



**FLAC submission in advance of
the examination of Ireland's
combined sixth and seventh
periodic reports under the UN
Convention on the Elimination of
all forms of Discrimination
against Women**

FLAC, December 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. 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.

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

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

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

Introduction

One of FLAC's key aims is to advance international human rights standards at the domestic level, including the UN Convention on the Elimination of all forms of Discrimination against Women. Accordingly, FLAC presents this submission to the UN Committee on the Elimination of all forms of Discrimination against Women for consideration in the context of its examination of Ireland's compliance with its obligations under the UN Convention, including in light of the State Party's combined sixth and seventh periodic reports pursuant to the simplified reporting procedure.

General

- **Periodic reporting**

FLAC notes the substantial delay of over nine years in submitting Ireland's combined sixth and seventh reports to the UN Committee on the Elimination of all forms of Discrimination against Women, which were originally due in January 2007. Concerns were raised on numerous occasions over the past number of years regarding the delay in submitting a state report under the UN Convention, most notably during Ireland's 2011 examination under the Universal Periodic Review mechanism.¹

FLAC underlines that periodic reporting is a key legal obligation for all states, including Ireland, and the timely access of civil society actors to the UN treaty system is a fundamental requirement for the effective protection of individuals or groups of individual rights holders.²

Recommendation: Ensure the timely submission of all future periodic reports to the UN Committee on the Elimination of all forms of Discrimination against Women.

Constitutional, legislative and institutional framework

- **Human rights and equality infrastructure**

Irish law prohibits gender discrimination and promotes gender equality in a range of areas. The Equal Status Acts 2000 – 2015 provide for the practical realisation of the principle of equality between men and women in that it prohibits gender discrimination in the provision of goods and a wide range of services, including services provided by the State such as social welfare and civil legal aid. It also prohibits discrimination in the provision of accommodation and education on nine grounds, also including gender.³ However, there is an exemption in the Equal Status Acts which limits both its

¹ Switzerland recommended that Ireland "rapidly" submit its overdue report to the UN Committee on the Elimination of all forms of Discrimination against Women. Office of the High Commissioner for Human Rights (2011) *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, p.17. See recommendation 106.52.

² Office of the UN High Commissioner for Human Rights (2012) *Strengthening the United Nations human rights treaty body system*, Geneva: OHCHR, p.20.

³ In addition, the Employment Equality Acts 1998 – 2015 prohibit discrimination in a wide range of employment and employment-related areas also on nine grounds, including gender.

application and effectiveness. Section 14 exempts anything mandated by an Act of the Oireachtas.⁴ For example any legislative provision, including any provision required by social welfare legislation or civil legal aid legislation, which discriminates against or has a disproportionately negative impact on women, falls outside the scope of the Equal Status Acts.

Recommendation: Review the exemption under the Equal Status Acts 2000 – 2015 to ensure an effective remedy is available for discrimination that has a legislative basis.

Access to Justice

- **Civil legal aid fees for victims of domestic violence**

One of the barriers facing victims of domestic violence in accessing justice is the requirement to pay financial contributions for state-funded civil legal aid. Civil legal aid services in Ireland, which are provided by the Legal Aid Board, play a vital role in ensuring that women with limited resources who have experienced domestic violence can access the protection of the legal system. In particular, civil legal aid provides women on low incomes with access to the courts for safety, protection and barring orders.

FLAC is concerned that women at risk of or who are victims of domestic violence are discouraged from using the civil legal aid scheme for financial reasons. This marginalisation can have significant risks, leaving women, who are disproportionately affected by domestic violence, in extremely vulnerable and dangerous situations.

In 2013, the minimum contribution for legal aid services provided by the Legal Aid Board increased from €50 to €130.⁵ This measure has had severe adverse implications for victims of domestic violence seeking or considering availing of state legal aid services, especially for those on low incomes. For victims of domestic violence in receipt of a basic social welfare payment, such as Supplementary Welfare Allowance, the minimum civil legal aid fee of €130 constitutes almost 70% of their weekly income.⁶ For those under the age of 25, who receive a reduced rate of social welfare, the required contribution actually exceeds their weekly income by €30.⁷

Victims of domestic violence may also need to make recurring applications for legal aid which can be very costly, especially given the 2013 rise in required financial contributions. Frontline organisations working with victims of domestic violence have reported that many people accessing their services

⁴ S. 14 of the Equal Status Acts also exempts any action mandated under EU law.

⁵ Civil Legal Aid Regulations 2013 (SI No. 346/2013).

⁶ Supplementary Welfare Allowance is a weekly allowance paid to people who do not have enough income to meet their needs and those of their families. The basic rate of Supplementary Welfare Allowance for people aged 26 and over is €186 per week.

⁷ The basic rate of Supplementary Welfare Allowance and Jobseekers Allowance for 18 to 24 year olds is €100 per week and for 25 year olds is €144 per week.

rely on state legal aid but this has become significantly less accessible. SAFE Ireland has noted that the 2013 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.⁸ Of immense concern is the fact that member organisations of SAFE Ireland have reported "making increased requests to the St Vincent de Paul Society⁹ to pay this minimum fee".¹⁰

However, even for those with greater levels of means, legal aid contributions can prove too costly. In some instances, required contributions for legal aid can reach four-figure sums. Access to justice and protection should not be dependent on the economic resources of a woman.¹¹

It is relevant to note that a system of waiver does exist which permits the Legal Aid Board to waive an applicant's legal fees where failure to do so would cause "undue hardship". While the Legal Aid Board recommends that a "sympathetic approach" be taken to an application for a waiver in domestic violence cases,¹² difficulties exist as to the operation of the waiver system in these types of cases. Some of the difficulties are outlined below:

- First, public awareness of the waiver system is low. In most instances, applicants are unaware that a system of waiver exists unless they contact a support service for victims of domestic violence. Lack of awareness of this waiver provision may deter victims of domestic violence, particularly women, from accessing the civil legal aid scheme.
- Secondly, applicants must wait for a decision in respect of their waiver application before a Legal Aid Board solicitor will file court proceedings. Sometimes victims of domestic violence may need immediate court protection and may not be able to wait the length of time required in respect of a decision on a waiver. Abolition of fees would ensure victims of domestic violence have speedier access to the courts.
- Thirdly, there is no automatic entitlement for victims of domestic violence to a waiver. Applicants must meet a high threshold in demonstrating that payment of a financial contribution will result in "undue hardship". Thus, concerns exist that victims of domestic violence may be refused a waiver and may subsequently be forced to stay in a violent situation. Abolition of fees would ensure that no woman in need of court protection would be refused legal assistance on financial grounds.

⁸ SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

⁹ St Vincent de Paul Society is a charitable organisation which assists people experiencing poverty.

¹⁰ SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

¹¹ In addition to SAFE Ireland, a number of other organisations have expressed concerns regarding the financial barrier posed by civil legal aid fees for victims of domestic violence, including FLAC, Women's Aid and the Law Society of Ireland. See FLAC (2016) *Accessing Justice in Hard Times*, Dublin: FLAC, p.18; Law Society of Ireland (2012) *Access to Justice: A Report of the Legal Aid Taskforce*, Dublin: Law Society of Ireland, p.18; Women's Aid (2014) *Submission to the Legal Aid Board Corporate Plan 2015 – 2018*, Dublin: Women's Aid, p.4.

¹² Legal Aid Board, *Administrative Procedures Handbook*, available at <http://www.legalaidboard.ie/en/Freedom-of-Information/Administrative-Procedures-Handbook-10th-Edition.pdf> [accessed 16 December 2016].

In addition, the Legal Aid Board is subject to the Public Sector Duty which requires public bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and treatment for service users, and protect the human rights of service users.¹³ In this context, it is relevant to note that several domestic and international human rights bodies have emphasised the need for legal aid schemes to be accessible and have raised concerns regarding the cost of legal aid services provided to victims of domestic violence in Ireland.

The Irish Human Rights and Equality Commission, has previously noted that affordability of legal assistance for victims of domestic violence remains an issue for those on little or no income.¹⁴ In its 2011 Concluding Observations, the UN Committee against Torture urged the State to enhance its support and funding of support services provided to victims.¹⁵ Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights expressed specific concerns regarding the “insufficient support services” for victims of domestic violence and called on Ireland “to strengthen supports, including legal aid, for victims of domestic violence.”¹⁶ Moreover, during Ireland’s May 2016 examination under the Universal Periodic Review mechanism, seven UN Member States recommended that state legal aid services for victims of domestic violence in Ireland be strengthened.¹⁷

Finally, the UN Committee on the Elimination of all forms of Discrimination against Women has stressed that certain general principles should be applicable to all legal aid systems, including that they be accessible, sustainable and responsive to the needs of women.¹⁸ In particular, the UN Committee has recommended that States parties remove economic barriers to justice by providing free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law.¹⁹

Recommendation: 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.

¹³ Section 42 of the Irish Human Rights and Equality Commission Act 2014.

¹⁴ Irish Human Rights and Equality Commission (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights*, Dublin: IHREC, p.72.

¹⁵ UN Committee against Torture (2011) *Concluding Observations of the Committee against Torture: Ireland*, Geneva: OHCHR, para. 27(b).

¹⁶ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.22.

¹⁷ Office of the High Commissioner for Human Rights (2016) *Draft report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR. See recommendations 135.98, 136.36, 136.37, 136.39, 136.40, 136.41 and 136.42.

¹⁸ UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women’s access to justice*, Geneva: OHCHR, p.15.

¹⁹ UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women’s access to justice*, Geneva: OHCHR, p.15.

National machinery for the advancement of women

- **Gender mainstreaming**

As noted above, Section 42 of the Irish Human Rights and Equality Commission Act 2014 requires public bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and treatment of service users, and protect the human rights of service users. Specifically the Act requires public bodies to identify the human rights and equality issues relevant to its functions and to devise an action plan to address those issues. For the purposes of the 2014 Act, “functions” clearly has a very wide meaning and includes any activities undertaken pursuant to a power or duty. Furthermore, the range of public bodies which come within the scope of the Public Sector Duty is very wide, and includes government departments, local authorities and universities.

In fulfilling their duties under the 2014 legislation, public bodies must consider the human rights and equality impact, including the gendered impact, of their policies, services, procedures and practices. Therefore, public authorities such as the Legal Aid Board and the Department of Social Protection are required to take a proactive approach to tackling institutional gender discrimination, and promote the mainstreaming of gender perspectives in all other functions. Such an approach has the potential to ensure that attention to the goal of gender equality is a central consideration in all activities undertaken by public bodies and to complement actions which are required under European Union law.

Recommendation: Ensure that the Public Sector Duty is utilised to promote the mainstreaming of gender equality in all areas and sectors.

- **Gender proofing of budgetary proposals**

In July 2015, the UN Committee on Economic, Social and Cultural Rights noted with concern that austerity measures had been adopted during and after the economic crisis without proper assessments of their impact on economic, social and cultural rights.²⁰ This includes retrogressive measures which adversely impacted on the economic, social and cultural rights of women.

The new Programme for a Partnership Government contains a commitment to equality and gender proof budget proposals and to draw on the expertise of the Irish Human Rights and Equality Commission to support the proofing process.²¹ According to the Programme, the aim of such proofing is to advance equality, reduce poverty and strengthen economic and social rights.²²

²⁰ 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(b).

²¹ Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

²² Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

While this commitment is welcome, it is important that gender proofing is used not just to produce gender disaggregated data which assesses whether women are disproportionately affected by budgetary measures, particularly taxation and social welfare measures, but that this information is utilised to achieve tangible, positive outcomes for women by reducing social and economic gender inequalities.

Gender impact assessments must also be used to monitor compliance with Ireland's obligations under international human rights law and be geared towards respecting, protecting and fulfilling the human rights of women. Both the UN Convention on the Elimination of all forms of Discrimination against Women and the UN International Covenant on Economic, Social and Cultural Rights place specific obligations on Ireland in this regard.

For example, the UN Convention on the Elimination of all forms of Discrimination against Women requires that the spending of public money be consistent with achieving substantive equality between women and men.²³ Additionally, the UN International Covenant on Economic, Social and Cultural Rights obliges the State to use the maximum resources available to it to progressively realise economic, social and cultural rights, including the economic, social and cultural rights of women, to refrain from taking unjustifiable retrogressive measures and to ensure minimum essential levels of economic, social and cultural rights. These obligations provide the framework for assessing whether budgetary measures are complying with international human rights law and adequately protecting the human rights of women.

More generally, equality proofing of all budgetary proposals would ensure that women experiencing intersectional and multiple forms of discrimination such as Roma women, migrant women, Traveller women and women with disabilities are better protected.

Recommendation: Ensure that all gender impact assessments consider Ireland's compliance with international human rights law, including obligations under the UN Convention on the Elimination of all forms of Discrimination against Women and the UN International Covenant on Economic, Social and Cultural Rights.

Economic and Social Benefits

- **Impact of the Habitual Residence Condition on Victims of Domestic Violence**

Migrant women who are victims of domestic violence can face particular obstacles in terms of accessing basic social welfare payments due to difficulties satisfying the Habitual Residence Condition.

The Habitual Residence Condition (HRC) is a qualifying condition for means-tested social welfare payments and Child Benefit, which was introduced in May 2004 in response to EU enlargement, in which applicants must show a sufficient connection to the State. In addition, all claimants of social

²³ United Nations Development Fund for Women (now UN Women) (2006) *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*, New York: UNIFEM.

welfare payments which are subject to the HRC must satisfy a “right to reside” test. The right to reside test seeks to ascertain whether the claimant has a lawful right to reside in Ireland. A person who does not have a right to reside cannot be regarded as habitually resident in Ireland.

In some circumstances, the immigration status of a victim of domestic violence, and their right to reside in Ireland, is derived from or dependent on that of the perpetrator. Where a relationship has broken down, and in the absence of an independent immigration status, victims of domestic violence no longer have a right to reside in Ireland and cannot satisfy the HRC. This can leave a victim of domestic violence in an extremely vulnerable and isolated situation.²⁴ Without access to a social welfare payment, a migrant woman who is a victim of domestic violence may not possess the financial resources required to successfully leave a violent relationship and may be unable to access necessary supports, such as a refuge.²⁵

In 2014, the UN Human Rights Committee noted “the existence of administrative and financial obstacles for marginalised women to access essential support services, particularly whose immigration status is dependent on their spouse or partner or who do not meet the habitual residence condition”.²⁶ The UN Committee called on the State to “take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalised groups, have access to protection against perpetrators of violence”.²⁷

Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the discriminatory effect of the HRC on women who are victims of domestic violence in accessing social security benefits.²⁸ The UN Committee recommended that Ireland review the HRC so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalised individuals and groups.²⁹

Recommendation: Review the Habitual Residence Condition so as to eliminate its discriminatory impact on victims of domestic violence.

²⁴ A victim of domestic violence whose immigration status is dependent on their spouse or partner can apply for an independent immigration status from the Irish Immigration and Naturalisation Service. If a victim of domestic violence obtains a right to residency in their own right, the Department of Social Protection then considers whether the woman is HRC compliant. For more information see Irish Immigration and Naturalisation Service (2012) *Victims of Domestic Violence: Immigration Guidelines*, Dublin: Department of Justice and Equality.

²⁵ SAFE Ireland (2013) *Report on the impact of the Habitual Residence Condition on women seeking protection and safety for themselves and their children from a domestic violence perpetrator*, Athlone: SAFE.

²⁶ UN Human Rights Committee (2014) *Concluding Observations of the Human Rights Committee: Ireland*, Geneva: OHCHR, para.8.

²⁷ UN Human Rights Committee (2014) *Concluding Observations of the Human Rights Committee: Ireland*, Geneva: OHCHR, para.8.

²⁸ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

²⁹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

- **One Parent Family Payment**

The One Parent Family Payment is a means-tested social welfare payment to support parents on low incomes who are parenting alone. Of the 215,000 lone parent families recorded as living in Ireland in 2011, over 186,000 households were headed by mothers.³⁰

Single-parent families currently have the highest consistent poverty rate of any family type in Ireland at 22.1%.³¹ In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the number of people living in consistent poverty or at risk of poverty, particularly among single-parent families.³²

Prior to April 2011, a lone parent could receive the One Parent Family Payment if they met the qualifying criteria until their youngest child reached 18 years of age. However, new measures introduced in 2012 reduced the age threshold for the youngest child for new recipients to 14 years in 2012, 12 years in 2013, 10 years in 2014 and 7 years in 2015.

Lone parents with children between the ages of 7 years and 13 years may now be entitled to Jobseekers Transitional Payment. This payment aims to support lone parents into the workforce while they have young children. While lone parents in receipt of One Parent Family Payment can qualify for Family Income Supplement, which provides extra financial support to those on low pay, lone parents in receipt of Jobseekers Transitional Payment cannot. Unlike other jobseekers payments however, lone parents are exempted from the requirement to be available for, and genuinely seeking, full-time work.

A lone parent whose youngest child is aged 14 years or more must seek and accept full-time work under the same conditions and rules that apply to single people without children, without regard for the potential need for childcare.³³

Recommendation: Reverse the cuts to the One Parent Family Payment.

- **Qualified Adult Allowance**

While on the surface the structure of the social welfare system is essentially gender neutral, the legacy of the male breadwinner system and the culture of social welfare in Ireland mean the payment structures present practical problems for women.³⁴

³⁰ Government of Ireland (2012) *Census 2011 Profile 5: Households and Families*, Dublin: Stationery Office, p.22.

³¹ Central Statistics Office (2015) *Survey on Income and Living Conditions (SILC) 2014*, Cork: CSO.

³² UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.24.

³³ In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the “very high cost of childcare services provided by private actors and the lack of affordable public childcare services” in Ireland. UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.23.

³⁴ National Women’s Council of Ireland (2003) *A Woman’s Model for Social Welfare Reform*, Dublin: NWCI, p.17.

Measures such as the Qualified Adult Allowance compromise economic independence, security and opportunity for many women.³⁵ More than 90% of Qualified Adults are women who do not have an independent entitlement to social protection payments in their own right but receive a derived payment paid to their male spouse or partner on their behalf.³⁶ Qualified adults can be invisible and may face significant obstacles in entering or re-entering the labour market. Comprehensive and disaggregated data according to gender on Qualified Adults is also lacking.³⁷

Recommendation: As part of the Public Sector Duty, conduct a comprehensive review of the Qualified Adults Allowance to understand its impact on women.

³⁵ A qualified adult is a person in respect of whom a recipient of a social security payment receives a dependent's allowance.

³⁶ National Women's Council of Ireland (2014) *Budget Directions 2015: Pre-Budget Submission*, Dublin: NWC, p.11.

³⁷ For more information see National Women's Council of Ireland and SIPTU (2012) *Careless to Careful Activation – Making Activation Work For Women*, Dublin: NWC & SIPTU.