

## UPR Pre-Session on Ireland

Geneva, 6/7 October 2021

Delivered by: FLAC (Free Legal Advice Centres)

Hi, I'm Eilis Barry, Chief Executive of FLAC<sup>i</sup>.

This statement will address the promotion of equality and access to justice for marginalised groups. FLAC has made submissions in advance of each of Ireland's reviews under the UPR mechanism<sup>ii</sup>.

### Accommodation

Ireland received nine recommendations on foot of its last review in relation the inclusion of Roma and Travellers. Turkey recommended Ireland “ensure the legislation in place does not hinder nomadic customs and practices”<sup>iii</sup>.

Since then, the UN Committee on the Rights of the Child<sup>iv</sup> and the UN CERD<sup>v</sup> have also highlighted Ireland's failures in relation to the provision of Traveller-specific accommodation.

In 2019, a report from an independent review group established by the Irish Government stated that the legislation in relation to the provision of Traveller accommodation must be “overhauled”, in order to address “overcrowding” and “extremely high rates of Traveller homelessness”. The Report criticised the absence of protections in Irish law for Traveller families faced with evictions<sup>vi</sup>.

Further, the Covid-19 pandemic has had a disproportionate impact on groups such as Roma and Travellers. FLAC has raised concerns about the absence of statutory safeguards against evictions for Travellers during this period.

In addition, the strict application by local authorities of a non-statutory departmental circular<sup>vii</sup> which purports to exclude certain categories of non-Irish nationals from accessing social housing supports, creates a particular difficulty for Roma and other EEA Nationals seeking to access social housing.

FLAC recommends that Ireland should

- Implement the recommendations set out in the report of the *Expert Review Group on Traveller Accommodation*.
- Amend or replace Housing Circular 41/2012 to accurately reflect the rights of EEA nationals to social housing supports under EU law

### Social security

At Ireland's last review, Sri Lanka recommended Ireland take “effective measures to safeguard the rights and status of the unemployed and vulnerable groups, through focused social assistance and income support”<sup>viii</sup>. This has not yet happened.

In 2018, 14% of Roma adults in Ireland reported having no source of income and identified the “Habitual Residence Condition” (HRC) as a barrier to accessing social security<sup>ix</sup>. The HRC is a qualifying condition for all means-tested social security payments and Child Benefit, by which an applicant has to show a connection to the State.

A UN Independent Expert on Extreme Poverty<sup>x</sup> and the UN Committee on Economic, Social and Cultural Rights<sup>xi</sup> have both expressed concern regarding the discriminatory impact of the HRC.

FLAC recommends that Ireland should review the habitual residence condition to eliminate its discriminatory impact on access to social welfare, particularly among disadvantaged and marginalized individuals and groups.

### Legal aid

Access to legal advice and representation is necessary for vulnerable groups to challenge discrimination and assert their rights. The Department of Justice has committed to a review of the civil legal aid scheme in 2021<sup>xii</sup>.

FLAC recommend that the upcoming legal aid review

- be comprehensive and independent,
- ensures the civil legal aid system complies with its obligations under regional and international human rights instruments,
- expands the civil legal aid system to include discrimination complaints, social welfare appeals and evictions, and
- addresses ICERD concerns and recommendations.

### Equality

At its second review, Ireland also received several recommendations in relation to the promotion of equality more generally<sup>xiii</sup>.

FLAC recommends that the recently announced forthcoming review of the Equality legislation<sup>xiv</sup> would ensure amendments to

- provide for explicit prohibition of multiple or inter-sectional discrimination,
- explicitly include the functions of public authorities within the definition of the “services” in Section 5 of the Equal Status Acts, and
- ensure that an effective remedy is provided for discrimination that has a legislative basis.

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<sup>i</sup> FLAC is a voluntary, independent, legal and human rights organisation which has been promoting access to justice in Ireland for over 50 years.

<sup>ii</sup> FLAC (2021), *FLAC Submission to the Office of the United Nations High Commissioner for Human Rights: Third Review of Ireland under the UN UPR Mechanism*. Available at: <https://www.flac.ie/publications/flac-submission-to-the-office-of-the-united-nation/>

FLAC also made a written submission to the Department of Equality's consultation on Ireland's National Report available at: <https://www.flac.ie/publications/flac-submission-to-the-department-of-children-equa/>

<sup>iii</sup> Office of the High Commissioner for Human Rights (2016), *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, Recommendation 136.86. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/157/18/PDF/G1615718.pdf?OpenElement>

<sup>iv</sup> In March 2016, the UN Committee on the Rights of the Child (UNCRC) criticised "drastic reductions" in the capital budget for the provision of Traveller accommodation over a ten-year period.

See: United Nations Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, Geneva: OHCHR, para.69(c). Available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsvOufvUWRUJLHilHKqpXzXUGOtZQF0l%2B37QzAKosbh7yc40d4J3lynFaWf0Egu6J99RK6Y%2FTHjpped5r1H3f3KQliFieFkoeAPALAwKpbZz>

<sup>v</sup> In December 2019, UNCERD highlighted its concern at "the persistent underspending of available budgets by local authorities on culturally appropriate housing for Travellers".

See: UN Committee on the Elimination of Racism (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 27. Available at:

[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_COC\\_IRL\\_40806\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf)

<sup>vi</sup> Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*, page i. Available at: <https://rebuildingireland.ie/news/minister-english-publishes-the-report-of-the-expert-review-group-on-traveller-accommodation/>

<sup>vii</sup> Housing Circular 41/2012

<sup>viii</sup> Office of the High Commissioner for Human Rights (2016), *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, Recommendation 135.128. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/157/18/PDF/G1615718.pdf?OpenElement>

<sup>ix</sup> Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018), *Roma in Ireland: A National Needs Assessment*. Available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/RNA-PDF.pdf>

<sup>x</sup> 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, pp.11-12. Available at: <https://undocs.org/A/HRC/17/34/Add.2>

<sup>xi</sup> In 2015, UNCESCR specifically recommended that Ireland "review the habitual residence condition so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalized individuals and groups, and ensure the consistent application of the criteria by providing clear guidelines and training to the relevant officials".

See: 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. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement>

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<sup>xii</sup> Department of Justice (2021), *Justice Plan 2021*. Available at: [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)

<sup>xiii</sup> Ireland supported 14 recommendations in relation to addressing racial discrimination. See for example Rec 135.104: Reinforce the policies for the protection against racism.

Ireland supported several recommendations in relation to the promotion of gender equality. See in relation to employment equality, for example: Rec 135.91: Continue to take actions to address the issue of gender pay gap, improve the access to decent work for marginalised women, and ensure adequate social protection system for women in vulnerable situations, and; Rec 135.93: Adopt effective measures to increase the representation of women in the public and private sectors, especially in decision-making posts.

Ireland supported Rec 135.143: Continue to improve employment opportunities and remove barriers to employment for persons with disabilities.

Ireland supported Rec 135.119: Take further steps to address discrimination of lesbian, gay, bisexual, transgender and intersex persons in access to goods, employment and services, including healthcare.

<sup>xiv</sup> Department of Children, Equality, Disability, Integration and Youth (22 June 2021) *Press Release: Minister O’Gorman announces review of the Equality Acts*. Available at: <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>