths each month in Ireland and in 2010 alone it cost the Exchequer approximately €1.2 billion in hospital in-patient care, GP and associated services and mental health services.<sup>500</sup>

**FLAC urges the Committee to recommend that the State:**

- **Target resources at preventative measures to reduce the rate of chronic illnesses and preventable diseases to reduce pressure on the health service.**

## 12.1 Access to Adequate Healthcare Services

### *Two-Tier Health System*

Access to healthcare is severely undermined because of Ireland’s entrenched two-tier healthcare system, meaning that those with higher incomes have better access to healthcare. The healthcare system has its origins in 1950s Ireland when the Voluntary Health Insurance Board (VHI) was established as a state-backed monopoly to cater for the 15 per cent of people at the top of the income distribution scale who did not have an entitlement to State hospital care.<sup>501</sup> The structure was designed to ensure that ‘the entire population had access to hospital care while satisfying the demands of medical consultants that their private practice not be undermined’.<sup>502</sup> Due to improved incomes nearly half of the population took out health insurance.<sup>503</sup> Attitudinal surveys reveal that this was due in part to concern about waiting times in public hospitals.<sup>504</sup>

The overall result is that those on low incomes have to wait for extended periods for procedures through the public system, while people who can afford health insurance can ‘jump the queue to get a much faster service’ through the private system.<sup>505</sup> Patients going through the public system are often subjected to waiting lists and delays, while those with greater resources and health insurance get faster treatment often on public hospital sites because the Irish system allows doctors to use public healthcare facilities to run private clinics.

Despite a government commitment to introduce a universal healthcare system,<sup>506</sup> a commitment which is now under review,<sup>507</sup> a two-tier system still operates. In 2013, 45 per cent of the population had private health insurance compared to 51 per cent in 2008.<sup>508</sup> Uninsured people are three times as likely to live in a household where someone has lost a job while almost two thirds of people who had given up their private health insurance cited cost as the main reason.<sup>509</sup> The number of employees who benefit from subsidies or provision of health insurance cover by employers has decreased from 41 per cent in 2011 to 32 per cent in 2013.<sup>510</sup> Increases

500 S. Byrne (2010) *Costs to Society of Problem Alcohol Use in Ireland*, Dublin: Health Service Executive, p.21.

501 A. Nolan and B. Nolan (2005) *Ireland’s Health Care System: Some Issues and Challenges*, Dublin: Economic and Social Research Institution, pp.82-83.

502 A. Nolan and B. Nolan (2005) *Ireland’s Health Care System: Some Issues and Challenges*, Dublin: Economic and Social Research Institution, p.83.

503 A. Nolan and B. Nolan (2005) *Ireland’s Health Care System: Some Issues and Challenges*, Dublin: Economic and Social Research Institution, p.83.

504 A. Nolan and B. Nolan (2005) *Ireland’s Health Care System: Some Issues and Challenges*, Dublin: Economic and Social Research Institution, p.83.

505 B. Harvey, (2007) *Evolution of Health Services and Health Policy in Ireland*, Dublin: Combat Poverty Agency, p. 12.

506 Department of Health, ‘Health Ministers Publish Future health: a strategic framework for reform of the health service 2012 – 2015’,

[press release], 15 November 2012.

507 P. Cullen, ‘Varadkar review casts further doubt on future of universal health insurance’, The Irish Times, 8 August 2014.

508 Health Insurance Authority (2014) *Market Statistics: February 2014*, Dublin: HIA.

509 Health Insurance Authority (2014) *The Private Health Insurance Market in Ireland 2014: Consumer Survey*, Dublin: HIA, p.5.

510 Health Insurance Authority (2014) *The Private Health Insurance Market in Ireland 2014: Consumer Survey*, Dublin: HIA, p.7.



in private insurance premiums and government-led changes to tax reliefs implemented as part of the Troika agreement have also impacted on people who were still able to afford some level of health insurance.

**Figure 5: Case study – Two-tier health system causes death due to long waiting lists**

Susie Long’s case highlights the devastating impact of the two-tier healthcare system.<sup>511</sup> In the summer of 2005 Susie, a mother-of-two in her late thirties, was referred for a colonoscopy following a consultation with her GP. She did not have private health insurance so waited seven months on the public waiting list. By the time she had the test, she was diagnosed with terminal bowel cancer as the cancer had spread while she awaited diagnosis and treatment. Susie discovered from a fellow patient who had private health insurance that she had been diagnosed within three days of a GP visit and was expected to recover from the illness. Susie highlighted her case in the media to draw the distinction between treatment of private and public patients. Before her death in October 2007, Susie had to move to Dublin as there were no available hospice services in Kilkenny.

***Waiting lists and delays for emergency and public patients***

At the end of 2013 there were 48 acute hospitals operating with 11,513 in-patient beds and 2063 day places.<sup>512</sup> In 2014, there are a significant number of people waiting for in-patient care and day procedures as well as on out-patient appointments as indicated in the following table.

**Figure 6: Hospital waiting times 2014**

| Hospital waiting times 2014 | In-patient and day cases | Out-patient |
|-----------------------------|--------------------------|-------------|
| More than 3 months          | 27,054                   | 76,535      |
| More than 6 months          | 12,347                   | 91,729      |
| More than 12 months         | 3486                     | 28,185      |

Source: National Treatment Purchase Fund – Hospital Trend Analysis of Waiting Times<sup>513</sup>

Hospital overcrowding remains a serious issue. In August 2014, just over 2100 in-patient beds were closed<sup>514</sup> while figures for July 2014 show that 4449 patients were forced to remain on trolleys in Emergency Departments due to bed shortages, a 26 per cent increase on 2007 figures.<sup>515</sup> In 2013, a total of 57,286 admitted patients were forced to wait on trollies while more than 10,500 patients were placed in beds, chairs or trolleys on wards without sufficient spaces in the last nine months of the year.<sup>516</sup>

511 Information for this case study was taken from the website: <http://bit.ly/SusieLongHospice> [accessed 8 August 2014].

512 Health Service Executive (2014) Annual Report and Financial Statements 2013 Report, Kildare: HSE, p.14.

513 National Waiting List Data from National Treatment Purchase Fund for May 2014, <http://bit.ly/NTPFHospitalWaitingData> [accessed 27 August 2014].

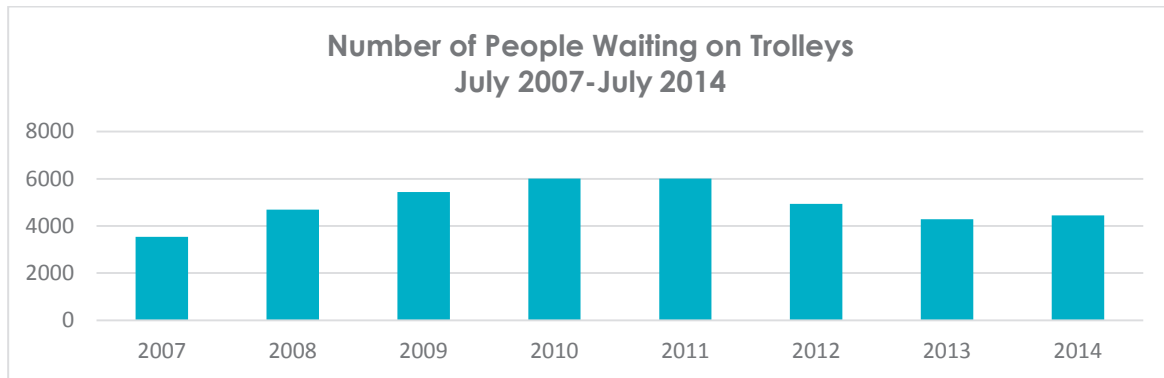
514 Irish Nurses and Midwives Organisation, ‘Bed Closures Nationwide as of August 2014’, <http://bit.ly/BedClosuresAug14> [accessed 27 August 2014].

515 Irish Nurses and Midwives Organisation, ‘Trolley Watch for the Month of July 2007 to 2014’, 8 August 2014, <http://bit.ly/INMOTrolleyWatch07-14> [accessed 27 August 2014].

516 Irish Nurses and Midwives Organisation (2014) INMO trolley and ward watch analysis 2006 – 2013, Dublin: INMO.



**Figure 7: Number of people waiting on hospital trolleys July 2007-July 2014**



Source: Irish Nurses and Midwives Organisation Trolley Watch Figures 2007-2014

Although patients who no longer require hospitalisation should be discharged as soon as possible, the lack of financing for community-based services as well as step-down and long-term facilities means that many patients, in particular older patients, spend prolonged periods in hospital unnecessarily.<sup>517</sup>

Despite Government’s commitment to reform the primary care system,<sup>518</sup> only a fraction of the Health Service Executive’s overall budget is allocated to these services: €726 million out of an estimated €13.1 billion in 2013.<sup>519</sup> The target of 530 Primary Care Teams, due to be in place nationwide by 2011, has not been achieved.<sup>520</sup> There is no clear legal basis for access to primary care teams or community therapy teams – currently these teams are often only available for medical card holders – and they are provided subject to budget caps and resource constraints.<sup>521</sup> Other community-based services are similarly subject to budget caps.<sup>522</sup> Furthermore, the low distribution of General Practitioner doctor services in disadvantaged urban and rural areas has been linked to the current payment system for GPs which encourages them to locate their practices in areas with more favourable health and social profiles and a higher proportion of private patients.<sup>523</sup>

### **Mental Health Services**

In 2014, the Government failed to honour its commitment to annually ring-fence €35 million of the health budget to develop community mental health teams<sup>524</sup> as it allocated only €20 million.<sup>525</sup> The Mental Health Commission, a statutory body established to promote high standards in the delivery of mental health services, suffered a funding cut of 36 per cent of its operating budget between 2007 and 2012.<sup>526</sup> However, there is a clear demand for greater access to mental health services particularly in times of recession. The National Suicide Research

517 Social Justice Ireland (2014) *Socio-economic Review 2014*. Dublin: Social Justice Ireland, p.176-8.

518 Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.32.

519 Health Service Executive (2013), *National Service Plan 2014*, Dublin, HSE, p.20.

520 Social Justice Ireland (2014) *Socio-economic Review 2014*. Dublin: Social Justice Ireland.

521 Department of Health (2014b) *Background Policy Paper on Designing the Future Health Basket*.

522 These include home help, home care packages, respite and convalescent, day care, meals on wheels and elder abuse services.

523 R. Layte, A. Nolan and B. Nolan (2007) *Poor prescriptions – poverty and access to community health services*. Dublin: Combat Poverty Agency, p.102.

524 Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.36.

525 Health Service Executive (2013) *Health Service National Service Plan 2014*, Dublin: HSE.

526 Mental Health Reform (2014) *Submission for Budget 2015*, Dublin: Mental Health Reform, p.6.



Foundation has found evidence of a link between the impact of the recession and a higher rate of suicide, such as loss of employment, financial difficulties and loss of possessions including a person's house.<sup>527</sup> In 2013, there were a total of 475 registered suicides, 83 per cent of which were men.<sup>528</sup>

In 2013, 13,377 people were admitted to adult acute units, a slight decrease of two per cent since 2012.<sup>529</sup> However, the number of involuntary admissions rose by five per cent in the same time period to 1741 people.<sup>530</sup> Increased demand on the 62 Child and Adolescent Mental Health Services (CAMHS) teams in operation led to a six per cent increase in referrals while the services have seen 12 per cent more new cases in 2014 compared to the year before.<sup>531</sup> In May 2014, 525 children or young people were waiting for more than a year for a first appointment with the Child and Adolescent Mental Health Services.<sup>532</sup> In 2013, some 332 children and young people were admitted to approved mental health facilities but 91 children (22 per cent of the overall figure) were inappropriately placed in adult facilities.<sup>533</sup> This trend continued in 2014, with 27 children or adolescents (34 per cent) admitted to adult facilities in the first five months of the year.<sup>534</sup> This is largely due to the lack of adequate child-specific facilities; only 56 out of 66 beds were available in the six Child and Adolescent Acute Inpatient Units.<sup>535</sup> Given the higher numbers admitted to adult facilities there is a clear need for more age-appropriate accommodation.

In the first six months of its operation, 5000 referrals were made to the newly established HSE Counselling in Primary Care service (CIPC).<sup>536</sup> However, in 2014 the service received less than one per cent of the overall mental health budget despite having the potential to reduce the number of individuals referred on to specialist mental health services or to encourage a return to work for people suffering from emotional or mental distress.<sup>537</sup> Furthermore, the service is only available to medical card holders for a maximum of eight sessions and can only be accessed through GP referral.

### **Reproductive Rights**

Article 40.3.3 of the Irish Constitution recognises the right to life of the unborn and provides protection for that right 'as far as practicable' with 'due regard to the equal right to life of the mother'. Legislation was passed in July 2013<sup>538</sup> to allow for terminations in the limited circumstances where there was a real and substantial risk to the life of the mother, including in

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527 Dr. E. Arensman et al (2012) *First Report of the Suicide Report and Information System*, Cork: The National Suicide Research Foundation, p.8.

528 Central Statistics Office, 'Births, Deaths and Marriages in 2013' [press release], 30 May 2014.

529 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin, Health Service Executive, p.46.

530 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin, Health Service Executive, p.46.

531 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin: Health Service Executive, p.46.

532 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin: Health Service Executive, p.46.

533 Mental Health Commission (2014) *Mental Health Commission Annual Report 2013 including the Report of the Inspector of Mental*

*Health Services*, Dublin: Mental Health Commission, p.32.

534 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin, Health Service Executive, p.46.

535 Health Service Executive (2014) *Health Service Performance Assurance Report: May 2014*, Dublin, Health Service Executive, p.46.

536 Mental Health Reform (2014) *Submission for Budget 2015*, Dublin: Mental Health Reform, p.6.

537 Mental Health Reform (2014) *Submission for Budget 2015*, Dublin: Mental Health Reform, p.6.

538 The Protection of Life During Pregnancy Act 2013.



circumstances where the mother is suicidal. In other circumstances, abortion remains a crime in Ireland.<sup>539</sup>

Other UN Treaty Bodies have made recommendations on the issue, including a recommendation by the UN Human Rights Committee in 2014.<sup>540</sup> Separate submissions will be made to the Committee on this issue.

**FLAC urges the Committee to recommend that the State:**

- **Provide adequate resources for acute, primary care and community-based services to ensure people can access appropriate care and treatment in a timely way.**
- **Provide adequate resources for mental health services including the full amount of development funding as outlined in the Programme for Government.**
- **Ensure no child or young person is placed in an adult facility and increase financial support for the Child and Adolescent Mental Health Service to cope with demand and ensure that no child or young person is left waiting for essential mental healthcare.**
- **Resource mental health supports and prioritise non-coercive forms of treatment and alternative pathways to mental health recovery, based on peer support.**
- **Ensure that contraception is both accessible and affordable for people on low incomes who require it.**

## 12.2 Affordability of Health Services and Treatment

Despite the Committee's 2002 recommendation to introduce a common waiting list for public and private patients this has not yet happened. As a consequence of significant cuts made to the overall health budget, health care costs have increasingly transferred onto patients through user charges including the prescription charge, increases in the charges for hospital treatment and increases in the threshold for the Drug Payment Scheme. The net result is that people are on average paying about €100 in additional costs for accessing care and prescribed drugs.<sup>541</sup> Such user charges are a significant deterrent to people on low incomes from accessing necessary treatment.

The cost for a General Practitioner (GP) consultation may also act as a barrier for low-income individuals who do not qualify for a medical card. A 2014 report looking at the cost of a GP visit across 650 clinics found a great disparity in prices right across the country: the cheapest consultation in Galway cost €30, rising to €65 in Dublin.<sup>542</sup> Medical professionals have expressed concern that people are not accessing or delaying necessary medical care due to the high cost.<sup>543</sup>

In May 2014, almost 1.8 million people (39 per cent of the population) held a full medical card; some 52,232 of these were granted on discretionary grounds. While the Health Act 1970 (as

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539 The legislation repealed Sections 58 and 59 of the Offences Against the Person Act 1861 but it continues to criminalise women who

seek abortions who may face up to 14 years imprisonment.

540 UN Human Rights Committee (2014) *Concluding Observations under the International Covenant on Civil and Political Rights: Ireland*,

Geneva: Office of the High Commissioner for Human Rights, para. 9.

541 S. Thomas, S. Burke and S. Barry, 'The Irish health-care system and austerity: sharing the pain', *The Lancet*, 383 (3), 3 May 2014, p.1546.

542 E. O'Regan, 'GP fees vary wildly from county to county', *Irish Independent*, 10 July 2014.

543 Irish Medical Organisation (2013) *IMO Budget Submission 2014*, Dublin: IMO, pp.6-7.



amended) sets out that access to a medical card is dependent on whether a person can afford medical services ‘without undue hardship’, this assessment relies on non-statutory income guidelines to determine eligibility.<sup>544</sup> In some cases where a person does not satisfy the strict means-test, a card for doctor’s visits may be issued (known as a GP visit card). In May 2014, 134,130 people had a GP visit card of which a quarter were discretionary.<sup>545</sup>

Between January and April 2014, a planned review of one million medical cards assessed whether the holder continued to fulfil the necessary qualifying criteria.<sup>546</sup> This resulted in the withdrawal of 97,000 cards; 1190 of these had been granted on a discretionary basis while 49,184 new cards were added in the same period, of which 5478 were granted on a discretionary basis.<sup>547</sup> The removal of discretionary medical cards from people with chronic illnesses, in particular from children and persons with disabilities, received widespread criticism.<sup>548</sup> In response to the public outcry, the Government announced in May 2014 that the review would be suspended<sup>549</sup> and medical and GP visit discretionary cards were returned to an estimated 15,000 people.<sup>550</sup> An Expert Panel has been convened to examine eligibility for medical cards based on medical rather than financial need. The report is expected in September 2014.<sup>551</sup>

Government spending on pharmaceutical drugs has reduced since the beginning of the crisis through the negotiation of price cuts with pharmaceutical companies, cuts to pharmacy fees and by increasing prescription charges.<sup>552</sup> However, since 2010 prescription charges for medical card holders have been introduced<sup>553</sup> and were further increased in 2014 to €2.50 per item with a monthly ceiling of €25 per family.<sup>554</sup> The projected revenue in 2014 from prescription charges is €120 million, an increase of 40 per cent since 2013.<sup>555</sup> This figure indicates the scale of the measure which will particularly impact on low-income families<sup>556</sup> and older people who are more likely to take multiple medicines.<sup>557</sup> For people not in possession of a medical card, the Government has committed to reduce the high cost of medicines in Ireland which is much higher than in other countries.<sup>558</sup> It plans to do this through reducing the maximum price of generic

544 Department of Health (2014) *Background Policy Paper on Designing the Future Health Basket*.

545 Health Service Executive (2014), *Health Service Performance Assurance Report: May 2014*, Dublin, HSE, p.7.

546 Health Service Executive (2013), *National Service Plan 2014*, Dublin, Health Service Executive, p.39.

547 Joint Oireachtas Committee of Public Accounts, Debate on Eligibility for Medical Cards, 12 June 2014,

<http://bit.ly/MedicalCardsPAC>

[accessed 22 July 2014].

548 A petition to reinstate medical cards based on medical need received more than 60,000 signatures. The campaign website is available

at: <http://bit.ly/OurChildrensHealth> [accessed 22 July 2014].

549 Department of Health, ‘Suspension of Medical Card Reviews’ [press release], 29 May 2014..

550 Department of Health, ‘Government approves method for the return of medical cards lost in discretionary review’, [press release], 17

June 2014.

551 Health Service Executive, ‘HSE Appoints Expert Panel on Medical Need for Medical Card Eligibility’ [press release], June 2014.

552 Organisation for Co-operation and Economic Development (2014) *OECD Health Statistics 2014: How does Ireland compare?* Paris:

OECD, p.2.

553 The Health (Amendment) No. 2 Bill 2010.

554 For information see: <http://bit.ly/PrescriptionCharges> [accessed 7 August 2014].

555 Minister for State with responsibility for Disability, Older People, Equality & Mental Health, Kathleen Lynch TD, Parliamentary Question: Written Answers [32202/14] and [32555/14], 17 July 2014.

556 Society of St Vincent de Paul (2013) *Analysis of Budget 2014*, Dublin: Society of St Vincent de Paul, p.6.

557 The Irish Longitudinal Study on Ageing 2011 (2012) *Polypharmacy in adults over 50 in Ireland: Opportunities for cost saving and improved healthcare*, Dublin: Trinity College Dublin, pp. 1-2.

558 A. Brick, P. Gorecki and A. Nolan (2013) *Ireland: Pharmaceutical Prices, Prescribing Practices and Usage of Generics in a Comparative Context*, Dublin: Economic and Social Research Institute, p.70.



drugs and by encouraging the use of generic medicines over branded medicines.<sup>559</sup> Even at national level prices vary widely with an average difference of 56 per cent across all individual prescription products.<sup>560</sup>

The right to sexual and reproductive health services includes the right to access and afford contraception.<sup>561</sup> While a variety of contraceptive methods are widely available in Ireland, the cost of accessing both prescription and non-prescription items can sometimes lead to people on low incomes, particularly young adults under 25,<sup>562</sup> having unprotected sex or not taking steps to avoid unplanned pregnancies. In a 2010 survey conducted by the Crisis Pregnancy Agency, the vast majority of respondents did not find it difficult to access contraception but a significant number cited ‘access/locality, embarrassment and cost’ as the three main barriers they faced.<sup>563</sup> In particular, the high cost of condoms not available under the medical card,<sup>564</sup> as well the high cost of GP visits to renew a prescription for the contraceptive pill, discouraged respondents from accessing and using contraception.<sup>565</sup> The survey found that while an overall 18 per cent of respondents reported that the cost of a GP visit was a ‘frequent barrier’ to accessing medical services, the cost was much more likely to deter those from a lower socio-economic background.<sup>566</sup> The high cost of contraception also impacts on women’s contraceptive choices, as women continue to use less reliable and more expensive forms of contraception such as the oral contraceptive pill because they cannot afford the upfront fee for more effective long-term contraception such as the implant or coil.<sup>567</sup> Access to quality, affordable reproductive health information, services, treatment and supplies is of particular concern in relation to people living in disadvantaged communities<sup>568</sup> including young women, people living in direct provision centres (asylum seekers) and other marginalised groups.

**FLAC urges the Committee to recommend that the State:**

- **Set out how it intends to progress its plans for universal health care and prioritise funding to implement the system. In the meantime, ensure that no further measures**

559 Minister for State with responsibility for Primary Care, Alex White TD, Parliamentary Questions: Written Answers [30459/14] and [30464/14], 10 July 2014.

560 National Consumer Agency, ‘National Consumer Agency Publishes Results of National Study of Prescription Medicines’, [press release], 25 March 2013.

561 J. Westeson (2012) *Sexual Health and Human Rights in the European Region*, Geneva: International Council on Human Rights Policy, p. 155.

562 O. McBride, K. Morgan and H. McGee (2012) *Irish Contraception and Crisis Pregnancy Study 2010* (ICCP-2010), Dublin: Crisis Pregnancy Agency and Health Service Executive, p.73.

563 O. McBride, K. Morgan and H. McGee (2012) *Irish Contraception and Crisis Pregnancy Study 2010* (ICCP-2010), Dublin: Crisis Pregnancy Agency and Health Service Executive, pp.71-72.

564 In 2008, the Government cut VAT on condoms from 21 to 13.5 per cent which reduced the price to €12.40 for a box of twelve which

was still much higher than the estimated cost of €3.50 in Germany. O. McBride, K. Morgan and H. McGee (2012) *Irish Contraception and Crisis Pregnancy Study 2010* (ICCP-2010), Dublin: Crisis Pregnancy Agency and Health Service Executive, p.73.

565 O. McBride, K. Morgan and H. McGee (2012) *Irish Contraception and Crisis Pregnancy Study 2010* (ICCP-2010), Dublin: Crisis Pregnancy Agency and Health Service Executive, pp.74-74

566 O. McBride, K. Morgan and H. McGee (2012) *Irish Contraception and Crisis Pregnancy Study 2010* (ICCP-2010), Dublin: Crisis Pregnancy Agency and Health Service Executive, pp.77-78.

567 Irish Family Planning Association (2010) *Annual Report*, Dublin: IFPA, p.4.

568 Center for Economic and Social Rights (2012) *Mauled by the Celtic Tiger: Human Rights in Ireland’s Economic Meltdown, Rights in Crisis Briefing Paper*, Madrid: CESR, p.22.





*are introduced to impact on the affordability of private health insurance for those on low or moderate incomes who do not qualify for a medical card.*

- *Ensure anyone in need of financial assistance to access medical services has access to a medical card based on their medical need.*
- *Conduct a review of the impact of prescription charges on low-income individuals and families, in particular for older people.*
- *Continue the implement of measures to ensure greater use of generic drugs and reduce the high cost of medication in Ireland.*

### 12.3 Travellers and Health

Travellers continue to experience health inequalities. In 2010 the *All Ireland Traveller Health Study (AITHS)* was published.<sup>569</sup> The results of the survey demonstrated that the Traveller mortality rate was 3.9 times that of the general population and they have a much lower life expectancy; Traveller men live 15.1 years less than other men while Traveller women live 11.5 years less than other women.<sup>570</sup> The suicide rate for Traveller men is 6.6 per cent higher than the general population and accounts for 11 per cent of all Traveller deaths.<sup>571</sup> The infant mortality rate in 2008 was 3.6 times the infant mortality rate for the general population, up from a ratio of 2.4 in 1987.<sup>572</sup>

While resources have been dedicated to tackling some of the inequalities in Traveller health, the allocated funding has consistently been underspent by an average of 18 per cent between 2008 and 2011.<sup>573</sup> The *Intercultural Health Strategy 2007-2012* was launched in 2008 but did not receive the required funding for its full implementation.<sup>574</sup> The European Commission against Racism and Intolerance (ECRI) called on the Government to reduce health inequalities and take steps to monitor and improve the health status of Travellers.<sup>575</sup> Despite these stark statistics there has been no action plan developed by Government to address the findings of the All Ireland Health Study.

***FLAC urges the Committee to recommend that the State:***

- ***Develop a new National Traveller Health Implementation Plan to address the findings of the All Ireland Traveller Health Study.***
- ***Implement measures aimed at reducing mortality rates for Traveller children.***

### 12.4 Older People and Health

Despite an increase in the number of older people living in Ireland and a commitment by the Government to help people stay in their homes as they get older,<sup>576</sup> there are concerns that

569 Kelleher et al (2010) *Our Geels, All Ireland Traveller Health Study*, University College Dublin & Department of Health & Children.

570 Kelleher et al (2010) *Our Geels, All Ireland Traveller Health Study*, University College Dublin & Department of Health & Children, p.95.

571 Kelleher et al (2010) *Our Geels, All Ireland Traveller Health Study*, University College Dublin & Department of Health & Children, p.94.

572 Kelleher et al (2010) *Our Geels, All Ireland Traveller Health Study*, University College Dublin & Department of Health & Children, p.87.

573 B. Harvey (2013) *Travelling with Austerity: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, pp.29-30.

574 Health Service Executive (2012) *National Intercultural Health Strategy 2007-2012: Update March 2012*, Dublin: Health Service Executive, p.2.

575 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, p.23.

576 Health Service Executive (2013) *Health Service National Service Plan 2014*, Dublin: HSE, p.44.



adequate resources are not being allocated to ensure that older people with care needs do not have to enter a nursing home or similar institution.<sup>577</sup> The failure to increase home help supports in line with the four per cent annual increase in the older population amounts to a disproportionate cut, the number of hours allocated in 2014 was 14 per cent lower than the number allocated in 2010. Furthermore, the number of homecare packages to support older people in their homes has decreased from 11,020 in 2013 to 10,870 in 2014.<sup>578</sup> There are concerns that ‘fragmented and inadequate’ support services may lead to ‘accelerated entry’ for some older people into residential nursing homes<sup>579</sup> where they would prefer to remain in their homes.

Nursing homes may be operated by the public or private sector but fees are negotiated by the National Treatment Purchase Fund. The scheme for funding nursing home is known as the ‘Fair Deal’ and is administered under the Nursing Home Support Scheme Act 2009. Longer waiting times and extra costs are placing additional financial pressure on pensioners.<sup>580</sup> In 2014, the target for the number of people to be funded under Fair Deal is almost 1,000 less than in 2013<sup>581</sup> despite cuts to home help funding and other supports which aim to help older people from remaining in their own homes. The Health Information and Quality Authority (HIQA) is responsible for inspecting residential centres for older people and has published a set of quality standards<sup>582</sup> which are under review in 2014.

Elder abuse is another area of concern as a 2010 study found that approximately 10,000 older people had suffered some form of abuse in the preceding year.<sup>583</sup> The Health Service Executive provides designated elder abuse social workers in each region.<sup>584</sup> However, around 2000 cases are reported each year and fewer than 1000 cases are substantiated or prove inconclusive.<sup>585</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Support older people to stay in their homes for as long as possible allowing them to live with dignity.***
- ***Provide a more cost-effective alternative to nursing home care.***

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577 Age Action (2014) *Pre-Budget Submission 2015*, Dublin: Age Action, p.21.

578 Age Action (2014) *Pre-Budget Submission 2015*, Dublin: Age Action, p.21.

579 S. Connolly, C. Finn, E. O’Shea (2012) *Rural Ageing in Ireland: Key Trends and Issues*, Galway: Irish Centre for Social Gerontology, p.6.

580 Age Action (2014) *Pre-Budget Submission 2015*, Dublin: Age Action, p.23.

581 Age Action (2014) *Pre-Budget Submission 2015*, Dublin: Age Action, p.22.

582 Health Information and Quality Authority (2009) *National Quality Standards for Residential Care Settings for Older People in Ireland*,

Dublin: Health Information and Quality Authority.

583 National Centre for the Protection of Older People (2010) *Abuse and Neglect of Older People: Report on the National Study of Elder*

*Abuse*, Dublin: University College Dublin, p.54.

584 National Centre for the Protection of Older People (2012) *Managing Elder Abuse in Ireland: The Senior Case Worker’s Experience*, Dublin: University College Dublin and Health Service Executive, p.4.

585 National Centre for the Protection of Older People (2014) *Open Your Eyes: HSE Elder Abuse Services 2013*, Dublin: University College

Dublin and Health Service Executive, p 49.



## Article 13

- 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
- 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
  - (a) Primary education shall be compulsory and available free to all;*
  - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
  - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
  - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
  - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*
- 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
- 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

State Report paragraphs 388-450

Funding allocated to the Department of Education and Skills amounted to €8.8 billion and accounts for 17 per cent of the overall budget. In the 2013/2014 academic year there were 528,562 primary school pupils enrolled in 3145 State-supported mainstream primary schools and 333,175 secondary level students enrolled in 723 State-supported post-primary schools.<sup>586</sup> The Government estimates that enrolment in primary schools will grow by more than 45,000 children at primary school level and 25,000 at post-primary level by 2017.<sup>587</sup> To address the increased enrolments and to improve conditions in schools, in 2012 the Government launched a

<sup>586</sup> Department of Education and Skills (2014) *Key Statistics 2013/2014*, Dublin: DES, p.1.

<sup>587</sup> Department of Education and Skills, 'Minister Quinn announces 70 major school building projects as part of €2bn five year plan' [press release], 29 November 2013.



€2 billion five-year investment programme involving 275 major school building projects.<sup>588</sup> These steps will go some way to addressing the quality issue raised by schools in 2012 that have been forced to seek funding from parents or from alternative sources.<sup>589</sup>

### 13.1 Access to Education

The education system continues to work on a two-tier basis with a higher percentage of students progressing to higher education from fee-paying schools or schools in non-disadvantaged areas. A 2013 Department of Education and Skills report found that 65.5 per cent of pupils who attended fee-paying secondary schools progressed directly to higher education as did 57.5 per cent of pupils from all-Irish schools.<sup>590</sup> Forty-seven per cent of pupils who attended public non-fee paying schools progressed directly to higher education although there was a marked difference between progression rates for pupils from schools in the Delivering Equality of Opportunity in Schools (DEIS) programme (24.2 per cent) and non-DEIS schools (49.1 per cent).<sup>591</sup>

The DEIS Programme introduced to primary and post-primary schools in 2006/2007 aims to prioritise and address the educational needs of children and young people from disadvantaged communities.<sup>592</sup> In 2014, there were 852 DEIS schools of which 658 are at primary level and 194 at post-primary level, benefitting almost 166,000 pupils.<sup>593</sup> Funding for the programme in 2013 was €96.4 million, including €16 million in grants to DEIS schools.<sup>594</sup> In 2014, the Department of Education and Skills expects to spend €99 million on the programme including grants.<sup>595</sup> Further funding is provided to DEIS schools by the Department of Social Protection for the School Meals Programme; in addition the Department of Children and Youth Affairs funds the School Completion Programme. Evaluations of the programme have demonstrated positive results in literacy and numeracy at both primary<sup>596</sup> and post-primary<sup>597</sup> level although the scores are still below those of non-DEIS schools at both levels. At post-primary level, the scores demonstrated a difference between the level of disadvantage in urban and rural schools with pupils in rural schools less susceptible to poverty and achieving better scores.<sup>598</sup> While these results are mostly

588 Department of Education and Skills, 'Minister Quinn announces details of 275 school building projects – More than 15,000 jobs to be

created over five years' [press release], 12 March 2012.

589 Catholic Primary Schools Management Association, Survey on School Funding available at: <http://bit.ly/SchoolSurvey2012> [accessed 3

September 2014].

590 Department of Education and Skills (2013) *School Completers – What's Next? Report on School Completers from Post-Primary Schools*

– pupils enrolled in 2009/2010 and not in 2010/2011 May 2013, Dublin: Department of Education and Skills, p.12.

591 Department of Education and Skills (2013) *School Completers – What's Next? Report on School Completers from Post-Primary Schools*

– pupils enrolled in 2009/2010 and not in 2010/2011 May 2013, Dublin: Department of Education and Skills, p.12.

592 Department of Education and Science (2005) *DEIS (Delivering Equality of Opportunity in Schools): An Action Plan for Educational Inclusion*, Dublin: Department of Education and Science.

593 Department of Education and Skills, 'Minister Quinn welcomes further positive research findings on DEIS schools at second level',

[press release], 15 May 2014.

594 Department of Education and Skills, 'Minister Quinn welcomes further positive research findings on DEIS schools at second level',

[press release], 15 May 2014.

595 Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [15517/14], 2 April 2014.

596 S. Weir and S. Denner (2013) *The evaluation of the school support programme under DEIS: changes in pupil achievement in urban primary schools between 2007 and 2013*, Dublin: Educational Research Centre.

597 S. Weir and D. Errity (2014) *Addressing disadvantage: What have we learned from the evaluation of DEIS in urban primary schools?*

Presentation available online at: <http://bit.ly/DEISevaluation> [accessed 28 July 2014].

598 S. Weir (2014) *Educational disadvantage in rural areas*, presentation available online at: <http://bit.ly/DEISevaluation>, pp.48-64



positive they indicate the need to maintain the programme in order to ensure that children from disadvantaged areas have the same opportunities to progress in the educational system as other children given that only 12 per cent of children from DEIS schools go onto third level education.<sup>599</sup>

Despite the enactment of legislation in 2004,<sup>600</sup> because parts of it remain unimplemented, children with special educational needs cannot yet avail of individual needs assessments, individual education plans or delivery of specific services in order to fulfil their right to education.<sup>601</sup> Although it made a commitment to publish an updated implementation plan in 2011,<sup>602</sup> following advice from the National Council for Special Education (NCSE) that an additional annual investment of €235 million would be required, it is unlikely that the Government will act on its commitment in the short to medium term.<sup>603</sup> The NCSE has made it clear that the Education for Persons with Special Educational Needs (EPSEN) Act 2004 should be implemented in full to effectively assess and plan for children as soon as resources are available.<sup>604</sup> In 2013, more than 22,000 children with a disability attending a mainstream school benefitted from the assistance of 10,580 Special Needs Assistants who provided them with care at school and more than 11,000 Resource Teachers were allocated to schools.<sup>605</sup> However, a two-tier system of assessment for support resources clearly operates creating an inequality between children whose school or parents can afford to pay for private assessments and those who cannot.<sup>606</sup>

Approximately ten per cent of primary school children and 12 per cent of post-primary school children in Ireland have a migrant background as noted by the European Commission against Racism and Intolerance which in highlighting the potential need for additional language support for the 75 per cent of these children who have a first language other than English.<sup>607</sup> In the 2011/2012 academic year, €69 million was allocated to English as an Additional Language Support (EAL) teachers but since 2012/2013 the General Allocation Model combines resources for special needs education and language support so it is impossible to provide a breakdown of current funding for the initiative.<sup>608</sup> This decision was made regardless of the *National Intercultural Education Strategy* published in 2010 which makes it clear that €100 million is required to implement the English language supports in addition to the 'regular educational

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[accessed 28 July 2014].

599 J. Humphreys, 'Some 99% of Dublin 6 students go on to third-level', *Irish Times*, 20 August 2014.

600 The Education for Persons with Special Educational Needs (EPSEN) Act 2004.

601 For further information see Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, pp.32-37.

602 Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.12.

603 Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [19162/11], 7 July 2011.

604 National Council for Special Education (2013) *Supporting Children with Special Educational Needs in Schools: NCSE Policy Advice Paper*

No. 4, Trim: NCSE, p.vii.

605 Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, pp.35-36.

606 Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, p.36.

607 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of

Europe, p.23.

608 F. McGinnity, E. Quinn, G. Kingston and P. O'Connell (2014) *Annual Monitoring Report on Integration 2013*, Dublin: ESRI & the Integration Centre, p.34.



resources'.<sup>609</sup> English language support had already been cut by 19 per cent in 2012 despite these children receiving the lowest scores in reading.<sup>610</sup>

According to a survey conducted by the Central Statistics Office on behalf of the OECD, 18 per cent of people aged between 16 and 65 years were rated at the lowest end of a five point literacy scale<sup>611</sup> while 25 per cent scored below this first level on a numeracy scale.<sup>612</sup> Research conducted in 2012 found that age, education and good health all played a part in people experiencing literacy or numeracy problems and despite difficulties in accessing the labour market, they were not more likely to be participating in a *National Employment Action Plan* programme. However, when they did receive training they were much more likely to benefit from the measure and exit unemployment.<sup>613</sup> The Back to Education Allowance, an important social security payment to support long-term unemployed individuals, lone parents or persons with disabilities to re-enter education or retrain has been subject to funding cuts with a six per cent reduction to the overall budget in 2013 resulting in 765 less recipients in 2013 with 62 per cent of all recipients being men.<sup>614</sup>

**FLAC urges the Committee to recommend that the State:**

- **Develop a long-term strategy to address educational disadvantage and ensure it is adequately resourced.**
- **Publish and begin action on the plan to fully implement the Education for Persons with Special Educational Needs (EPSEN) Act 2004 and reform the support allocation model to bring an end to exclusionary practices.**
- **Ensure that migrant children, for whom English is not their first language, receive appropriate language supports to assist with any educational difficulties they may encounter.**

**13.2 Affordability of Education**

The reduction in the Back to School Clothing and Footwear Allowance, a payment to assist parents with the additional cost of school uniforms and footwear, has impacted on a wide number of families. In 2013, the scheme assisted 176,000 families in respect of 324,000 children.<sup>615</sup> Since Budget 2012, the annual payment has been reduced from €305 to €200 (34 per cent) for children aged 12 years or over and from €250 to €100 (50 per cent) for children aged four to 11 years. In 2014, the Government allocated €46.3 million for the scheme and estimates that it would cost approximately €15.5 million to restore it to its previous rate.<sup>616</sup> In 2014, an online survey completed by parents calculated the cost of clothing and footwear for a child going to secondary school to be €260 while clothing and shoes costs for primary school children

609 Department of Education and Skills & Office of the Minister for Integration (2010) *Intercultural Education Strategy 2010-2015*, Dublin:

Department of Education and Skills & Office of the Minister for Integration, Introduction.

610 F. McGinnity, E. Quinn, G. Kingston and P. O'Connell (2013) *Annual Monitoring Report on Integration 2012*, Dublin: ESRI & the Integration Centre, p.1.

611 Central Statistics Office (2013) *PIAAC 2012: Survey Results for Ireland from the OECD's Programme for the International Assessment of*

*Adult Competencies*, Dublin: Stationery Office, p.3.

612 Central Statistics Office (2013) *PIAAC 2012: Survey Results for Ireland from the OECD's Programme for the International Assessment of*

*Adult Competencies*, Dublin: Stationery Office, p.5.

613 E. Kelly, S. McGuinness and P.O'Connell (2012) *Literacy, Numeracy and Activation among the Unemployed: Research Series Number*

25, Dublin: Economic and Social Research Institute & the National Adult Literacy Association, p.xiii.

614 Department of Social Protection (2014) *Statistical information on Social Welfare Services 2013*, Dublin: DSP, pp.15, 18 and 21.

615 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers [30246/14], 9 July 2014.

616 Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers [30246/14], 9 July 2014



ranged between €165 and €180.<sup>617</sup> This survey also found that 76 per cent of parents with primary school children and 97 per cent with secondary school children had to buy school-specific, crested uniforms which greatly increased the cost.<sup>618</sup> In 2013, the Department of Education and Skills circulated a survey to parents to give them the option of greater control over the type and cost of school uniforms.<sup>619</sup> However, the Department has not collated results and it will be the responsibility of Boards of Management of each school to consider and act on the results.

The high cost of school books also increases the overall school costs for both primary and post-primary children. In 2014, the average costs of school books varied from €76 to €100 for primary school children but rose significantly to €300 for a first year pupil in secondary school.<sup>620</sup> In 2014, the Government allocated €15 million for a school books rental scheme over three years targeted at 531 primary schools which did not operate a book rental scheme.<sup>621</sup> Initially, it excluded up to 80 per cent of schools with existing schemes which drew criticism particularly from teachers' unions.<sup>622</sup> The Minister later announced that the remainder of the funding – €8.3 million which had not been allocated following applications from approximately 400 schools – would be divided between all other primary schools with existing book rental schemes.<sup>623</sup> However, the cost of school books remains either unaffordable or incredibly difficult for low-income families.

The cost of the school transport scheme for those who are eligible also places a burden on the parents of school going children who live more than 3.2 kilometres from the nearest primary school or 4.8 kilometres from a post-primary school. The annual cost to parents of a primary school going child is €100 or €220 per family for more than one child, while this rises to €350 annually for a child going to a post-primary school or €600 where there is more than one child.<sup>624</sup> Following a value-for-money review into the scheme in 2011,<sup>625</sup> the Department reduced the operator fees by more than €10 million from the 2008 level; however, the revenue from parental charges increased by almost €3 million in the same period.<sup>626</sup> This is despite a reduction in the number of children using the service at both primary and post-primary level.<sup>627</sup>

617 Barnardos (2014) *School Costs Survey Briefing*, Dublin: Barnardos, p.3.

618 Barnardos (2014) *School Costs Survey Briefing*, Dublin: Barnardos, p.3.

619 Department of Education and Skills (2013) *Circular 0063/2013: Reducing Costs to Parents – School Uniforms*, Athlone: Department of Education and Skills.

620 Barnardos (2014) *School Costs Survey Briefing*, Dublin: Barnardos, p.4.

621 Department of Education and Skills, 'Minister Quinn announces all primary schools to be offered funding from school book rental scheme capital fund', [press release], 17 April 2014.

622 Irish National Teachers Organisation (2014) *Submission to the Joint Oireachtas Committee Organisation on Education and Social Protection*, 4 June 2014 available online at: <http://bit.ly/INTObookrental> [accessed 29 July 2014].

623 Department of Education and Skills, 'Minister Quinn announces all primary schools to be offered funding from school book rental scheme capital fund', [press release], 17 April 2014.

624 See <http://bit.ly/PrimarySchoolTransport> and <http://bit.ly/PostPrimaryTransport> for more information [accessed 6 August 2014].

625 Department of Education and Skills (2011) *School Transport: A Value for Money Review of the School Transport Scheme*, Dublin: Department of Education and Skills.

626 Minister for State at the Department of Education and Skills, Ciarán Cannon TD, Parliamentary Questions: Written Answers, [22327/14], 27 May 2014.

627 Minister for State at the Department of Education and Skills, Ciarán Cannon TD, Parliamentary Questions: Written Answers, [22327/14], 27 May 2014.

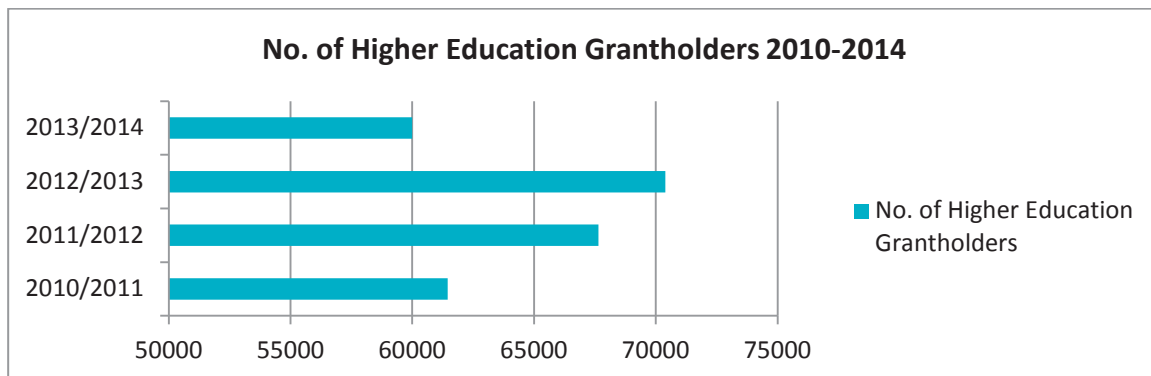


Under its agreement with the Troika, the Government agreed to raise the level of third level fees and introduce ‘a more stringent means-test for maintenance grants for Undergraduates’<sup>628</sup> making it more difficult for some students on low incomes to afford to go to third level education.

Third-level students living in Ireland who meet certain residence criteria<sup>629</sup> can avail of a free tuition fees initiative but have to make a student contribution in the form of a registration fee. In 2009, the registration fee increased from €900 to €1500, 67 per cent in one year; by 2014 the fee had increased to €2500. A 2013 survey on the cost of third level education found that the majority of students received financial support from their parents.<sup>630</sup> Eighty-four per cent of parents reported that they faced difficulties in meeting these costs while 71 per cent revealed that their family budget had been adversely impacted by the rising cost of registration fees.<sup>631</sup> The survey found that due to the increased registration fees, eight per cent of students would not be able to attend college or would not be in a position to remain in college.<sup>632</sup>

Budget 2013 introduced a three per cent reduction in the income threshold for student grant eligibility.<sup>633</sup> Following this measure the number of students in receipt of a grant in the 2013/2014 academic year is almost 15 per cent lower than the year before.<sup>634</sup>

**Figure 8: Number of Higher Education grant holders 2010-14**



A 2014 survey of higher-level students highlighted concerns about the clear connection between students’ socio-economic background and financial hardship with 25 per cent of students from families with household incomes below €35,000 indicating that they were in serious financial difficulty, rising to 36 per cent for those with a household income of less than €20,000.<sup>635</sup> The survey also noted ‘that the majority of those who benefit from higher education are from the

628 International Monetary Fund (2012) *IMF Country Report No. 12/336 - Ireland: Eighth Review Under the Extended Arrangement; Staff*

*Report; Staff Supplements; and Press Release on the Executive Board discussion*, Washington DC: IMF, p.59.

629 To be eligible the person must have lived in an EEA member state for three out of the five years immediately preceding enrolment.

630 Irish League of Credit Unions, ‘ILCU 2013 Third Level Education Survey’, [press release], 12 August 2013.

631 Irish League of Credit Unions, ‘ILCU 2013 Third Level Education Survey’, [press release], 12 August 2013.

632 Irish League of Credit Unions, ‘ILCU 2013 Third Level Education Survey’, [press release], 12 August 2013.

633 Student Grant Scheme 2013 (SI 159/2013), Schedule 1.

634 Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [28581/14], 2 July 2014.

635 D. Harmon & O. Foubert (2014) *Eurostudent Survey V: Report on the Social and Living Conditions of Higher Education Students in Ireland 2013*, Dublin: Higher Education Authority, p.15.





middle and professional social classes’.<sup>636</sup> Data on progression rates for new entrants in the 2010/2011 academic year found that 16 per cent across all sectors and qualification levels did not progress to the second year of their course.<sup>637</sup> The drop-out rate was higher for males, at 19 per cent compared to 13 per cent of females, while non-progression rates increased for a number of groups from lower socio-economic backgrounds.<sup>638</sup> Furthermore, recent statistics indicate that progression rates to third level education are significantly lower for young people from disadvantaged areas; in more disadvantaged parts of Dublin the progression rate is as low as 15 per cent increasing to 99 per cent in the most affluent postcodes.<sup>639</sup>

Since July 2013, legally resident third-level students who attain Irish or EEA citizenship during the course of their studies no longer have to pay the higher rate for non-EEA students which will significantly reduce the cost of third-level education for migrant students living in Ireland.<sup>640</sup> However, young migrants over 18 who have received permission to remain in Ireland but who are not yet eligible for their citizenship will continue to face paying the higher rate of fees. Those who are still in the asylum process are not in a position to go onto third level education.

**FLAC urges the Committee to recommend that the State:**

- **Restore the Back to School Clothing and Footwear Allowance for all claimants who qualify.**
- **Ensure that all schools receive the necessary financial support to operate an adequate book rental scheme.**
- **Ensure that transport costs are affordable and will not place an onerous burden on parents of school-going children.**
- **Reduce the third-level student contribution fee and ensure that third-level students are adequately supported to complete their courses.**

### 13.3 Non-Discrimination in Education

#### Travellers

In 2011, 10,500 Travellers were enrolled in school, the majority in primary school.<sup>641</sup> Early school-leaving remains a distinct problem in the Traveller community, as 55 per cent of Traveller pupils left school by age 15 compared to 11 per cent of the general population.<sup>642</sup> The number of Travellers who have completed secondary school has increased since 2002, up from 3.6 to 8.2 per cent in 2011 but still remains well below the average for the general population.<sup>643</sup> Only one per cent of the Traveller population – 115 people – completed third level education in 2011.<sup>644</sup>

636 D. Harmon and O. Foubert (2014) *Eurostudent Survey V: Report on the Social and Living Conditions of Higher Education Students in*

*Ireland 2013*, Dublin: Higher Education Authority, p.48.

637 Dr V. Patterson and N. Prendeville (2014) *A Study of Progression in Irish Higher Education Institutions 2010/11 to 2011/12*, Dublin:

Higher Education Authority, p.6.

638 Dr V. Patterson & N. Prendeville (2014) *A Study of Progression in Irish Higher Education Institutions 2010/11 to 2011/12*, Dublin: Higher Education Authority, pp.7-8.

639 J. Humphreys, ‘Some 99% of Dublin 6 students go on to third-level’, *Irish Times*, 20 August 2014.

640 Department of Education and Skills, ‘Minister Quinn announces changes to third level fees to benefit migrant students’ [press release], 25 July 2013.

641 Government of Ireland (2012) *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, Dublin: Stationery Office, p.32.

642 Government of Ireland (2012) *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, Dublin: Stationery Office, p.32.

643 Government of Ireland (2012) *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, Dublin: Stationery Office, p.32.

644 Government of Ireland (2012) *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, Dublin: Stationery Office, p.32.



Traveller education has undergone severe funding cuts during the recession with a reduction from €76.5 million in 2008 to €10.2 million in 2013.<sup>645</sup> Both the Visiting Teachers for Travellers Programme and the Resource Teachers for Travellers (RTT) scheme were abolished in Budget 2011.<sup>646</sup> The Minister for Education and Skills stated that these measures had been deliberate to ensure 'additional resources provided in the education system are allocated on the basis of identified educational need rather than that of ethnic or cultural background'.<sup>647</sup> The Traveller Education Strategy Advisory & Consultative Forum which oversees implementation of the Traveller Education Strategy identified the need for comprehensive data on Traveller education and the Department has committed to introducing an ethnic identifier to address this information deficit.<sup>648</sup>

Proposed legislation will require schools to include an explicit statement in their enrolment policies that they will not discriminate against an applicant on a number of grounds including membership of the Traveller community. However, Traveller groups are concerned that certain provisions in the draft legislation will impact negatively on Traveller children, in particular the 'past pupil criterion' as Traveller parents are much less likely to have gone to secondary school.<sup>649</sup> The percentage of Irish Travellers with no formal education was 17.7 per cent in comparison to 1.4 per cent of the general population so the inclusion of such a clause will perpetuate the lower participation rate for Travellers. This policy also poses a significant challenge for Travellers who are nomadic and are therefore unlikely to have had a family member previously attend the school in question.

Discrimination in the education system presents significant barriers for both Traveller and Roma students. The All Ireland Traveller Health Study (AITHS) found that 62% of Travellers experienced discrimination in schools. Identity based bullying by other student's poses a significant problem. It should also be noted that despite the *National Traveller Roma Integration Strategy*<sup>650</sup> which committed to ensuring greater access to education, Roma children did not avail of the specialised support provided to Traveller children in the past.<sup>651</sup>

***FLAC urges the Committee to recommend that the State:***

- **Restore targeted resources to ensure the participation of Travellers & Roma in education.**

***Right to educational freedom***

The Committee is clear that religious instruction of a particular faith in public schools is inconsistent with the right to education unless provision is made to accommodate the wishes of parents and guardians.<sup>652</sup> Almost 90 per cent of schools are under the patronage of the Catholic

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645 B. Harvey (2013) *Travelling with Austerity: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p.36.

646 Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [7412/13], 12 February 2013.

647 Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [49494/13], 19 November 2013.

648 Children's Rights Alliance (2014) *Report Card 2014*, Dublin: Children's Rights Alliance, p. 127.

649 Irish Traveller Movement (2013) *Submission to Joint Oireachtas Committee on Education and Skills re Draft General Scheme of an Education (Admission to Schools) Bill 2013*, Dublin: Irish Traveller Movement.

650 Department of Justice and Equality (2011) *Ireland's National Traveller/Roma Integration Strategy*, Dublin: Department of Justice and Equality.

651 Irish National Teachers Organisation, *Traveller Education: INTO policies and proposals updated*, Dublin: INTO, 2010.

652 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para.28.



Church while a further six per cent are run by other religious patrons; only four per cent of schools can be described as multi-denominational.<sup>653</sup> Article 44 of the Irish Constitution recognises the right of parents to decide that they do not want their children to attend religious instruction in a school which receives public money. This right is also protected in legislation.<sup>654</sup> However, despite recommendations by different human rights bodies,<sup>655</sup> progress made by the Forum on Patronage and Pluralism in the Primary Sector to divest patronage<sup>656</sup> has been described as 'slow'.<sup>657</sup> The UN Human Rights Committee also highlighted that while some provision was made for multi-denominational schools, there were no plans to introduce non-denominational schools.<sup>658</sup>

Following a Budget 2012 decision to increase the number of pupils required to ensure the allocation of a teaching post there are concerns in the Protestant community that this will impact negatively on small Protestant schools in rural areas with smaller enrolment numbers. There are currently 194 out of a total of 3146 primary schools which operate under a Protestant ethos.<sup>659</sup> The Minister for Education and Skills has acknowledged that this presents a 'particular challenge especially in any locality where enrolment in their schools is declining to single figures and amalgamation is not an option because there is no other school nearby'.<sup>660</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Continue the divestment of schools at a faster rate to ensure greater multi and non-denominational school options are available for school-going children.***
- ***Ensure that minority religion-schools are not disproportionately impacted by rationalisation measures.***

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653 Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: DES, pp.5-6.

654 Section 30 of the Education Act 1998. In practise, schools may not have the staff resources or the facilities to accommodate a child of

a different religion or none outside of his or her classroom for the duration of the religious instruction which may result in the child

remaining in the classroom but not participating in the lesson.

655 These include the UN Human Rights Committee, the UN Committee on the Elimination of all forms of Racial Discrimination and the

report of the Working Group on the Universal Periodic Review of Ireland. Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: DES, p.9.

656 The Forum's Advisory Group, following consultation with parents, recommended three courses of action: divestment of patronage in

some schools on a phased basis where this was the preferred parental choice; the provision of Irish language schools which are not as

focused on the issue of religious patronage and ensuring inclusiveness of all children in 'stand-alone' schools where there is no other

school option nearby. Between 2007 and 2014, 61 new primary schools have been established, 44 of which are multi-denominational

with a further 20 schools planned by 2017.

Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: DES, p.13.

657 UN Human Rights Committee (2014) *Concluding Observations under the International Covenant on Civil and Political Rights: Ireland*,

Geneva: Office of the High Commissioner for Human Rights, para. 21.

658 See transcript of discussion on issue of religion in schools during Ireland's examination by the UN Human Rights Committee in July

2014 at: <http://bit.ly/AtheistIreland> [accessed 6 August 2014].

659 Minister for State at the Department of Education and Skills, Seán Sherlock TD, Dáil Debates: Other Questions [29373/14], 8 July 2014.

660 Minister for Education and Skills, Jan O'Sullivan TD, Parliamentary Questions: Written Answers, [32508/14], 17 July 2014.



## Article 14

*Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.*

State Report paragraph 451

Nothing to report under this Article.



## Article 15

1. *The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.*
3. *The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.*
4. *The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.*

State Report paragraphs 452-479

### 15.1 State resources for culture and the arts and participation

Funding for culture and the arts has declined since the onset of the recession. Despite a commitment in the 2011 Programme for Government to develop a 'cultural plan for future commemorative events' and an announcement in 2014 by the Minister for Arts, Heritage and Gaeltacht that the Government had approved plans to draft a National Cultural Policy by 2016,<sup>661</sup> no progress has been made.

The Arts Council continues to be the Government's main conduit for supporting the arts but by its own admission, the Council's primary aim is 'funding the professional arts sector'.<sup>662</sup> Although funding for the Arts Council rose by 14.3 per cent between 2005 and 2009, the inflation rate of 14.6 per cent neutralised this increase.<sup>663</sup> Like other cultural and arts bodies including the National Cultural Institutions, funding for the Arts Council has continued to decline since the economic crisis as can be seen in the following chart.<sup>664</sup>

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661 Department of Arts, Heritage and the Gaeltacht, 'Minister for Arts, Heritage and the Gaeltacht, Jimmy Deenihan, T.D., announces

plans to draft a National Cultural Policy – Culture 2025' [press release], 24 June 2014.

662 Arts Council (2014) *Inspiring Prospects: Arts Council Strategic Review 2014 – Report of the Steering Group*, Dublin: Arts Council, p.4.

663 M. Fitzgibbon, *Compendium Cultural Policies and Trends in Europe: Ireland*, available online at:

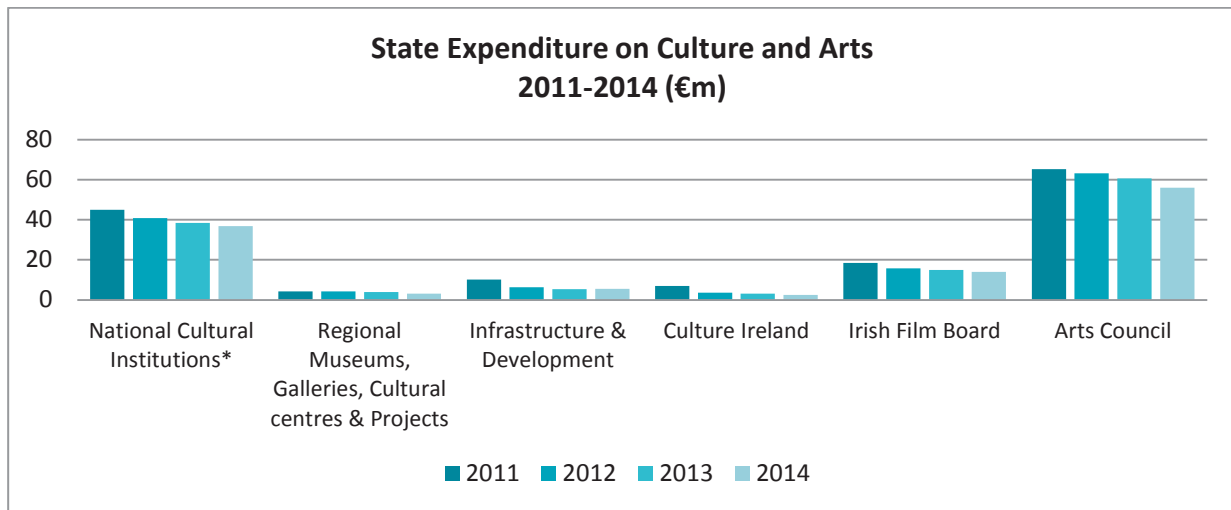
<http://bit.ly/CulturalPolicyIreland>

[accessed 6 August 2014].

664 The National Institutions include the Chester Beatty Library, the Crawford Gallery, the Irish Museum of Modern Art, the National Archives, the National Gallery the National Library and the National Museum.



**Figure 9: State Expenditure on Culture and Arts 2011-2014**



A 2014 review highlighted a potential ‘disconnect’ between the arts as funded by the Arts Council and ‘significant cohorts of the population’ as it places ‘little emphasis on engagement and participation as a fundamental and valued aspect of the arts in Irish society’.<sup>665</sup>

There is an under-participation of people from lower socio-economic backgrounds. Community arts projects have evolved since the 1980s and 1990s through youth services, family supports, the Community Development Programme and the Drugs Task Force but they have all suffered significant cuts since the beginning of the recession.<sup>666</sup> While there remains a lack of data about the resources dedicated to cultural inclusion,<sup>667</sup> there is evidence to indicate that people from disadvantaged socio-economic backgrounds with lower levels of educational attainment display equal levels of interest in the arts but are ‘many times less likely’ to participate in cultural events than their better-off counterparts.<sup>668</sup> Both the *National Action Plan for Social Inclusion*<sup>669</sup> and *Towards 2016*<sup>670</sup> recognise the need to address a cultural deficit and enable marginalised people to participate in cultural activities. Income generated by the National Lottery accounts for the majority of funding allocated to the arts through the Department of Arts, Heritage and the Gaeltacht and the Arts Council.<sup>671</sup> However, the regressive nature of this funding, due to the higher numbers of people from lower socio-economic groups playing the National Lottery, is not offset by the allocation of this funding to arts initiatives as they are less likely to participate in, or benefit from, these activities.<sup>672</sup> Despite an Oireachtas (Parliamentary) Committee hearing in

665 Arts Council (2014) *Inspiring Prospects: Arts Council Strategic Review 2014 – Report of the Steering Group*, Dublin: Arts Council, pp.4-5.

666 Blue Drum & Equality and Rights Alliance (2014) *Cultural Rights in Ireland: A Joint Submission to ICESCR*, Dublin: Equality and Rights Alliance & Blue Drum, pp.2-3.

667 National Economic and Social Forum (2007) *The Arts, Cultural Inclusion and Social Cohesion*, Dublin: NESF, p.

668 P. Lunn and E. Kelly (2008) *In the Frame or Out of the Picture: A Statistical Analysis of Public Involvement in the Arts*, Dublin: Economic

Social Research Institute, p.

669 Government of Ireland (2007) *National Action Plan for Social Inclusion 2007-2016*, Dublin: Stationery Office, p.70.

670 Government of Ireland (2006) *Towards 2016: Ten Year Framework Social Partnership Agreement 2006-2015*, Dublin: Stationery Office, p.36.

671 Department of Public Expenditure (2013) *2014 Revised Estimates for Public Services*, Dublin: Stationery Office, p.228.

672 F. Crowley, J. Eakins and D. Jordan, ‘Participation, Expenditure and Regressivity in the Irish Lottery: Evidence from Irish Household



2012 to consider how best to support and ensure the participation of disadvantaged groups in cultural life, no recommendations or actions have been issued.<sup>673</sup> A *Community Culture Strategy* was developed and proposed by the community arts and culture organisation Blue Drum; however, in response the Minister for Arts, Heritage and the Gaeltacht did not offer financial support for the strategy making it clear that ‘much of the programmes aimed at community arts fall outside the remit of this Department and the Arts Council’.<sup>674</sup>

Many migrants face the same difficulties as other groups in accessing their cultural rights and participating in the arts, with the added disadvantages of language barriers<sup>675</sup> and the ‘prevalent tendency in the arts to fix minorities in terms of traditional cultures’.<sup>676</sup> However, migrant artists also face these difficulties as the Irish arts community is often seen as a ‘closed community’.<sup>677</sup> The Arts Council has put in place a *Cultural Diversity and the Arts Policy and Strategy*, noting a lack of funding and support for intercultural arts practices.<sup>678</sup> Given the diverse make-up of the population there is a greater need than ever to ‘better understand the experiences of immigrant and culturally diverse artists, art professionals and cultural workers’.<sup>679</sup>

**FLAC urges the Committee to recommend that the State:**

- **Ensure that disadvantaged individuals and groups are able to access and enjoy their cultural rights through targeted inclusion measures including community arts initiatives.**
- **Consider and adopt a Community Culture Strategy.**
- **Provide the Arts Council with adequate resources to implement the Cultural Diversity and the Arts Policy and Strategy.**

## 15.2 Language Rights

The repeated failure by the Government to allocate adequate resources for the promotion and protection of the Irish language as well as the lack of implementation of state obligations led to the resignation of the Irish Language Commissioner (an Coimisinéir Teanga) in February 2014 after ten years in office.<sup>680</sup> The role of the Irish Language Commissioner was established in 2004 to provide advice to the public on their Irish language rights, to provide advice to public bodies

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Budget Survey 2004/2005’, *Economic and Social Review*, Vol. 43, No.2, Summer, 2012, pp.199-225.

673 Joint Oireachtas Committee on the Environment, Transport, Culture and the Gaeltacht, Utilising the Arts to Combat Disadvantage:

Discussion, 13 March 2012, <http://bit.ly/JOCDebateArts> [accessed 30 July 2014].

674 Letter from former Minister for Arts, Heritage and the Gaeltacht Mr Deenihan TD to community arts organisation Blue Drum dated 4

March 2014 in response to the Community Culture Strategy, which looked to renew, refresh and reinvent Community Arts. The full strategy is available to download at <http://bit.ly/CommunityCulturalStrategy> [accessed 31 July 2014].

675 R. Wakely (2013) *Research Report into the practices of Professional Artists from Immigrant, New Communities and Traveller backgrounds*, Dublin: RW International, p.3. This report was commissioned by South Dublin County Council Arts Office and Social Inclusion Unit, Dublin City County Social Inclusion Unit, Tallaght Community Arts and New Communities Partnership with the support

of Dublin City Arts Office and CPLN Partnership and the Arts Council Local Partnership Scheme.

676 D. Jewesbury, J.Singh, S. Tuck (2009) *Cultural Diversity and the Arts: Final Report*, Dublin: Create & the Arts Council, p.43.

677 R. Wakely (2013) *Research Report into the practices of Professional Artists from Immigrant, New Communities and Traveller backgrounds*, Dublin: RW International, p.20.

678 Arts Council (2010) *Cultural Diversity and the Arts: Policy and Strategy*, Dublin: Arts Council, p.5.

679 R. Wakely (2013) *Research Report into the practices of Professional Artists from Immigrant, New Communities and Traveller backgrounds*, Dublin: RW International, p.20.

680 An Coimisinéir Teanga (2014) *Annual Report 2013*, An Spidéal: An Coimisinéir Teanga, p



on their obligations under the legislation and to act as a redress mechanism. By 2014 it had received more than 6000 complaints and instigated 96 formal investigations.<sup>681</sup>

Under Article 8 of the Irish Constitution, the Irish language is recognised as the first official language of the State and the language rights of Irish-speakers has been upheld in a number of cases by the Irish Courts.<sup>682</sup> The Official Languages Act 2003 also recognises certain language rights including the right of Irish speakers to access key documents in Irish, interact with public bodies in Irish and use Irish in any dealings with the courts. In 2011, some 77,185 people - representing 1.8 per cent of the population over the age of three - spoke Irish on a daily basis outside of the education system.<sup>683</sup> This figure increases to 25 per cent in the seven designated Gaeltacht<sup>684</sup> (Irish-speaking) regions.<sup>685</sup>

Since 2008, the Office of the Irish Language Commissioner has suffered a cut of 45 per cent to its budget. A proposal by the Government in the 2011 Public Service Reform Plan<sup>686</sup> caused the Irish Language Commissioner to express concerns 'about the future viability of the Office' in such an arrangement.<sup>687</sup> The overall budget allocated to the Irish language, Gaeltacht and Islands was reduced by five per cent to less than €40 million in 2014.<sup>688</sup>

A 20-Year Strategy for the Irish Language was published in 2010 but a progress report highlighted the 'resource constraints within which the Strategy is being implemented' and the significant reduction in funding since the plan's establishment.<sup>689</sup> A review of the Official Languages Act 2003 'to ensure expenditure on the language is best targeted towards the development of the language and that obligations are imposed appropriately in response to demand from citizens' took place in 2011 resulting in the publication of draft revised legislation in 2014.<sup>690</sup> Concerns have been expressed by Irish language rights advocates that the proposed changes will result in a roll-back on the State's obligations to provide equality for Irish language speakers accessing public services under the original legislation based on the additional cost to the Exchequer.<sup>691</sup> Further concerns for the Government's commitment to recognise and protect Irish language rights were raised following the appointment of a non-fluent Irish speaker as Minister for the Gaeltacht in July 2014.<sup>692</sup>

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681 An Coimisinéir Teanga (2014) *Annual Report 2013*, An Spidéal: An Coimisinéir Teanga, p.11.

682 An Coimisinéir Teanga, 'Court Cases on the Irish Language under the Constitution', available online at: <http://bit.ly/IrishLanguageCases> [accessed 30 July 2014].

683 Government of Ireland (2012) *Census 2011 Profile 9 – What We Know*, Dublin: Stationery Office, p.27.

684 These were defined by the Gaeltacht Areas Orders 1956-1982 and include areas in the counties of Cork, Donegal, Galway, Kerry, Meath, Mayo and Waterford.

685 Government of Ireland (2012) *Census 2011 Profile 9 – What We Know*, Dublin: Stationery Office, p.31.

686 Department of Public Expenditure and Reform (2011) *Government Statement Public Sector Reform Plan*, Dublin: Department of Public Expenditure and Reform.

687 An Coimisinéir Teanga (2014) *Annual Report 2013*, An Spidéal: An Coimisinéir Teanga, p.7.

688 Department of Arts, Heritage and Gaeltacht, 'Dinny McGinley TD, Minister of State at the Department of Arts, Heritage and the Gaeltacht welcomed the proposed allocation for the Irish language, the Gaeltacht and the Islands functions of the Department for 2014' [press release], 15 October 2013.

689 Department of Arts, Heritage and the Gaeltacht (2013) *Progress Report on the 20-Year Strategy for the Irish Language 2010-2030*, Dublin: DAHG, p.1.

690 Official Languages (Amendment) Bill 2014.

691 Conradh na Gaeilge, 'Language Act Urgently Needs Much Amending', [press release], 28 May 2014.

692 RTÉ News Online, 'New Gaeltacht affairs minister Joe McHugh books Irish language course', 15 July 2014, <http://bit.ly/RTEGaeltachtMinister> [accessed 15 July 2014].





Despite a commitment in the 2011 *Programme for Government* to promote its recognition,<sup>693</sup> Irish Sign Language (ISL), the indigenous language used by the Deaf community in Ireland, is still not officially recognised.<sup>694</sup> There are an estimated 40,000 ISL daily users of which 5000 are Deaf people who have difficulty in accessing public services and information on their rights and entitlements.<sup>695</sup> Despite the clear recognition of native signed languages in the Convention on the Rights of Persons with Disabilities which Ireland has not yet ratified, proposed legislation<sup>696</sup> to officially recognise ISL was rejected by the Seanad (Senate) in January 2014. The Minister for State clarified that the Government did ‘not want to see scarce resources, particularly at this time of extremely scarce resources, used without the service being put in place’.<sup>697</sup> Coupled with a complete funding cut to the IDS Deaf Advocacy Service in 2014, which was later reversed as a temporary measure,<sup>698</sup> it is not clear how the State intends to progress this important issue and ensure the rights of the Deaf Community are protected and respected.

**FLAC urges the Committee to recommend that the State:**

- ***Adequately resource the Irish Language Commissioner’s office.***
- ***Ensure Irish speakers can avail of their constitutional and statutory rights to access services in the Irish language.***
- ***Legislate to officially recognise Irish Sign Language.***

### 15.3 Recognition of Traveller Ethnicity and Culture

Notwithstanding numerous calls by both UN<sup>699</sup> and Council of Europe human rights bodies,<sup>700</sup> the Irish Government continues to refuse to recognise Traveller Ethnicity. In 2011 the Committee on the Elimination of Racial Discrimination (CERD) reported on Traveller ethnicity and reiterated its concern at the State’s ‘persistent refusal to recognise Travellers as an ethnic group, notwithstanding that they satisfy the internationally recognised criteria’. In 2013, a cross-party Parliamentary Committee consulted with national human rights institutions, representative civil society organisations and leading academics to determine the question of Traveller Ethnicity. The Committee rejected ‘all identifiable potential excuses or concerns that could be deployed by this State to justify the continued denial of Traveller ethnicity’<sup>701</sup> and recommended that the State officially recognise the ethnicity of the Traveller community.<sup>702</sup>

In Budget 2014, Department of Justice and Equality funding for Traveller Initiatives to promote equality and integration was reduced from €405,000 to €305,000.<sup>703</sup> Prior to 2013 there had been no separate budget line for these initiatives. The Advisory Committee of the Framework

693 Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.24.

694 Irish Deaf Society, ‘Irish Sign Language Recognition: Information Leaflet’, Dublin: IDS.

695 Irish Deaf Society, ‘Irish Sign Language Recognition: Information Leaflet’, Dublin: IDS.

696 Recognition of Irish Sign Language for the Deaf Community Bill 2013

697 Kathleen Lynch TD, Minister of State with responsibility for Disability, Older People, Equality & Mental Health, Seanad Debates: Recognition of Irish Sign Language for the Deaf Community Bill 2013 – Second Stage, 22 January 2014.

698 Irish Deaf Society, ‘Irish Sign Language Awareness Week: ‘Strengthening Human Diversity’, [press release], 11 September 2014.

699 Recommendations have been made by the UN Committee on the Elimination of all forms of Racial Discrimination (2011), the UN Special Rapporteur on Extreme Poverty and Human Rights (2011) and the UN Human Rights Committee (2014).

700 Recommendations have been made by both the former and present Council of Europe Commissioners for Human Rights (2007) and

the European Commission against Racism and Intolerance (2013).

701 Joint Committee on Justice, Defence and Equality (2014) *Report on the Recognition of Traveller Ethnicity*, Dublin: Houses of the Oireachtas, p.15

702 Joint Committee on Justice, Defence and Equality (2014) *Report on the Recognition of Traveller Ethnicity*, Dublin: Houses of the Oireachtas, p.7.

703 Department of Public Expenditure and Reform (2013) *2014 Revised Estimates for Public Services*, Dublin: Stationery Office, p.97.



Convention on National Minorities noted that while the Irish ‘authorities continue to support manifestations of Traveller culture, such as the annual Traveller Pride Week, the support provided to Traveller culture continues to be event-centred, not allowing for continuous and sustained development of cultural projects’.<sup>704</sup> Furthermore, in its collective complaint to the European Committee on Social Rights the European Roma Rights Centre, supported by the Irish Traveller Movement, argues that the State’s policies and legislation represent ‘an attack on the nomadic culture of many Travellers’.<sup>705</sup>

**FLAC urges the Committee to recommend that the State:**

- **Recognise Traveller ethnicity as a matter of urgency and put in place long-term sustainable measures to ensure ongoing support and development of Traveller culture.**

**15.4 Access to broadband internet in rural areas**

A range of measures have been put in place to achieve the Government’s commitment to ensure that ‘next generation broadband’ is available ‘to every home and business in the state’.<sup>706</sup> These measures include the Rural Broadband Scheme designed to deliver a basic broadband internet service to rural premises which cannot access it directly from an existing internet service provider.<sup>707</sup> In 2009, the Government identified approximately 25,000 homes and businesses not otherwise identified by the earlier National Broadband Scheme.<sup>708</sup> Approximately 3700 out of 5000 applications qualified for this scheme.<sup>709</sup> A total of 509 applicants have been served by the scheme (a referral service),<sup>710</sup> and although more than €13 million was allocated under the European Agricultural Fund for Rural Development to this project, no public money was spent as private providers indicated that they could provide the necessary service.<sup>711</sup> However, both schemes have terminated and no rural interventions are currently active.

The National Broadband Plan published in August 2012 aimed to rollout broadband to rural areas.<sup>712</sup> However, by the end of 2013, only 82 per cent of households had access to home internet; 29 per cent of households without internet access stated the reason as lack of availability in the area.<sup>713</sup> The Government has acknowledged that there is a ‘connectivity challenge in rural Ireland’ and has given a commitment to rollout fibre broadband services to rural locations as the majority of investment by commercial entities is in relation to urban areas.<sup>714</sup> At the time of writing, the definition of ‘next generation access’ is awaiting clarification by the Government and details of the consequent intervention area is expected to be published

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704 Committee of Ministers (2014) *Resolution CM/ResCMN2 on the implementation of the Framework Convention for the Protection of*

*National Minorities by Ireland*, Strasbourg: Council of Europe.

705 *European Roma Rights Centre v Ireland*, Complaint No. 100/2013, p.22, para.68.

706 Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.15.

707 Department of Communications, Energy and Natural Resources. ‘Rural Broadband Scheme Announced by Minister Rabbitte’ [press release], 9 May 2011.

708 European Commission (2009) *State Aid No N 607/2009 – Ireland: Rural Broadband Reach*, Brussels: European Commission, p.2.

709 Department of Communications, Energy and Natural Resources (2012) *Rural Broadband Scheme – Final Update December 2012*.

710 Department of Communications, Energy and Natural Resources (2012) *Rural Broadband Scheme – Final Update December 2012*.

711 Minister for Agriculture, Food and the Marine, Simon Coveney TD, Parliamentary Questions: Written Answers, [23294/13], 15 May 2013.

712 Department of Communications, Energy and Natural Resources (2012) *National Broadband Plan*, Dublin: DCENR.

713 Central Statistics Office (2013) *Information Society Statistics – Households 2013*, Cork: CSO.

714 Minister for Communications, Energy and Natural Resources, Pat Rabbitte TD, Parliamentary Questions: Written Answers [22121/14], 27 May 2014.



by the end of 2014.<sup>715</sup> Further consultations may address plans for government intervention.<sup>716</sup> In relation to mobile services, the Communications Regulator (ComReg) has set a population coverage obligation of a mere 35 per cent outdoor coverage in each area for existing operators delivering new generation data services.<sup>717</sup> Given Ireland's low population density outside Dublin, this could result in very limited implementation of the new technology in rural areas.<sup>718</sup>

***FLAC urges the Committee to recommend that the State:***

- ***Adequately resource the National Broadband Plan to ensure that anyone living in a rural area requiring access to broadband internet can enjoy the benefits of scientific progress and access it without difficulties.***
- ***Strengthen the rural coverage mandate of the Communications Regulator.***
- ***Ensure adequate state interventions where existing commercial internet service providers fail to provide rural broadband.***

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715 Minister for Communications, Energy and Natural Resources, Alex White TD, Parliamentary Questions: Written Answers, [34222/14],

17 September 2014.

716 Department of Communications, Energy and Natural Resources (2014) *National Broadband Plan: Call for input on key aspects of the*

*State-led intervention*, Dublin: DCENR.

717 Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz bands) Regulations, 2012 (SI 251/2012)

718 Government of Ireland (2012) *Census 2011 Profile 1 – Town and Country*, Dublin: Stationery Office, p. 10.



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25, 2013

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**Notes**



**Notes**

# Our Voice, Our Rights

a parallel report  
in response to Ireland's Third Report under the  
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