



Submission on Proposed Principles to Guide Public Engagement on Policy and Services Development

A submission by FLAC to the Department of Public Expenditure and Reform

FLAC, October 2015

About FLAC

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

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

FLAC Policy

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

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

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Introduction

In Ireland, civil society organisations play an important role in presenting evidence for legislative and policy change on behalf of specific groups. Additionally, they identify issues of concern for disadvantaged and marginalised groups. The aim is to ensure that the development of legislation and public policy is informed by a wide range of voices in Irish society.

In recent years, however, FLAC has raised concerns regarding the lack of meaningful consultation by Government departments and public bodies developing policy, services and legislation with vulnerable and marginalised groups and those representing them. As a result, FLAC attaches particular importance to this guidance document, given the need for constructive and meaningful consultation between civil society and Government departments and public bodies in formulating and developing policies.

FLAC welcomes the opportunity to provide comments on the draft guidance and offers the following observations.

1. Updating and Replacing “Reaching Out”

According to the draft guidance, it is intended that these draft consultation principles will replace and update the current “*Guidelines on Consultation for Public Sector Bodies – Reaching Out (2005)*”¹. However, despite committing to update the 2005 guidelines, FLAC observes that the new document actually omits much of the guidance contained in “*Reaching Out*”. FLAC shares the concerns expressed by members of the Wheel² that the original guidance dating from 2005 is far more detailed and practical as compared to its proposed successor. While undoubtedly “*Reaching Out*” could be enhanced, it does, when followed, provide a solid basis for consultation with civil society in policy-making. FLAC submits that the new guidance should seek to build and improve on “*Reaching Out*” rather than leaving out part of it.

Examples of good practice from different Government departments are distinctly lacking from the new draft. The new draft contains only one concrete example as regards undertaking consultations for the purposes of policy development. FLAC favours the inclusion of more examples of good practice from different Government departments.

In addition, given that “*Reaching Out*” has been in existence for ten years, the new draft guidance should reflect on what types of consultations have and haven’t worked since 2005. Government departments and public bodies should be asked to consider the forms of consultation that have proved most effective. Such an exercise would help to ensure that future consultations adhere to best practices.

¹ Department of the Taoiseach (2005) *Guidelines on Consultation for Public Sector Bodies – Reaching Out*, Dublin: Dept. of the Taoiseach.

² FLAC is a member of the Wheel. More information on the Wheel is available at <http://www.wheel.ie/> [last accessed 8 October 2015].

FLAC is also of the view that the 2005 guidelines are far more user-friendly than the new draft consultation principles. For example, the 2005 guidance lists the strengths and weaknesses associated with each type of consultation. This form of guidance can be of practical assistance to public officials when deciding what form of consultation is most beneficial. This type of functional guidance is absent from the new draft document.

Recommendations:

- *Ensure that the draft guidance builds and improves on the 2005 guidelines, “Reaching Out”.*

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 recent 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.³ Thereafter, the 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.⁴

A number of independent UN human rights experts have also voiced concerns regarding lack of consultations with vulnerable and marginalised individuals and groups. For example, the Special Rapporteur on Human Rights Defenders has called for the Government to improve its engagement with Travellers in order to integrate their views into public policy planning meaningfully.⁵ Furthermore, the Independent Expert on Extreme Poverty and Human Rights, during a 2011 visit to Ireland, stated that “[f]ailure to ensure participation and transparency in the design of national policies seriously jeopardizes the State’s ability to respond to its human rights obligations”.⁶

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.⁷ These principles are integral both to ensuring effectiveness of the adopted policy and to responding

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.10.

⁴ 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.

⁵ 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.

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, p.10.

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.10.

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.⁸

FLAC is of the firm view that human rights principles should form the underlying basis for policy-making and that Ireland's international human rights obligations should be a primary consideration for officials when deciding whether or not to consult with civil society on policy decisions.⁹ 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:

- *Ensure that human rights principles underpin the guidance document.*
- *Ensure that public officials take into account the State's international human rights obligations when deciding whether or not to consult with civil society and other relevant stakeholders.*

3. Participation

It is FLAC's view that consultations regarding policy-making should be open, accessible, inclusive and wide-ranging. Decisions relating to participation in consultations should be transparent and particular care must be taken to include the views of vulnerable and marginalised groups. 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 longer-term applicability of the policy initiative.¹⁰

Recommendation:

- *Ensure that all those who are directly affected by a policy decision, particularly vulnerable and marginalised groups, as well as those advocating on their behalf, are afforded the opportunity to meaningfully engage in consultations.*

⁸ 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.

⁹ 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.

¹⁰ Conference of INGOs of the Council of Europe (2009) *Code of Good Practice for Civil Participation in the Decision-Making Process*, Kyiv: INGO, p.5.

4. Transparency

Transparency is one of the key pillars of a more open and people-centric government. With this in mind, states are under an obligation to ensure that all public services and programmes, particularly those affecting vulnerable and marginalised groups, are designed and implemented transparently.¹¹

FLAC is particularly concerned by the lack of transparency at the decision-making stage of policy development in Government departments. To take but one example, FLAC participates within the limited avenues currently available for engagement with the budget-making process. Despite a commitment to “*open up the Budget process to the full glare of public scrutiny...*” in the 2011 Programme for Government,¹² the budgetary process remains characterised by a lack of transparency. It is often unclear how decisions are arrived at and by whom. While the Department of Social Protection provides avenues for engagement through pre-budget forums and by accepting pre-budget submissions from civil society, it is still somewhat unclear when decisions are made, how submissions influence decision-making and what weight attaches to individual submissions.

FLAC is of the belief that a higher degree of transparency will ensure greater and more effective participation by civil society in policy development.

Recommendation:

- *Provide clear, open and accessible procedures for civil society participation at all stages of policy-making, particularly at the decision-making stage.*

5. Accountability

One major shortcoming regarding the draft guidance is that it lacks legal force. If the Government is genuinely committed to improving engagement with all relevant stakeholders, FLAC is of the view that the guidance should be placed on a statutory footing. In its current, principles-based form, compliance will largely depend on the individual departments and their willingness to constructively engage with civil society and other relevant stakeholders. In the absence of legal force, the guidance can be ignored without any repercussions. FLAC cautions that failure to address this issue may mean that the new guidance will remain largely aspirational.

Recommendation:

- *Place the guidance on a statutory footing.*

6. Structures for cooperation between civil society and public authorities

FLAC welcomes the creation of a central website which will be used as a central repository for all public consultations. The development of an automatic notification system is particularly welcome

¹¹ Office of the High Commissioner for Human Rights (2012) *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, Geneva: OHCHR, p.9.

¹² Government of Ireland (2011) *Programme for Government 2011-2016*, Dublin: Stationery Office, p.23.

and should ensure that civil society organisations and other relevant stakeholders have timely access to information regarding public consultations. Given that people with disabilities and older persons will be engaging in these consultations, it is important that this website is accessible for all.

Notwithstanding the creation of a website, FLAC is of the view that each Government department and public body should designate a focal point within each of their respective departments and bodies. This person would be responsible for liaising with civil society organisations and other relevant stakeholders in relation to the consultations with the ultimate aim of improving coordination between civil society organisations and public bodies.

FLAC also believes that this focal point should have other responsibilities such as to assist and support departmental officials in carrying out activities in line with the guidance and to disseminate information regarding the public consultations. This person may also deal with queries or complaints which civil society organisations and other relevant stakeholders may potentially have with regard to the consultations as well as to monitor and report on progress in implementing the guidance.

Recommendation:

- *Ensure that the proposed website for consultations is accessible and user-friendly.*
- *Identify a focal point within each Government department and other relevant public bodies who will assume responsibility for liaising with civil society and other relevant stakeholders.*

7. Capacity-Building and Awareness-Raising Initiatives

In order to ensure that all vulnerable and marginalised groups can meaningfully participate in all stages of the policy-making process, they must be empowered and supported. FLAC believes that Government departments and public bodies should undertake capacity-building and awareness-raising measures to ensure the effective participation of all groups who are directly affected by policy decisions.

There is a genuine lack of awareness amongst civil society organisations, particularly those working at a community and local level, regarding opportunities to engage in policy-making. Organisations operating at the grassroots level as well as vulnerable and marginalised individuals and groups throughout the country should know about and be able to take up opportunities to actively engage in policy formulation, project development and service provision. To address this, the Government should undertake awareness-raising initiatives, including through local media.

According to the UN Independent Expert on Extreme Poverty, empowering and supporting vulnerable and marginalised individuals and groups to participate in policy-making also requires capacity building measures.¹³ Similar sentiments have been expressed by the Council of Europe, which has emphasised the importance of developing “the capacity and skills of local, regional and national NGOs so that they may be actively involved in policy formulation, project development and

¹³ Office of the High Commissioner for Human Rights (2012) *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, Geneva: OHCHR, p.9.

service provision”.¹⁴ FLAC calls on the Government to undertake capacity-building measures to ensure more effective and constructive engagement from civil society in the policy-making process. Capacity-building initiatives can include workshops which explain how best to engage with Government departments and agencies in policy development.

Recommendation:

- *Undertake awareness-raising and capacity-building measures to ensure that all those who are directly affected by a policy decision, or those advocating on their behalf, can engage in the policy development process.*

8. Human Rights and Equality Impact Assessments

Consultation with civil society on policy development will undoubtedly assist in clarifying the possible impact of a policy proposal and understanding its possible unintended consequences. However FLAC submits that this task would be made considerably easier if Government departments undertook human rights and equality impact assessments when making policy decisions, particularly budgetary decisions. 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”.¹⁵

Such assessments are an important mechanism for embedding human rights and equality considerations into policy-making. They would also provide officials with a clearer picture as to who is disproportionately impacted by particular policy measures, and who is experiencing inequality or violations of their human rights as a result of specific measures. Civil society organisations and other relevant stakeholders could assist public officials in undertaking such assessments.

Recommendation:

- *Introduce systematic human rights and equality impact assessments of policy measures in all Government departments, particularly in the budgetary process.*

¹⁴ Conference of INGOs of the Council of Europe (2009) *Code of Good Practice for Civil Participation in the Decision-Making Process*, Kyiv: INGO, p.15.

¹⁵ 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.