
IHRC & Law Society of Ireland - 9th Annual Human Rights Conference

Ireland's Human Rights Record under the Spotlight *Implications of the UN Universal Periodic Review*

Session 4: Human Rights based approach to tackling poverty

Speaking Notes - Noeline Blackwell, Director General, FLAC

- Even in times of restricted resources and economic uncertainty, the rule of law must remain. Commitments made under international treaties do not end at the arrangements made with the EU/IMF bailout. They also include commitments under international human rights law.
- **Legal duties** under international human rights law:
 - Respect, protect and fulfil the rights guaranteed
 - Consistency and fairness
 - Accountability, transparency and participation
 - To a minimum core standard
 - Specific obligations under the provisions of the European Convention of Human Rights and Fundamental Freedoms
- **Article 2.1 International Covenant on Economic, Social and Cultural Rights:**

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, 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”
- **Maximum available resources.** This means real resources, which will be more than just budget appropriations. It is the resources within a state as well of those available from the international community.

- **Progressive realisation.** An immediate duty to move towards the goal of full realisation as quickly as possible (UN Committee on Economic Social and Cultural Rights, General Comment No.3). This is about the *process* through which decisions are taken as well as the outcomes achieved. Principles of participation, accountability and equality are part of this duty.
- **Obligation to refrain from retrogressive measures.** Any deliberate retrogressive measures 'require the most careful consideration' (UN Committee on Economic Social and Cultural Rights, General Comment No.3)

'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' (UN Committee on Economic Social and Cultural Rights, General Comment No.4).

Even where available resources are demonstrable inadequate, states must strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. States must continue to monitor the extent of the realisation or the non-realisation of economic, social and cultural rights, and to devise strategies and programmes for their promotion. Whether resource constraints are caused by adjustment, by recession or otherwise, the most vulnerable members of society must be protected.

'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' (UN Expert on Extreme Poverty, Interim report of visit to Ireland 10-16 Jan 2011)

- Programme for Government 2011 has a commitment to act in '*a way that is fair, balanced and which recognises the need for social solidarity*' and also recognises the need to maintain social welfare rates. Those living in poverty must be assured a basic minimum income which will not allow anyone to become destitute through the lack of appropriate state provision.
- State compliance with international law obligations will be demonstrated by:
 - Identification of basic minimum needs of every member of society;
 - Particular identification of the needs of the most vulnerable; and
 - An assessment of the potential impact of measures on society, particularly the most vulnerable.

- **European Convention on Human Rights, incorporated into Irish law by European Convention on Human Rights Act 2003.** An obligation on every 'organ of the State' to 'perform its functions in a manner compatible with the State's obligations under the Convention provisions'. The Convention contains a number of guarantees which are important in the context of social welfare entitlements and payments. These include:
 - Right to life
 - Prohibition on cruel inhuman or degrading treatment
 - Right to family and private life
 - Right to a fair hearing and effective remedy
 - Right of non-discrimination.

Those who draft policy and regulations, who are responsible for budgetary and fiscal measures, as well as those who make decisions affecting individuals are obliged to respect, protect and fulfil the rights of every person in the jurisdiction.

- **UPR recommendations** to advance a human rights based approach to tackling poverty. Selection below:

Recommendations accepted by Ireland:

- reinforce the independence and the capacity of the Irish Human Rights Commission/ Human Rights and Equality Commission to fulfil its mandate effectively in accordance with the Paris Principles by endowing it with adequate and sufficient resources (no.105. 7 & 8 & 13)
- Take the measures required to respect economic, social and cultural rights (no.105.18)
- Make available adequate budgetary allocations despite financial constraints for the continued provision and improvement of education and health services which are essential to protect the rights of the poorest and the most vulnerable members of society (no.105.56)

Recommendations under consideration by Ireland:

- Consider incorporating the right to health and housing and to sign and ratify the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (no.106.4)
- Draw up an integrated and comprehensive human rights plan of action (no.106.22)

Web Resources:

Information on the United Nations international human rights law treaties, on the reports made to and by the UN Human Rights Council under the Universal Periodic Review process and the comments of committees which monitor those treaties can all be obtained on the website of the UN's High Commissioner for Human Rights: <http://www.ohchr.org>. The general comments of the UN Committee on Economic Social and Cultural Rights are particularly helpful in identifying rights and duties in tackling poverty. This site also contains the statements of the UN Expert on Extreme Poverty, Magdalena Sepúlveda, following her mission to Ireland.

The Programme for Government 2011 may be accessed at the Department of the Taoiseach. Website reference is <http://www.taoiseach.gov.ie>

Information on maintaining and respecting rights in a recession can be accessed at FLAC's website: <http://www.flac.ie/publications/flacsheet-on-realising-rights-in-a-recession/> and <http://www.flac.ie/publications/respecting-rights-in-a-recession/>

In addition to the State's report under the Universal Periodic Review process, a number of alternative or shadow reports were also submitted. One was submitted by the Irish Human Rights Commission. This can be accessed at <http://www.ihrc.ie/publications/list/ihrc-report-to-un-universal-periodic-review-march/>. A coalition of non-governmental organisations also provided a joint report which can be accessed at www.rightsnow.ie. Many of these organisations made their own submissions which can be accessed at the organisations individual websites. FLAC's submission is to be found at <http://www.flac.ie/publications/flacs-submission-to-the-upr/> and its response to the State's report at: http://www.flac.ie/publications/flac-response-to-national-upr-report_july-2011/