



# Respecting Rights in a Recession

**FLAC**

July 2011

## About FLAC

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## FLAC Policy

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## 1. Introduction

Even in times of restricted resources and economic uncertainty, the rule of law, the principle of respect for the individual does not disappear. Human rights do not disappear. Rather countries and governments have to figure out how to ensure that they continue to respect, to protect and to promote fundamental human rights when problems cannot be solved by applying additional money and other resources.

Currently, Irish society faces a massive constriction of State resources. Ireland is not the first country ever to be severely constrained by financial pressure and undoubtedly, it will not be the last. Human rights law has developed some basic rules, principles and guidance to assist in the respect, protection and promotion of human rights law in times of economic trouble. These principles, set out in this paper, cover some broad categories. They include that states must take every possible step to ensure that everyone in the state has a basic level of subsistence to live in dignity and, when it is necessary to make cuts, states must take account of the impact of those cuts on the most vulnerable in their societies and make those cuts in a non-discriminatory and transparent way. Further, there is an obligation to consult in making those cuts.

These rules are not optional extras, to be considered when everything else has been taken into account. They are obligations which a country takes on when it ratifies an international human rights law treaty. States are bound to implement them. Indeed human rights law also requires states to continue to try to improve their compliance with human rights even where funds are limited.

FLAC has produced this document to identify the human rights law and principles which are applicable in this area in order to reinforce the need to maintain and progress rights in a recession and to assist in understanding how respect for people's basic dignity can be maintained even where hard and unpopular decisions have to be made and accepted.

## 2. Implementation of International Human Rights Law

By becoming a signatory to international human rights law treaties, the Irish state has committed itself to respecting, to protecting and to promoting or fulfilling the rights outlined in those treaties for every individual in the land. Because of the structure of Irish law, the majority of those treaties are not part of its normal domestic law to be invoked in the courts by individuals.<sup>1</sup> Rather, the manner in which those rights are to be implemented is left to the Government of Ireland. However, the Government is not entirely free to implement the treaties in whatever way it thinks appropriate. It is obliged by international law to take account of the substantial guidance and interpretation of the treaties<sup>2</sup> which is available from the international community.

As part of this international oversight, international committees monitor observance of the treaties, receive periodic reports from Ireland, and make recommendations to the Irish Government for the

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<sup>1</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union are exceptions to this.

<sup>2</sup> Treaties may also be called conventions or covenants.

treaties' better implementation. In addition, those committees issue General Comments in relation to the specific interpretation of a treaty, or of one or more provisions within a treaty. These general comments are complementary of each other<sup>3</sup> and are relevant for all states that have ratified a particular treaty.

### 3. Respect, protect and promote human rights.

Inherent throughout international human rights law is a state's obligation to respect, protect and fulfil the rights recognised in treaties to which it is a party. Provisions obliging states to fully realise these rights, either immediately or progressively can be found in these international instruments. In particular, rights which are recognised as economic, social and cultural rights, such as the rights to housing, health, food and water, social security or education, will all have to be realised progressively over time. On the other hand, the duty not to discriminate contained in Art 2(2) of the International Covenant on Economic Social and Cultural Rights is an immediate obligation which is subject to neither progressive realization nor the availability of resources.

The UN's Committee on Economic, Social and Cultural Rights is responsible for the interpretation of states' commitment to respect, protect and fulfil those rights contained in the International Covenant on Economic, Social and Cultural Rights<sup>4</sup>. It has clarified that the obligation to *respect* a right requires states not to interfere with existing access or enjoyment of a right and to take positive steps to ensure that existing access is maintained. The duty to *fulfil* a right requires a state to facilitate or provide a way of exercising the right where people cannot secure its enjoyment of their own accord. In facilitating access to a right, a state must pro-actively engage in activities intended to strengthen people's access to that right<sup>5</sup>. The Irish Government has emphasised in its Programme for Government 2011 that it will "require all public bodies to take due note of equality and human rights in carrying out their functions"<sup>6</sup>.

### 4. Minimum Core of obligations

Even in a time of recession, Ireland's obligation to implement the treaties it has ratified remains intact. The question of how that commitment is to be measured however can change to take account of the resources available. It was stressed in Ireland's Programme for Government 2011, that "our system of government must modernise, adapt to new financial circumstances and to start

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<sup>3</sup> UN Convention on the Rights of the Child, General Comment No 5, "General Measures of Implementation for the Convention on the Rights of the Child (2003) para 5

[http://www2.ohchr.org/english/bodies/crc/docs/GC5\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc) Accessed on 12th July

<sup>4</sup> Committee on Economic Social and Cultural Rights, *General Comment No.12. The Right to Adequate Food* U.N. Doc. E/1999/5 <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> Accessed on 25<sup>th</sup> July 2011

<sup>5</sup> Ibid para 15.

<sup>6</sup> Programme for Government 2011, page 53

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf) Accessed on 25th July 2011

to deliver better services with scarce resources”<sup>7</sup>. The international human rights community has also set parameters as to how this obligation can be met, identifying minimum benchmarks and methods for progressing rights, even with limited resources.

Under the International Covenant on Economic Social and Cultural Rights, as well as under other international human rights law treaties, Ireland has a duty to provide to every person in the land the basic level of subsistence which is necessary to live in dignity. This is known as a minimum core obligation. The minimum core obligation is interpreted by the Committee on Economic, Social and Cultural Rights as follows:

‘... (t)he Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essentials levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*<sup>8</sup>, failing to discharge its obligations under the Covenant<sup>9</sup>.

The Committee on Economic, Social and Cultural Rights describes the minimum core obligation as one which cannot be detracted from<sup>10</sup>. However, any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints within that country. Where a state seeks to excuse its performance to meet human rights obligations because of a lack of available resources, it must ‘demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations’<sup>11</sup>.

While the precise minimum core obligation will vary from state to state, the right to primary education and the right to access public educational institutions would be examples of minimum core obligations within the right to education<sup>12</sup>. Similarly, access to basic shelter and sanitation, an

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<sup>7</sup> Ibid page 3,

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)

Accessed on 25<sup>th</sup> July 2011

<sup>8</sup> Committee’s emphasis

<sup>9</sup> Committee on Economic Social and Cultural Rights, ‘*General Comment No. 3, The Nature of States Parties Obligations*’ U.N. Doc. E/1991/23 annex III at 86 (1990) paragraph 10.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

Accessed on 12<sup>th</sup> July

<sup>10</sup> Committee on Economic Social and Cultural Rights, ‘*General Comment No.14, on the right to the highest attainable standard of health*’ E/C.12/2000/4 (2000) paragraph 47;

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)

Accessed on 25<sup>th</sup> July 2011. Committee on Economic Social and Cultural Rights, ‘*General Comment No. 15, The Right to Water (Article 11 and 12)*’ U.N. Doc E/C.12/2002/11 (2002) paragraph 40.

[http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf) Accessed

on 25<sup>th</sup> July

<sup>11</sup> Committee on Economic Social and Cultural Rights, ‘*General Comment No. 3, The Nature of States Parties Obligations*’ U.N. Doc. E/1991/23 annex III at 86 (1990) paragraph 10.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>12</sup> Committee on Economic Social and Cultural Rights, ‘*General Comment No 13, The right to Education*’ U.N. Doc.E/C.12/1999/10 (1999) paragraph 57

adequate supply of water, and essential drugs have all been identified as meeting minimum core obligations within the right to health<sup>13</sup>.

## 5. Progressive Realisation

The concept of progressive realisation is noted in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights. It says that each State party to the present Covenant:

*‘undertakes to take steps, (...), especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’<sup>14</sup>.*

This recognises that a state will generally be unable to ensure full realisation of all economic, social and cultural rights all at once<sup>15</sup>. However, there is an immediate duty to move towards that goal as quickly as possible<sup>16</sup>. The duty to progressively make real the implementation of a right is flexible of necessity. It reflects the context in which a country operates and takes account of the practical difficulties involved for a country in ensuring full realisation of economic, social and cultural rights. However, recognising existing barriers to implementing a right does not take from a country’s obligation to aim for full realisation of the rights in question<sup>17</sup>.

The duty to progressively realise a right is not just about the outcome but also about the process through which decisions regarding those actions are taken. The process which leads to action should take account of its effectiveness to advance a particular human right. Participation, accountability and equality are identified as principles which are part of the duty to progressively realise economic social and cultural rights<sup>18</sup>.

## 6. Available Resources

The “maximum available resources” referred to in Article 2(1) of the International Covenant on Economic Social and Cultural Rights refers to a country’s real resources. This means more than the

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<http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument> Accessed on 25<sup>th</sup> July

<sup>13</sup> Committee on Economic Social and Cultural Rights, ‘General Comment No 14, The right to the highest attainable standard of health’ U.N.Doc.E/C.12/2000/4 (2000) paragraph 43

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>14</sup> UN International Covenant on Economic Social and Cultural Rights (1968) Article 2 (1)

<http://www2.ohchr.org/english/law/cescr.htm> Accessed 25th July 2011

<sup>15</sup> Committee on Economic Social and Cultural Rights, ‘General Comment No. 3, The Nature of States Parties Obligations’ U.N. Doc. E/1991/23 annex III at 86 (1990) paragraph 9.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>16</sup> Ibid paragraph 2.

<sup>17</sup> Ibid

<sup>18</sup> S Freedman, *Human Rights Transformed-positive rights and positive duties*, (3<sup>rd</sup> ed Oxford University Press, Oxford 2008) p.83. See also section on participation accountability and transparency below.

country's budget appropriations. The responsibility of a state to use the maximum of its available resources towards fully realising the provisions of the Covenant entitles it to receive resources offered by the international community. The phrase "to the maximum of its available resources" refers to both the resources existing within a State as well as those available from the international community through international co-operation and assistance<sup>19</sup>.

## 7. Obligation to refrain from retrogressive measures

In addition to the obligation to progress human rights to the best of a country's ability using the maximum available resources, there is also an obligation on every state to consider with special care the impact of retrogressive measures. The Committee on Economic Social and Cultural Rights states that any deliberate retrogressive measure requires the most careful consideration<sup>20</sup>. There is no specific definition of what constitutes a 'deliberate retrogressive measure' in the treaties, but the Committee on Economic, Social and Cultural Rights has made the following point:

'a general decline of living and housing conditions, directly attributable to policy and legislative decisions by State parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant'<sup>21</sup>

Even where available resources are demonstrably inadequate, states are obliged to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances<sup>22</sup>. Moreover, the obligations to monitor the extent of the realisation, or more especially of the non-realisation, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. Even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors, the most vulnerable members of society can and indeed must be protected<sup>23</sup>.

If any deliberate retrogressive measures are taken by a State that has ratified the Covenant, the state has the burden of proving that they have been introduced after the most careful consideration of all alternatives. The UN Committee will look carefully at whether:

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<sup>19</sup> Committee on Economic Social and Cultural Rights "Statement by the Committee: An evaluation of the obligation to take steps to the 'Maximum of available resources' under an optional protocol to the Covenant" (2007) paragraph 5. <http://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf> Accessed on 12th July 2011

<sup>20</sup> Committee on Economic Social and Cultural Rights, 'General Comment No. 3, The Nature of States Parties Obligations' U.N. Doc. E/1991/23 annex III at 86 (1990) paragraph 9.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>21</sup> Committee on Economic Social and Cultural Rights, 'General Comment No. 4, The Right to Adequate Housing' U.N. Doc. E/1992/23 annex III at 114 (1991) paragraph 59.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)

Accessed on 12<sup>th</sup> July 2011

<sup>22</sup> Committee on Economic Social and Cultural Rights, 'General Comment No. 3, The Nature of States Parties Obligations' U.N. Doc. E/1991/23 annex III at 86 (1990) paragraph 11.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>23</sup> Ibid

- There was reasonable justification for the action;
- Alternatives were comprehensively examined;
- There was genuine participation of affected groups in examining the proposed measures and alternatives;
- The measures were directly or indirectly discriminatory;
- The measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and
- There was an independent review of the measures at the national level<sup>24</sup>.

The United Nations Expert on the Question of Human Rights and Extreme Poverty Magdalena Sepúlveda, in a Statement following her visit to Ireland in January 2011 noted that:

“Any deliberate retrogressive measures in the enjoyment of any economic, social and cultural rights needs to be fully justified and in the context of the maximum available resources. The Government must commit to a human rights based recovery, where all economic, social and cultural rights are ensured without discrimination of any kind, in which there is equality of access to public services and where participation of civil society actors is guaranteed in all levels of decision making structures.”<sup>25</sup>

## 8. Allowing for participation, accountability and transparency

The formulation and implementation of government policies should involve full respect for the principles of accountability, transparency and participation by interested groups. The right of individuals and groups to participate in decision making should be an integral part of all policies, programmes and strategies intended to implement the obligations of governments under international human rights instruments<sup>26</sup>. Ensuring accountability, transparency and participation in decision making processes is vital to maintaining economic, social and cultural rights such as the right to adequate food<sup>27</sup>, the right to water<sup>28</sup> and the right to work<sup>29</sup>.

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<sup>24</sup> Committee on Economic Social and Cultural Rights, General Comment No 19 *The Right to Social Security* (2008) para 42 <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>

<sup>25</sup> UN Expert on Extreme Poverty, Interim Report of Visit to Ireland 10<sup>th</sup> to 16<sup>th</sup> January 2011. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E> Accessed on 12<sup>th</sup> July 2011

<sup>26</sup> Committee on Economic Social and Cultural Rights General Comment No. 18 *The Right to Work* 2005 paragraph 42 <http://tb.ohchr.org/default.aspx?Symbol=E/C.12/GC/18> Accessed on 12th July 2011

<sup>27</sup> See General Comment No.12 *The Right to Adequate Food* Committee on Economic Social and Cultural Rights 1999 paragraph 23 <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> Accessed on 12<sup>th</sup> July 2011

<sup>28</sup> See General Comment No.15 *The Right to Water* Committee on Economic Social and Cultural Rights 2002 paragraph 49 <http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94>

<sup>29</sup> See General Comment No. 18 *The Right to Work* Committee on Economic Social and Cultural Rights 2005 paragraph 42 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.GC.18.En](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En)

As Magdalena Sepulveda noted in her report on Ireland to the UN Human Rights Council on 17 May 2011:

“ Failure to ensure participation by interested groups and transparency in the design of national policies seriously jeopardizes a State’s ability to respond to its human rights obligations, undermines the effectiveness of budgetary adjustment policies, and prevents the needs of the poorest and most excluded from being taken into account<sup>30</sup>.

Among the elements that increase accountability and transparency are consistency and fairness in the application of the law and in the provision of public services that focus on individuals’ needs<sup>31</sup>. The Programme for Government 2011 promises legislation to restore and extend the remit of the Freedom of Information Act and the Ombudsman Act to cover all State and publicly funded bodies<sup>32</sup>, and states that it will “open up the budget process to the full glare of public scrutiny in a way that restores confidence and stability by exposing and cutting failing programmes”<sup>33</sup>.

## 9. Particular Economic, Social and Cultural Rights

Signatories to international human rights treaties have a core obligation to ensure the satisfaction at the very least, of minimum essential levels of each of the rights enunciated in the Covenant. This requires the country to ensure sufficient access to a social security scheme that provides a minimum level of payments to all individuals and families to enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education<sup>34</sup>. Having looked at the overview of how economic, social and cultural rights are to be implemented and maintained even in a time of recession, this paper now looks at two particular rights to identify some core obligations for states in maintaining those rights. The examples chosen are the right to social security and the right to housing. Similar comments have also been made by the oversight bodies about how other rights are to be maintained.

### 9.1 Right to Social Security

Article 9 of the International Covenant on Economic, Social and Cultural Rights states:

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<sup>30</sup> UN Independent Expert on the Question of Human Rights and Extreme Poverty, Mission to Ireland A/HRC/17/34/Add.2 (2011) paragraph 37

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf)

<sup>31</sup> *Developing and Optimising the role of the Ombudsman*. Office of the Ombudsman February 2011.

<sup>32</sup> Programme for Government 2011 page 19

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)

<sup>33</sup> Ibid page 22.

<sup>34</sup> Committee on Economic Social and Cultural Rights, General Comment No 19 *The Right to Social Security* (2008) para 59 <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>

*“The State parties to the present Covenant recognize the right of everyone to social security, including social insurance”<sup>35</sup>.*

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights<sup>36</sup>. In accordance with Article 2(1), parties to the Covenant must take effective measures, and periodically revise them when necessary, within their maximum available resources, to fully realize the right of all persons without any discrimination to social security, including social insurance<sup>37</sup>.

In order to create a favourable climate for the realisation of the right to social security, states should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider its importance, in pursuing their activities.<sup>38</sup> Ensuring public participation in decision making processes, accountability and transparency is essential.

In addition to the right to social security elaborated in the UN treaty, Ireland is a signatory to the Council of Europe’s European Social Charter. As a result, it is subject to examination by the European Committee of Social Rights (ECSR). In 2009, Ireland was held by the ECSR not to conform to its obligations under Article 12(1) of the Charter<sup>39</sup>. Article 12(1) guarantees the right to social security to workers, including the self-employed, and their dependents. The Committee said that Ireland was not in conformity with the Revised European Social Charter (the Charter) on the grounds that:

- (i) The minimum sickness benefit is inadequate
- (ii) The minimum unemployment benefit is inadequate
- (iii) The minimum survivors benefit is inadequate
- (iv) The minimum employment injury benefit is inadequate
- (v) The minimum invalidity benefit is inadequate

Payments were found to be below the threshold which put people in Ireland at risk of poverty<sup>40</sup> and therefore Ireland fell below its minimum core commitment. Because the minimum core commitment is the very least expected of a state, the ECSR was of the opinion that the State could not argue that a lack of resources permitted it to breach its obligations under the Convention.

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<sup>35</sup> UN International Covenant on Economic Social and Cultural Rights (1968) Article 9  
<http://www2.ohchr.org/english/law/cescr.htm> Accessed 25th July 2011

<sup>36</sup> Committee on Economic Social and Cultural Rights, General Comment No 19 *The Right to Social Security* (2008) para 1. <http://www.unhcr.org/refworld/docid/47b17b5b39c.html> Accessed on 25<sup>th</sup> July 2011

<sup>37</sup> Ibid para 4

<sup>38</sup> Ibid para 71

<sup>39</sup> European Committee of Social Rights, Conclusions 2009 (Ireland) Articles 3,11,12,13,14,23 and 30 of the Revised Charter, February 2010  
[http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ireland2009\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ireland2009_en.pdf) Accessed 20th July 2011.

<sup>40</sup> Note that these payments refer to social welfare benefits only and do not appear to include the payment of means-tested allowances. Benefits are those which depend on the recipient having made sufficient social insurance contributions, thus a significant proportion of those at risk of poverty who have been unemployed for a period of time have not been taken into account.

The Programme for Government has committed to maintaining social welfare rates and has to replace the One Parent Family Payment with a parental allowance which will remove current discriminations based on marriage, work, and cohabitation in an effort to remove poverty traps and progress the right to social protection within the maximum of resources available to the state<sup>41</sup>. This is an example of working within limited resources to progressively realise the fundamental human right to social protection for parents and families.

## 9.2 *Right to Housing*

The UN's Committee on Economic Social and Cultural Rights<sup>42</sup> has highlighted and elaborated particular aspects of the right to adequate housing<sup>43</sup>. These include legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.<sup>44</sup> These elements of the right to adequate housing are useful benchmarks when evaluating state conformity with its housing rights obligations.

The EU Charter of Fundamental Rights contains an important right to social and housing assistance in Article 34(3):

“In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices”.<sup>45</sup>

Article 34(3) draws on the right to protection against poverty and social exclusion (Article 30) and also draws upon the right to housing (Article 31) in the Council of Europe's European Social Charter. While Ireland has not ratified the right to housing in Article 31 of the European Social Charter, it has ratified Article 30, recognising the right to protection against poverty and social exclusion, which has a specific reference to housing. The Irish government is bound by the EU Charter of Fundamental Rights and in addition by the UN Covenant on Economic Social and Cultural Rights which recognises the right of everyone to adequate housing.

Following her mission to Ireland, the UN Independent Expert on Extreme Poverty Magdalena Sepúlveda stated that:

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<sup>41</sup> Programme for Government 2011 page 22.

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)

<sup>42</sup> <http://www2.ohchr.org/english/bodies/cescr/>

<sup>43</sup> See Committee on Economic Social and Cultural Rights General Comment No 4 on the *Right to Adequate Housing* U.N. Doc. E/1992/23 annex III at 114 (1991).

<http://www.unhcr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>

<sup>44</sup> See Committee on Economic, Social and Cultural Rights, General Comment 4 *on the Right to Adequate Housing (Article 11(1))* for a more detailed account of these elements of the right to adequate housing.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)

Accessed 20<sup>th</sup> July 2011

<sup>45</sup> EU Charter on Fundamental Rights, Article 34 (3). [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

Accessed 20<sup>th</sup> July 2011

“Ensuring that everyone in the country (Irish and non-Irish nationals) enjoys adequate accommodation is an obligation that Ireland must comply without delay, giving priority to vulnerable groups such as families headed by lone parents, persons with disabilities, older people and the homeless.”<sup>46</sup>

The Programme for Government has noted that ‘a more radical approach is needed to protect families in fear of losing their homes’. It argues that ‘making greater use of the mortgage interest supplement to support families, who cannot meet their mortgage payments, is a better and cheaper option than paying rent supplement’<sup>47</sup>. Whatever mechanism is used, the principle of maintaining adequate housing for everyone remains an obligation on the government.

## 10. Conclusion

Before it commits the state to an international human rights law treaty, the Irish government has taken a positive decision to sign the treaty. Following that, both Houses of the Oireachtas have examined the treaty and approved Ireland’s ratification of it. These careful steps mean that when Ireland takes on the obligations of a treaty, it understands the nature of the solemn commitments it has given. These carry with them a concrete obligation to ensure that human rights are protected and promoted.

Fundamental human rights are not expendable and cannot be disregarded in times of economic uncertainty. Even where resources are limited, the rights of the people living in Ireland must be maintained to the best extent possible. Reducing fundamental rights citing economic difficulties is only permitted in extreme circumstances and even then, there is a minimum level of obligation below which those who are making decisions in government cannot fall. The duty to respect, protect, fulfil and progressively realise these rights using the maximum of resources available to them requires the State to act as they have committed themselves to act in the Programme for Government, namely in “a way that is fair, balanced and which recognises the need for social solidarity”<sup>48</sup>.

This paper aims to assist in the identification of how those principles of fairness and balance can be achieved in a way that also respects international human rights law and fundamental freedoms.

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<sup>46</sup> UN Expert on Extreme Poverty, Statement following her Visit to Ireland, 10<sup>th</sup> to 15<sup>th</sup> January 2011

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E>

<sup>47</sup> Programme for Government 2011 page 43

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)

<sup>48</sup> Programme for Government 2011 page 22.

[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)