

# **Pre-budget submission 2016**

A submission by FLAC to the Department of Social Protection

**FLAC**

**June 2015**

## About FLAC

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

## FLAC Policy

Towards achieving its 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>

For **more information**, contact us at

FLAC,

13 Lower Dorset Street, Dublin 1

T: 01 874 5690 | E: [info@flac.ie](mailto:info@flac.ie) | W: [www.flac.ie](http://www.flac.ie) | Tw: [@flacireland](https://twitter.com/flacireland)

As a human rights organisation, FLAC (Free Legal Advice Centres) has as its main aim to promote equal access to justice for all. One of our avenues of achieving this aim is by seeking greater fairness, consistency and transparency in the administration of the social welfare system.

FLAC encourages an approach to social welfare law, policies and administration that will improve the situation of people reliant on the social protection system; our vision is of a social protection system with respect for fundamental human rights at its heart.

In this light, FLAC presents this short but, we hope, useful submission to inform thinking around Budget 2016.

## Introduction

As identified by the United Nations and adopted by Ireland and the EU as well as others, social protection systems are important in respecting, protecting and promoting fundamental rights as they “make a critical contribution to the realization of human rights for all, in particular for those who are in vulnerable or marginalized situations and are trapped in poverty and subject to discrimination”.<sup>1</sup>

We outline below a number of general concerns around social protection in Ireland and then make a number of short recommendations for action. While we would like to say that submissions from previous years are now obsolete, the reality is that social protection reforms have not advanced human rights protection in recent years and therefore, our analysis and our recommendations reflect much of the content of submissions of previous years.

This year, we focus on identifying how good investment by the State via the social protection system can result in fairer outcomes that better protect people’s basic rights and at the same time yield better value for money. As has been said, in the course of speeches in Budget 2015 and elsewhere, we cannot have an economic recovery without a social recovery.

## Overall budget process

Ireland has had austerity budgets for the past seven years, and these have particularly impacted on certain groups – those most vulnerable and dependent on the State for support. FLAC has consistently highlighted that the need to cut state spending does not remove the State’s duty to ensure that such cuts do not condemn people living in Ireland to a life of destitution and degradation.<sup>2</sup> In particular, the state must continue to **respect, protect and promote existing rights** and to take into account its real and immediate duty to continually move towards the goal of **full realisation of economic, social & cultural rights, even in recession**. This legal

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<sup>1</sup> Resolution 67/164 on Human rights and extreme poverty adopted by the General Assembly in March 2013, available online at: <http://www.refworld.org/docid/51e673b84.html>

<sup>2</sup> [http://www.flac.ie/download/pdf/maintaining\\_rights\\_in\\_a\\_recession\\_final\\_27\\_july\\_2011.pdf?issuusl=ignore](http://www.flac.ie/download/pdf/maintaining_rights_in_a_recession_final_27_july_2011.pdf?issuusl=ignore)

obligation is imposed by a number of international conventions, including the International Covenant on Economic, Social and Cultural Rights under which Ireland has just been examined in June 2015.

Some of the good practice which takes place in the Department of Social Protection could be rolled out across government. The approach to budgeting has become more and more constricted and opaque, with ultimate decisions taken behind closed doors, without consultation with affected groups, impact assessments or recognition of minimum core entitlements. With valuable input from other civil society groups, FLAC with its Public Interest Law Alliance has analysed the last two budgets from a human rights perspective, with almost unanimous agreement that had government decisions been based on human rights approaches, those budgets would have been fairer for all in society and particularly for those who were most vulnerable and who suffered most in austerity budgets.<sup>3</sup>

### Minimum core

A social protection floor or minimum income standard can help address poverty and social exclusion. In a report entitled *The Human Rights Approach to Social Protection*, the UN Special Rapporteur on Extreme Poverty and Human Rights recommended that

States must ensure, at the very least, minimum essential levels of non-contributory social protection – not as a policy option, but rather as a legal obligation under international human rights law.<sup>4</sup>

This was strongly reflected in the UN Committee’s Concluding Observations issued 22 June 2015,<sup>5</sup> which while highlighting the state’s disproportionate focus on cuts in public expenditure during the recession, states at para 11 that state policies “**must also identify the minimum core content of the Covenant rights or a social protection floor and ensure the protection of this core content at all times**”. It goes on to recommend that the State consider “**instituting human rights impact assessments in its policy-making process, particularly relating to the Covenant rights.**”

### Access to service and remedies

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<sup>3</sup> See analysis of Budget 2014 at <http://pila.ie/events/archive/pila-equality-budgeting-campaign-ngo-budget-response/> and of Budget 2015 at <http://www.flac.ie/publications/report-from-flac-postbudget-seminar-fairer-budget/> as well as the briefing document on Human Rights Budgeting at <http://www.flac.ie/publications/briefing-human-rights-approach-to-budgeting/>.

<sup>4</sup> See Sepúlveda & Nyst, *Human Rights Approach to Social Protection*, available online at: <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>. This publication was published by the Ministry of Foreign Affairs of Finland.

<sup>5</sup> UN Committee on Economic, Social and Cultural Rights, E/C.12/IRL/CO/3, *Concluding observations on the third periodic report of Ireland*, issued 22 June 2015, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%20C.12%20IRL%20CO%203&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%20C.12%20IRL%20CO%203&Lang=en)

Access to justice, a fundamental human right which FLAC promotes in its work includes access to the courts and to civil legal aid, especially for those in debt. It also includes access to the social welfare decision-making structures including the Appeals Office. In addition, FLAC/PILA's work on co-ordinating a composite Parallel Report to the UN on economic, social and cultural rights in Ireland - see <http://www.ourvoiceourrights.ie/> - has identified that the difficulties of access created by bureaucracy, rigid structures and reduction in public services during the recession create a key barrier for those who are poor and unrepresented. The Social Welfare system, including the Appeals Office operates on the premise that it should be accessible to everyone without legal help. This is in fact not the case. Many of the provisions of the social welfare system are so legally complex that not even experienced decision makers understand them. How then is the applicant to understand? The lack of access to legal aid is a structural problem which inhibits a fair application of the social welfare system and ultimately complicates it. As the UN Committee's Concluding Observations state, in the recommendation at para 8, that **"the State party ensure the provision of free legal aid services in a wider range of areas, including through expanding the remit of the Civil Legal Aid Scheme."**

### **Affordable, adequate childcare**

Although child care is not an area on which FLAC work directly, the absence of adequate, affordable childcare facilities has consistently recurred in our own work and in our work on the Parallel Report to the UN<sup>6</sup> as one of the single most common reasons for people not being able to live a life in dignity. This extends from those who seek to escape from over-indebtedness through work, to lone parents struggling because of cutbacks in the One Parent Family Allowance, to limitations on women's equal capacity to work. The pre-school year is viewed as excellent but inadequate, and no special arrangements exist for children with special needs or disabilities.

Again the UN Committee on Economic, Social and Cultural Rights has recommended at para 23 that **"the State party take all necessary measures to meet the childcare needs of families, including through expanding affordable public childcare services."**

### **Housing, over-indebtedness, and social welfare**

Recently announced measures, including greater MABS supports, some access to independent oversight of personal insolvency arrangements and an improved mortgage to rent scheme, indicate that the Government has recognised the dangers arising from its failure to resolve the mortgage arrears problem thus far. From FLAC's perspective, alongside speedy implementation of the steps announced, we have concerns about protections for consumers of credit for the future, including implementation of the mortgage credit directive.

Associated issues with the mortgage arrears/ over-indebtedness problem include the inadequacy of Rent Supplement to deliver housing to many people and associated problems in landlord and tenant law which create great difficulties for both small, non-professional landlords (often who are renting to support and mortgage) and

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<sup>6</sup> See 'Our Voice, Our Rights' available at [www.ourvoiceourrights.ie/](http://www.ourvoiceourrights.ie/)

for tenants. Many of these people were also forced into insecure housing with the discontinuance of the Mortgage Interest Supplement. FLAC's concern would be that people would be able to access affordable, habitable accommodation where they could have some security of tenure.

### **Training for decision makers in the Social Welfare system**

We would submit that an investment in greater resources for training and monitoring of decision makers would build the capacity of those decision makers and lead to better, fairer first instance decisions. This would constitute an improvement for both the applicants who need the money and also for the State in reducing the number of appeals. Publication of important Social Welfare decisions would also be valuable for applicants and decision makers in expediting the process and facilitating greater transparency. This was reflected in the UN Committee's recent Observations to the state:

**(para 20). The Committee is concerned at the large numbers of social welfare appeals due to the lack of clear understanding, and consistent application, of the eligibility criteria. It is further concerned that a considerable number of initial decisions on these appeals have been revoked (art. 9).**

Bearing in mind that social welfare benefits provide a social safety net to the most disadvantaged and marginalized, the Committee recommends that the State party clarify the eligibility criteria regarding social welfare benefits as well as their application so as to avoid a large number of appeals. It further recommends that initial decisions on social welfare appeals are made in a consistent and transparent manner and that appropriate training be provided to the public officers who make such decisions.

### **Independence of Social Welfare Appeals Office**

According to objective fair hearing and human rights standards, this office is not independent of the Department of Social Protection. There would be real value for the State, particularly in the perception of the office, in ensuring it is truly independent. This would also assist the State in complying with its international human rights commitments. In addition, the decisions of the office are not available on a publicly available, searchable database. Therefore applicants cannot understand the Office's thinking or understanding of social welfare law, regulations and practice, denying them the capacity that is always available to the presenters from the Department who are regularly before the Office and have the benefit of understanding its precedents.

### **Recovery of social welfare overpayments**

This area has been of particular concern over the past year. Overpayments can arise through error – on the part of the welfare recipient or the department – or through fraud. Whatever the genesis, however, the Department approach to recovery is standard. FLAC's concern in this area is not about reclaiming overpayments but rather

about the methods and standards of proof in decisions to seek repayment and also about the risk of destitution where excessive amounts are sought for overpayment. FLAC believes there is a strong risk for those facing recovery under the current regime that the government will reduce people to destitution. Even if this is permitted under the Social Welfare (Misc Provisions) Act 2015, it does not comply with State obligations under human rights law to ensure a minimum floor in terms of the right to an adequate standard of living, to a life of dignity.

In line with our consistent proposals, rooted firmly in an equality and human rights framework, FLAC is pleased to present the following recommendations to the Minister:

**Recommendations for Budget 2016:**

- 1. The Government should take account of its binding legal commitments to respect, protect and promote human rights when making budget decisions. The Government as a whole should adopt the practices currently undertaken by the Department of Social Protection – consultation and impact assessments – to counteract the increasing opacity and secrecy of recent budgets.**
- 2. As stipulated in the UN Committee on Social Economic & Cultural Rights report, state policies should identify and protect a minimum core which would protect a social protection floor.**
- 3. Having rights in place is not enough. People must have access to them. The State should ensure equal access to all of its resolution procedures, including the provision of legal aid where necessary.**
- 4. Affordable, adequate and accessible childcare, if it were available to all in Ireland. would greatly enhance the realisation of many rights, particularly for women and lone parents and is a cross cutting issue.**
- 5. FLAC strongly urges early adoption of measures to support those with mortgage debt. In addition, the State should revisit the inadequacy of Rent Supplement and the abolition of Mortgage Interest Supplement as both have led to serious insecurity of housing.**
- 6. FLAC urges greater investment in training of decision makers to build their capacity and to lead to better, fairer first instance decisions.**
- 7. To comply with international human rights standards, to demonstrate clear independence, and to allow for fairer decisions, FLAC recommends that the Social Welfare Appeals Office be an independent office and that decisions of the office be published in a public, searchable database.**
- 8. No social welfare system should deliberately set out to leave people destitute. FLAC recommends that the provisions for recovery of social welfare overpayments be reviewed so that no one would ever be subject to repayments which would cause them to receive less than the minimum social welfare assistance payments relevant to their circumstances.**

**/Ends.**