



Submission to the Sub-Committee on Dáil Reform

FLAC, April 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.

FLAC Policy

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

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

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Introduction

FLAC welcomes the creation of the Sub-Committee on Dáil reform and the opportunity to provide members of the Sub-Committee with our comments. Our short submission addresses a number of issues which are currently being considered by the Sub-Committee, including matters related to financial scrutiny, procedures for engagement in policy-making and consideration of legislation.

1. Human Rights & Equality Budgeting

As documented by the UN Committee on Economic, Social and Cultural Rights, austerity measures have had and continue to have a significant adverse impact on the whole population. Many of these regressive measures were adopted without thorough prior **assessment** of their impact, particularly on vulnerable and marginalised groups. While the Department of Social Protection does carry out a post-hoc social impact assessment of measures relevant to it, such assessments should be undertaken more extensively, across all Departments, ideally prior to implementation, and should incorporate a human rights and equality analysis.

Such assessments are an important mechanism for embedding human rights and equality considerations into budgetary processes. They would also provide officials with a clearer picture as to who is disproportionately impacted by particular budgetary measures, and who is experiencing inequality or violations of their human rights as a result of specific measures.¹

Impact assessments have been proposed by human rights bodies and experts. In 2011, then UN Independent Expert on extreme poverty Magdalena Sepúlveda Carmona called on Ireland to undertake a human rights reviews of all budgetary policies.² In its 2015 Concluding Observations, the UN Committee on Economic, Social and Cultural Rights recommended that Ireland “consider instituting human rights impact assessments in its policy-making process, particularly relating to Covenant rights”.³ Most recently, in January 2016, the UN Committee on the Rights of the Child recommended that Ireland “child-proof” its budgets.⁴

FLAC’s research among civil society bodies has shown the vast majority see these assessments as key to reducing discrimination, protecting vulnerable and marginalised groups and maximising the use of resources.⁵

The budgetary process must also be underpinned by human rights principles including **transparency**, **participation** and **accountability**. To foster greater participation in budgetary decision-making, there should be avenues for increased involvement of civil society in the budgetary process as well as the inclusion of those who “will be directly affected by such policies, including people living in poverty”. In addition, each

¹ See for more information FLAC’s briefing note on Human Rights Approach to Budgeting (Oct 2014) available at <http://bit.ly/FLACHRB2014>.

² 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.7.

³ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

⁴ UN Committee on the Rights of the Child (2016) *Concluding Observations of the Committee on the Rights of the Child: Ireland*, Geneva: OHCHR, para.16.

⁵ FLAC (2014) *Fairer Budget, Fairer Society: An Analysis of A Human Rights Analysis of Budget 2015 from Irish civil society*, Dublin: FLAC. Available at <http://bit.ly/1rq5O8p>.

government department should hold a pre-budget forum similar to that which the Department of Social Protection organises for civil society.

There is also a lack of transparency surrounding the current budgetary process. For example, the Economic Management Council, which consists of the Taoiseach, the Tánaiste, the Minister for Finance and the Minister for Public Expenditure and Reform, makes important budgetary decisions without consulting with Cabinet and the Oireachtas. This makes it very difficult for those affected by cuts to engage with decision-makers and to highlight potential oversights or long-term negative consequences of short-sighted cuts.

Recommendations:

- *Introduce systematic human rights and equality impact assessments of budgetary measures in all Government departments.*
- *Provide a greater role for civil society involvement in budgetary decision-making.*
- *Ensure that the budgetary process is underpinned by human rights principles such as participation, transparency and accountability.*

For more information, please see:

- http://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf
- <http://www.flac.ie/publications/pre-budget-submission-2016/>

2. Applying human rights principles to policy-making

Concerns regarding the State's failure to meaningfully consult with civil society in policy development have been raised by United Nations (UN) Treaty Bodies and experts. During Ireland's June 2015 examination under the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights expressed concern regarding the lack of meaningful consultation with civil society and relevant stakeholders in formulating and implementing policies and legislation, which often results in such policies and legislation being less effective.⁶ Thereafter, the UN Committee recommended that the State party make the efforts necessary to consult on a regular basis with civil society and relevant stakeholders in the policymaking process, including by establishing an effective consultation mechanism.⁷

A number of independent UN human rights experts have also voiced concerns regarding lack of consultations with vulnerable and marginalised individuals and groups in policy-making. For example, the Special Rapporteur on human rights defenders has called for enhanced engagement with Travellers in order to integrate their views into public policy planning.⁸ Furthermore, the Independent Expert on extreme poverty, during a 2011 visit to Ireland, stated that "[f]ailure to ensure participation and transparency in the

⁶ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.10.

⁷ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.10.

⁸ Office of the High Commissioner for Human Rights (2013) *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, Geneva: OHCHR, p.21.

design of national policies seriously jeopardizes the State's ability to respond to its human rights obligations".⁹

FLAC shares the view of the Independent Expert that at the core of the human rights framework is an overarching requirement that all States take into consideration the principles of participation, transparency and accountability in the design, implementation and evaluation of State policies.¹⁰ These principles are integral both to ensuring effectiveness of the adopted policy and to responding to the obligations of States with regard to the rights to take part in public life, seek and receive information, and have access to effective remedies in cases of violation.¹¹

FLAC is of the firm view that human rights principles should form the underlying basis for policy-making.¹² A human rights based approach to policy-making that includes the effective involvement of civil society would help to ensure that public policy decisions are non-discriminatory and are geared at protecting and advancing human rights as well as prioritising those who are most vulnerable and marginalised.

Recommendations:

- Provide avenues for consultation with civil society organisations in policy-making.
- Take into consideration the principles of participation, transparency and accountability in the design, implementation and evaluation of State policies.

For more information on FLAC's views on this issue, please see:

- http://www.flac.ie/download/pdf/flac_submission_to_dper_on_consultation_guidelines.pdf?issuusl=ignore

3. Guillotining of Legislation

The Oireachtas must set aside adequate time for consideration of all legislation, particularly legislation which affects vulnerable and marginalised groups. For example, FLAC notes that in recent years little time has been provided to review and debate the potential significance of amendments to the Social Welfare Consolidation Act 2005. Thus, the underlying democratic principles of participation and transparency are undermined, and there is an increased risk that the most vulnerable within society will be harmed as politicians pass law in haste.

It is FLAC's view that policy-making should be open, accessible, inclusive and wide-ranging. The input of civil society and other relevant stakeholders, particularly those who are directly affected by policy decisions, provides crucial value to the political decision-making process, enhancing the quality, understanding and

⁹ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.10.

¹⁰ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.10.

¹¹ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.10.

¹² Ireland has ratified a number of regional and international human rights instruments including the European Convention on Human Rights, the UN International Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of Racial Discrimination, the UN Convention against Torture, the UN Convention on the Rights of the Child and the UN Convention on the Elimination of all forms of Discrimination against Women.

longer-term applicability of the policy initiative. Where discussions are limited, legislation is not properly scrutinised and debate and participation is curtailed.

Recommendation:

- *Ensure that adequate time is set aside for consideration of legislation.*

For more information on FLAC's views on this issue, please see:

- <http://www.flac.ie/publications/joint-submission-social-welfare-bill-2015/>

Thank you for your attention – please do not hesitate to get in contact with FLAC for any further questions.

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