



Submission to inform the Department of Justice and Equality's consultation on its Statement of Strategy 2016 – 2019

FLAC, October 2016

About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence. We also engage in strategic litigation.

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Introduction

FLAC welcomes the opportunity to contribute to the Department of Justice and Equality's consultation on its Strategy Statement 2016 – 2019.

FLAC is pleased to note that one of the five high-level objectives in the Department's current Strategy Statement (2015-2017) is to ensure access to justice for all. FLAC has made a number of detailed submissions on a number of issues which are relevant to the issue of access to justice.¹

Summary of submission

- The new Public Sector Duty, which mainstreams human rights and equality in public life, should form a key part of both the process for developing the Department's Strategy Statement and be reflected in the outcome document.
- While the Department of Justice and Equality has committed to ensuring equal access to justice for all, a range of practical measures are required to ensure effective implementation of this goal, including a more comprehensive and community-oriented civil legal aid scheme, a more efficient court system and improved access to legal aid supports for victims of domestic violence and insolvent borrowers with unsecured debts.
- The Department of Justice and Equality is responsible for a wide range of issues where human rights and equality are engaged, such as prison conditions, reception conditions for asylum-seekers and ratification of the UN Convention on the Rights of Persons with Disabilities. These, and other issues detailed below, should form a key part of the assessment to be carried out by the Department pursuant to the public sector duty.

Public Sector Duty

The Department of Justice and Equality was the lead Government Department in the design of the public sector duty which mainstreams human rights and equality in public life. The public sector duty is a stand-alone mandatory requirement for public bodies to take cognisance of human rights and equality standards in their work; to ensure compliance with those standards and to promote the development of those standards in a proactive way.² Departments must set out in an accessible manner in their strategic plan an assessment of the human rights and equality issues they believe to be relevant to their functions and purpose. They must also identify the policies, plans and actions that are already in place or proposed to be put in place to address these issues.

¹ See FLAC submission to the Office of the United Nations High Commissioner for Human Rights on the occasion of Ireland's second review under the Universal Periodic Review mechanism, available at <http://www.flac.ie/publications/submission-irelands-second-universal-periodic-revi/> [accessed 4 October 2016]. See also Free Legal Advice Centres (2016) *Accessing Justice in Hard Times*, Dublin: FLAC.

² The public sector duty is now reflected in primary legislation - section 42 of the Irish Human Rights and Equality Act, 2014.

The Strategy Statement 2016 – 2019 is a key instance of strategic planning by the Department to which the public sector duty applies. The Strategy Statement must show how the duty has influenced the process and be reflected in the outcome. Compliance with the public sector duty must therefore be evident from the published strategy and should articulate how the requirements of the public sector duty are to be met on an ongoing basis in the period 2016 – 2019.

FLAC urges the Department of Justice & Equality to make the public sector duty a core consideration in the process of developing the Department’s strategy for the next three years and to provide a model of best practice for other public bodies more generally.

The public sector duty is set out in section 42 of the Irish Human Rights and Equality Commission Act, 2014. Public bodies, in carrying out their functions must have regard to the need to (i) eliminate discrimination, (ii) promote equality of opportunity and treatment and (iii) protect the human rights of staff, members and service users. All three objectives of the duty must be considered. In the context of the 2014 Act, “functions” has a very wide meaning, including any activities undertaken pursuant to a power or duty and also many of the operational aspects of the work of the relevant public body. The human rights and equality standards referred to in the public sector duty include the fundamental rights provisions of the Constitution, rights protected under the European Convention on Human Rights and also those enshrined in the EU Charter of Fundamental Rights. The right to equality and freedom from discrimination is central to all these instruments, and is also given practical effect at a legislative level by the Equal Status Acts 2000 – 2015 and the Employment Equality Acts 1998 – 2015, which in turn are underpinned by various EU Directives.³

Compliance with the public sector duty is flexible and may be tailored to suit the particular circumstances of the public body concerned, and that of its staff and service users.⁴ While every public body, as a matter of law, must comply with relevant human rights and equality standards in decision making, the public duty is focused on the processes put in place to reach a particular decision and whether there was meaningful consideration of the human rights and equality implications of the decision taken.

Minimum requirements

Although compliance with the duty allows for flexibility, section 42 sets out some minimum steps that must be taken by the public duty as follows:

- Carry out an assessment of and document in the Strategy Statement 2016 – 2019 the human rights and equality issues relevant to its functions as a policy-maker, service provider, employer and/or

³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. There are a number of other Directives dealing with pregnancy and maternity entitlements of women that also supplement these broader Directives.

⁴ The Irish Human Rights and Equality Commission has an oversight role. For instance, section 42 (3) provides that the Commission can give guidance and encouragement to public bodies in relation to the duty. In addition pursuant to section 42 (5) the Commission, if it considers there is a failure by a Public Body to comply with the public duty, may invite the body concerned to undertake certain actions directed at remedying the failure. The Commission may also review the operation of the public duty, and report to the Oireachtas in respect of same. The Courts, in due course, may also be called on to assess compliance with the duty in a particular case.

procurer of goods and services e.g. the provision of civil legal aid and advice is one of a number of core human rights and equality issues relevant to the Department's functions. This assessment must be made accessible to the public;

- Identify the policies, plans and actions it already has in place to address these issues and document these in the Strategy Statement 2016 – 2019, which must in turn be reported on;
- Identify the policies, plans and actions it proposes to put in place to address these issues and document these in the Strategy Statement 2016 – 2019.

In order to meet the requirements of the duty FLAC submits that it is necessary to address two matters:

- (i) Establish internal processes and structures that will ensure the public duty is integrated into all decision making within the Department. This includes not only decisions that have an immediate impact on an individual, but also policy development and legislative drafting, budgetary decisions, human resource operations and any other work of the Department where human rights and equality standards are implicated and;
- (ii) Conduct an audit of the matters where the Department has responsibility and where individual rights are engaged to understand where change is required on an immediate basis in order to ensure human rights and equality standards are being respected.

Internal Structures

In this regard FLAC submits that there are certain actions that might be considered immediately to resource the Department in implementing the public duty.⁵ The strategic plan should include a set of steps and objectives in relation to the public sector duty itself, addressing such issues as:

1. Staff education and development in respect of the duty and also the values and standards that underpin it;
2. Developing data systems and practical tools to underpin analysis of the equality and human rights impacts of decisions, policy proposals and practices;
3. Developing a set of performance indicators at staff and Departmental level that can track consistency and quality in complying with the public duty;
4. Establishing mechanisms for providing information and assistance to the public in relation to the duty and how the Department is meeting its obligations under the duty, including ensuring that information is disseminated in a way that is accessible to the widest audience possible;
5. Providing training, information and assistance to staff as beneficiaries of the public duty, and collaborating with public service unions to promote the benefits of the duty for all staff;

⁵ The Equality and Rights Alliance, of which FLAC is a member, has developed guidance material to support the effective implementation of the public sector duty on an ongoing basis: *A New Public Sector Equality and Human Rights Duty* available at <http://www.eracampaign.org/uploads/A%20New%20Public%20Sector%20Duty%20March%202015.pdf> [accessed 4 October 2016].

6. Disseminating information and guidance to agencies operating under the auspices of the Department, including statutory bodies, to develop understanding and encourage broad compliance with the duty not only within the centralised aspect of the Department but also the broader areas of responsibility of the Department. Of importance in this regard is An Garda Síochána, the Immigration and Naturalisation Service, the Reception and Integration Agency, the Courts Service, the Policing Authority, the Garda Síochána Ombudsman Commission, the Irish Prison Service, the Insolvency Service of Ireland, the Legal Aid Board, the Parole Board and the Office of the Data Protection Commissioner.
7. Developing a consistent but flexible approach to stakeholder/public engagement to inform the Department's decision making, particularly as to how a particular policy, practice or decision may impact on groups with particular protected characteristics, or who may be considered vulnerable in the context of human rights protection, and how any adverse impacts can be mitigated or removed.

To create a vehicle for engaging with the duty, FLAC would submit that a specialised task force or advisory body be established within the Department with sufficient expertise, resources and influence, including senior management input, to support all sections of the Department in developing their approach to the duty. Such a unit within the Department could also take a role in supporting and monitoring progress on implementation of the duty. While staff at all levels should understand that they each have rights and responsibilities under the duty, a central driver will be important at an early stage to support consistency of approach and understanding and to provide leadership within the Department thereby creating a positive environment for the duty to take root.

Audit of the matters where the Department has responsibility and where human rights and equality are engaged

There are a wide range of issues where the Department has a remit but where it appears progress in meeting human rights and equality standards has stalled or failed to come to fruition. FLAC has previously highlighted a number of these issues which should form part of the assessment that is to be carried out by the Department pursuant to section 42(2). The following is a non-exhaustive list of areas which should form part of that assessment:

- **Access to justice for all**

A comprehensive civil legal aid scheme is essential to compliance with Article 6 of the European Convention on Human Rights (ECHR). There is a high degree of likelihood that some provisions of the Civil Legal Aid Act 1995 as presently drafted are incompatible with the protections afforded to the right to a fair hearing guaranteed by the ECHR.⁶ In addition, Article 47 of the Charter of Fundamental Rights of the European Union guarantees a right to an effective remedy where a breach of rights and freedoms under EU law is concerned, including the provision of legal aid to ensure effective access to justice.

FLAC's most recent report "*Accessing Justice in Hard Times*", contains a number of recommendations which, if implemented, would assist in the delivery of a more efficient, accessible, timely and comprehensive scheme

⁶ In addition to lack of availability of legal aid before the Social Welfare Appeals Office, Labour Court, Residential Tenancies Board and Workplace Relations Commission, Section 28(9)(a) of the 1995 Act excludes a number of "designated matters" from the remit of the Legal Aid Board. This is so despite the fact that the European Court of Human Rights has held that the blanket exclusion of any area of the law from a civil legal aid scheme violates Article 6(1) of the Convention.

of civil legal aid. Implementation of the recommendations would also assist in ensuring that the scheme was equality and human rights compliant.

Compliance with the positive duty also provides an opportunity to review the model of the provision of legal aid. A legal aid service which is responsive to the needs of the community could be a powerful tool for social inclusion by familiarising people with the law, the legal system and its role in society through the provision of legal information, advice and education. This is an issue which could also be usefully addressed as part of the Department’s new Integrated Framework for Social Inclusion, to tackle inequality and poverty.⁷

Secondly, while the new scheme of Aid and Advice on Home Mortgage Arrears will assist in addressing unmet legal need for some housing issues, some areas of need remain excluded from the remit of the Legal Aid Board. For example, civil legal aid is not available to local authority tenants facing eviction proceedings in the District Court.⁸

The Legal Aid Board itself has acknowledged that the continued exclusion of some areas of the law from the civil legal aid scheme leaves the State open to a legal challenge.⁹ In 2005, the Department of Justice and Equality initiated a preliminary examination of the implications of the *Steel & Morris* judgment for Ireland,¹⁰ however it is unclear if this review was ever completed.¹¹ Further consideration of this issue is necessary under the application of the public sector duty.

Under its “Access to justice for all” objective, FLAC would suggest the following goal with accompanying actions and indicators:

Goal	Actions	Performance Indicators / Outcomes
<ul style="list-style-type: none"> ➤ Provide equal access to justice for all through the provision of an efficient, accessible and comprehensive civil legal aid scheme. 	<ul style="list-style-type: none"> ➤ Undertake a review of the Civil Legal Aid Act 1995 by reference to the requirements of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights; ➤ Undertake a review of the model of the delivery of legal aid and advice; 	<ul style="list-style-type: none"> ➤ Increased numbers of people accessing legal aid for issues related to employment, housing and social welfare law; ➤ Publication of a review of the Civil Legal Aid Act 1995 by reference to the requirements of the

⁷ The new Programme for a Partnership Government commits the Department of Justice and Equality to developing a new Integrated Framework for Social Inclusion, to tackle poverty and social exclusion. Government of Ireland (2016) *A Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.6.

⁸ It is noted that in the case of *Pullen & Ors v Dublin City Council [2008] IEHC 37*, it was found that evictions from local authority houses could involve a breach of Article 6 of the European Convention on Human Rights.

⁹ In response to a 2011 Parliamentary Question posed by Jerry Buttimer TD, then Minister for Justice, Equality and Defence, Alan Shatter, informed that “the Board suggested that the continued exclusion of defamation might leave the State open to challenge for not providing for the possibility of the provision of legal aid in such cases”. Minister for Justice, Equality and Defence, Alan Shatter TD, Parliamentary Questions: Written Answers, [24638/11], 20 September 2011.

¹⁰ In *Steel & Morris v the United Kingdom*, the European Court of Human Rights held that, “[t]he question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant’s capacity to represent him or herself effectively.” *Steel & Morris v UK* (2005) 41 EHRR 22, para.61.

¹¹ Free Legal Advice Centres (2005) *Access to Justice: A Right or a Privilege*, Dublin: FLAC, pp.13-14.

	<ul style="list-style-type: none"> ➤ Designate the Social Welfare Appeals Office, Residential Tenancies Board, Labour Court and Workplace Relations Commission as “prescribed” tribunals for the purposes of Section 27(2)(b) of the Civil Legal Aid Act 1995; ➤ Provide civil legal aid to local authority tenants facing eviction proceedings in the District Court. 	<p>European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights;</p> <ul style="list-style-type: none"> ➤ Publication of a review of the model of the delivery of legal aid.
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- **Access to justice for victims of domestic violence**

FLAC, in its 2016 submission under the UN Convention on the Elimination of all forms of Discrimination against Women,¹² has highlighted its concerns about one of the barriers that victims of domestic violence face in accessing justice, namely the requirement to pay financial contributions for state-funded civil legal aid.¹³

In this context, FLAC welcomes recent comments delivered by the Tánaiste and Minister for Justice and Equality, Frances Fitzgerald, at the AGM of the National Women’s Council of Ireland in which she stated that she “want[s] women to feel that they can reach out and ask for help”.¹⁴ In light of ongoing concerns that victims of domestic violence are discouraged from accessing the civil legal aid scheme for financial reasons, FLAC believes that a practical way of giving effect to the Tánaiste’s sentiments and encouraging victims to seek help would be to abolish legal aid fees for those seeking safety, protection or barring orders from the courts.

Under its “Access to justice for all” objective, FLAC would suggest the following goal with accompanying actions and indicators:

Goal	Actions	Performance Indicators / Outcomes
<ul style="list-style-type: none"> ➤ Ensure access to justice for victims of domestic violence. 	<ul style="list-style-type: none"> ➤ End the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought. 	<ul style="list-style-type: none"> ➤ Increased numbers of victims of domestic violence accessing court protection through the civil legal aid scheme.

¹² FLAC submission to the Irish Human Rights and Equality Commission’s consultation on Ireland’s examination under the UN Convention on the Elimination of all forms of Discrimination against Women, available at X [accessed X].

¹³ In 2013, the minimum contribution for legal aid services provided by the Legal Aid Board increased from €50 to €130. SAFE Ireland has noted that the increase in legal fees for advice and representation provided by the Legal Aid Board puts legal assistance out of reach for most women availing of SAFE’s services, in particular for those reliant on state payments. This exclusion can have huge risks, leaving victims in extremely vulnerable and dangerous situations. SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

¹⁴ Frances Fitzgerald TD, Tánaiste and Minister for Justice and Equality, Address at the AGM of the National Women’s Council of Ireland, 09 September 2016.

- **Annual study on court efficiency**

The new Programme for a Partnership Government contains a commitment to commission an annual study on court efficiency and sitting times, benchmarked against international standards, to provide accurate measurements for improving access to justice.¹⁵ This is a welcome development, particularly in light of the recent publication of the Courts Service’s 2015 Annual Report which details protracted waiting times for hearings in almost all courts, from District Court up to Supreme Court.¹⁶

Inevitably, court inefficiencies pose a significant barrier to people seeking timely access to justice. Court inefficiencies can significantly increase the costs of legal representation, lead to individuals dropping their cases, and delay the provision of a resolution. Furthermore, having court proceedings conclude within a reasonable time is a fundamental human right in both non-criminal and criminal proceedings, guaranteed by Article 6 of ECHR and Article 47 of the EU Charter of Fundamental Rights.

As an organisation dedicated to the realisation of equal access to justice, FLAC would be happy to lend its assistance in developing this study. In particular, FLAC could usefully offer its perspective on what access to justice means, assist in developing indicators for assessing improvements in accessing justice and provide analysis on applicable international standards, such as ECHR and UN instruments. FLAC would also be happy to share information on the types of issues which we hear about through its own services which have the effect of hindering court efficiencies.¹⁷

Additionally, FLAC is concerned by anecdotal evidence which suggests that there are growing numbers of lay litigants in court proceedings. Unrepresented litigants can impede the timely administration of justice as they are frequently unaware of procedural rules and require considerable assistance from courts, which can cause delays.¹⁸ The extent to which the Department of Justice and Equality is collecting data on lay litigants, their impact on court efficiencies and the reasons for the apparent increase in those who are self-representing, is unclear. FLAC suggests that systematic data on lay litigants should be gathered both as part of the study and the implementation of the public sector duty.

Under its “Access to justice for all” objective, FLAC would suggest the following goal with accompanying actions and indicators:

Goal	Actions	Performance Indicators / Outcomes
➤ Ensure timely access to justice by improving court efficiencies.	➤ Commission an annual study on court efficiency and sitting times, benchmarked against international standards, to provide accurate measurements for improving access to justice.	<ul style="list-style-type: none"> ➤ Consult FLAC in developing the study on court efficiency and sitting times; ➤ Publication of an annual study on court efficiency and sitting times;

¹⁵ Government of Ireland (2016) *A Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.101.

¹⁶ Court Service of Ireland (2016) *Annual Report 2015*, Dublin: Courts Service.

¹⁷ For example, it is clear from FLAC’s own work that lack of timely access to civil legal aid can contribute to court inefficiencies. Waiting times for consultations with Legal Aid Board solicitors can be quite lengthy and result in delays in gaining legal representation. These delays can have knock-on effects in the form of court adjournments and delays.

¹⁸ Fundamental Rights Agency (2016) *Handbook on European law relating to access to justice*, Luxembourg: FRA, p.59.

		➤ Improved court efficiencies.
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- **Scheme of Aid and Advice on Home Mortgage Arrears**

As noted above, the newly established scheme of Aid and Advice on Home Mortgage Arrears became operational in July 2016. According to the Department of Justice and Equality, the overall objective of the scheme is to ensure that people who are struggling to pay their debts, and at risk of losing their homes due to mortgage arrears, can access free, independent expert financial and legal advice and support, which will help them to identify and put in place their best option to get back on track.¹⁹

While the establishment and operationalisation of the scheme is welcome, access to it is limited. As per the Civil Legal Aid Regulations 2016, borrowers must be insolvent, in mortgage arrears on the home in which they normally reside and at risk of losing their home to avail of assistance under the scheme.²⁰ Thus, the scheme is restricted to insolvent borrowers with a secured debt in the form of mortgage arrears and excludes other indebted people, such as those with unsecured debts.

FLAC is of the view that the scheme’s focus on mortgage arrears is too restrictive and that borrowers who are insolvent with unsecured debts could significantly benefit from the provision of early legal advice. In particular, early access to legal assistance for those with unsecured debts could ensure that sustainable solutions are identified and put in place as early as possible. It could also allow borrowers to recover from indebtedness and return to solvency faster.

Furthermore, while the scheme allows for legal representation for a court review of a Personal Insolvency Arrangement, a similar level of assistance is not available to borrowers facing Circuit Court repossession proceedings against their home due to mortgage arrears. The Legal Aid Board will only provide borrowers with legal representation in such proceedings where there is a valid legal defence to repossession capable of meeting the merits criteria under section 24 and 28 of the Civil Legal Aid Act 1995, “but this applies to relatively few cases”.²¹ While a Duty Solicitor under the scheme may be able to provide some assistance to an unrepresented borrower at court, many people will still be left without a legal representative to defend the repossession proceedings on their behalf.

Under its “Access to justice for all” objective, FLAC would suggest the following goal with accompanying actions and indicators:

¹⁹ Department of Justice and Equality, Scheme of Aid and Advice on Home Mortgage Arrears, available at http://www.justice.ie/en/JELR/Pages/Scheme_of_Aid_and_Advice_on_Home_Mortgage_Arrears [accessed 23 September 2016].

²⁰ Civil Legal Aid Regulations 2016 (SI No. 272/2016).

²¹ Department of Justice and Equality, Scheme of Aid and Advice on Home Mortgage Arrears, available at http://www.justice.ie/en/JELR/Pages/Scheme_of_Aid_and_Advice_on_Home_Mortgage_Arrears [accessed 23 September 2016].

Goal	Actions	Performance Indicators / Outcomes
<ul style="list-style-type: none"> ➤ Ensure that insolvent borrowers can access justice by accessing the requisite financial and legal supports. 	<ul style="list-style-type: none"> ➤ Broaden the scheme of Aid and Advice on Home Mortgage Arrears to include insolvent borrowers with unsecured debts; ➤ Provide legal representation to insolvent borrowers facing Circuit Court repossession hearings. 	<ul style="list-style-type: none"> ➤ Insolvent borrowers with unsecured debts can access an expanded scheme of Aid and Advice on Home Mortgage Arrears; ➤ Legal Aid Board no longer requires applicants seeking legal aid for Circuit Court repossession proceedings to satisfy the merits test.

Audit of other matters where the Department has responsibility and where human rights and equality are engaged

While FLAC, in this submission, examines in detail areas it has identified through its own work where change is needed to meet human rights and equality standards or to progress access to justice, there are also a wide range of other issues where the Department has a remit and where approaches informed by human rights and equality standards are essential to reach successful outcomes. FLAC wishes to also highlight some examples of issues that may arise in the course of carrying out the assessment to be carried out by the Department pursuant to section 42(2), and which provide the Department with an immediate opportunity to take concrete steps to develop action plans arising from the duty; identify best practice and thereby inform the rolling out of the duty in other areas. A non-exhaustive list includes:

- Integrated Framework for Social Inclusion²²
- Scope of equality legislation
- Periodic reporting to international human rights mechanisms²³
- An efficient, responsive and fair immigration, asylum and citizenship system²⁴

²² As noted, the new Programme for a Partnership Government commits the Department of Justice and Equality to developing a new Integrated Framework for Social Inclusion, which will outline measures to help eliminate any persisting discrimination on grounds of gender, age, family status, marital status, sexual orientation, race, disability, religion or membership of the Traveller Community. It will draw on existing as well as new strategies, in particular the (i) New National Women’s Strategy, (ii) New National Disability Inclusion Strategy, (iii) Comprehensive Employment Strategy for People with Disabilities, (iv) National Traveller and Roma Inclusion Strategy, and (v) New Action Plan for Educational Inclusion. Government of Ireland (2016) *A Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.39.

²³ The Department of Justice and Equality is responsible for coordinating the state response to a number of international human rights bodies, including the UN Committee on the Elimination of all forms of Racial Discrimination. Ireland’s combined fifth to seventh periodic reports under the International Convention on the Elimination of Racial Discrimination were due in January 2014 and have yet to be submitted for consideration to the UN Committee on the Elimination of Racial Discrimination.

²⁴ The International Protection Act 2015 was passed in December 2015, but has yet to be commenced. In the process of planning for the commencement of the legislation, there is now an opportunity to ensure that the public sector duty is integrated into the implementation process before the legislation goes live. Furthermore, FLAC published a legal analysis of the Direct Provision and dispersal system in November 2009. It found that Direct Provision has failed to

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- Trafficking²⁵
 - Investigation of suspicious deaths²⁶
 - Travellers and ethnicity²⁷
 - OPCAT²⁸
 - Disability²⁹

adequately protect the rights of those seeking asylum and protection in Ireland. FLAC's view is that the system as a whole is incompatible with the State's obligations under international human rights law and should be abolished. For more information, see Free Legal Advice Centres (2009) *One Size Doesn't Fit All*, Dublin; FLAC.

²⁵ In the case of *P v Chief Superintendent Garda National Immigration Bureau & Ors [2015] IEHC 222*, a number of inadequacies were identified in the administrative system for the identification of suspected victims of human trafficking, particularly where the alleged victim is suspected of a crime. Since the delivery of that judgment, the Department has been working on a new national action plan against trafficking, but there has been no published change to the identification system. This requires immediate action, preferably placing the identification system on a legislative footing to clarify the rights and obligations involved.

²⁶ The civil system for the investigation of suspicious deaths has not significantly changed since the Coroners Act 1962. This is despite the very significant developments in the case law of the European Court of Human Rights in relation to the obligations that devolve on the State to investigate deaths under Article 2 of the Convention. The Coroners Bill, 2007, itself now out of date has never been enacted. This is another area where immediate legislative action is required to bring the coronial system into line with the requirements of Article 2 ECHR.

²⁷ To date there has still been no recognition of Traveller ethnicity on a formal basis by the State. When this does occur, as appears inevitable, then the public sector duty again should come into play to inform any initiatives thereafter and the State's work in relation to achieving full equality for Travellers in Irish society.

²⁸ While prison conditions have improved and a form of complaint mechanism has been introduced, the long awaited ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has yet to materialise. Again, ratification provides an opportunity to incorporate the public sector duty in the roll out and design of the preventative mechanism required under the protocol.

²⁹ Ratification of the UN Convention on the Rights of Persons with Disabilities and the implementation of the Assisted Decision Making (Capacity) Act 2015 will generate a significant area of work for the Department where the public sector duty will be engaged, and where the usual consultative processes may be ineffective.