



FLAC Submission to the Seanad Public Consultation Committee on Travellers; 'Towards a more equitable Ireland post-recognition'

FLAC SUMMARY STATEMENT

July 2019

FLAC welcomes the opportunity to make the submission and this opening statement to the Seanad Public Consultation Committee on Travellers. The recommendations made in the submission and this summary statement are based on FLAC's experience of the JUSTROM programme, a Council of Europe pilot programme aimed at promoting equality of opportunity and anti-discrimination for Roma and Traveller women. Within JUSTROM, FLAC supported the running of legal clinics for Travellers¹ and Roma.

ACCESS TO JUSTICE:

As part of the JUSTROM programme, we were very struck by the level and extent of unmet legal need that Travellers experience, particularly in the areas of: access to Traveller-specific housing, standards of accommodation, evictions and discrimination in access to goods and services, including licensed premises.

We believe that access to justice is essential to addressing unmet legal and is integral and essential for social inclusion. We ask that access to justice be a central foundational and/or overarching theme to this Committee's considerations.

The enforcement of rights and obligations under the Equal Status Acts is critical to access to justice for Travellers, as it prohibits a wide range of service providers, including the state, from discriminating on a number of grounds including the Traveller community ground and related grounds such as gender and the disability ground. The scope of the legislation also extends to all kinds of educational establishments, from playschools to third level, and the provision of accommodation by the state, local authorities and the private sector.

However, rights are only effective if they can be enforced. There is no legal aid available for people to bring claims of discrimination under the Equal Status Acts or the Employment Equality Acts to the Workplace Relations Commission, no matter how the complex or important the issue is, how little resources the potential complainant may have, or the capacity of the complainant to represent him or herself.

The Minister for Justice can enable the Legal Aid Board to provide legal aid in discrimination claims, simply by designating the Workplace Relations Commission, under section 27 of the Civil Legal Aid Act 1995 as amended.

¹ In relation to Travellers 40 casefiles were opened with accommodation and housing constituting 75% of them, discrimination 20% and civil cases 5%. FLAC is engaged in advocacy on behalf of 26 others (Accommodation/Housing: 18 (69.2%); Civil Issues: 5 (19.2%); Discrimination: 2 (7.7%) and Social Welfare: 1 (3.8%).

There is a misperception or lack of clarity as to the extent to which the Legal Aid Board can deal with the issues of housing. There is nothing in the Civil Legal Aid Act 1995 to stop it providing legal aid in cases dealing with the legal responsibilities of local authorities and the state in relation to housing and homelessness.

The Civil Legal Aid Act 1995 however, needs to be amended to ensure it is available in eviction cases. FLAC has furnished the Minister with an amendment which if enacted would ensure that legal aid would be available in such cases.

We also note that the number of complaints under the ESA act to the Workplace Relations Commission is reducing which is surprising and concerning given the extent of allegations of discrimination against Travellers.

The number of discrimination complaints taken against licenced premises has also decreased hugely since the jurisdiction for such claims was transferred to the District Court in 2003. While there is legal aid available in theory for claims of discrimination against licenced premises, the reality is very few claims are taken, possibly due to lack of awareness of the entitlement to legal aid, the €150 fee you have to pay to make a claim, and the risks of costs if you lose.

We would like the Committee to recommend that the Legal Aid Board would engage in an information campaign about the entitlements to legal aid in housing case and discrimination claims against licensed premises.

We also want the Committee to recommend that a targeted coordinated information campaign be carried out about the important provisions in the Equal Status Acts by bodies such as IHREC, the WRC, the Citizens Information Board and Traveller NGOS.

Critical legislative amendments:

Civil Legal Aid Act 1995

The Civil Legal Aid Act 1995 needs to be amended to ensure it is available in eviction cases and FLAC has furnished the Minister with an amendment which if enacted would ensure that legal aid would be available in such cases.

Equal Status Acts

The potential impact of the Equal Status Acts is relation to discrimination against Travellers is limited in two respects:

- It is unclear to what extent the Equal Status Acts apply to public authorities performing public functions which may not come within the definition of “services” but which may nonetheless have a great impact on lives, including the lives of Travellers for example police and prisons.²
- The scope of the Equal Status Acts need to be amended to include the functions of the State, in critical areas like policing and prisons.

Section 14 of the Equal Status Acts precludes legal actions against legislative provisions. In practical terms, this means that any action that is required on foot of legislation which discriminates against Travellers, or has a disproportionately negative impact on Travellers, for example the Criminal Trespass legislation, falls outside the scope of the Equal Status Acts and cannot be challenged under domestic equality legislation.

- Section 14 of the Equal Status Acts 2000 – 2015 need to be amended to ensure that an effective remedy is available for discrimination that has a legislative basis.

Accommodation:

- **Expert Review Group on Traveller Accommodation**

FLAC Recommends that the Seanad Committee seek a commitment from the Minister for Housing, Planning and Local Government that when the report of the Expert Review Group on Traveller Accommodation is published he will take steps to implement the recommendations without delay through legislation and any other measures necessary.

- **Standards in Traveller Specific Accommodation**

FLAC asks the Seanad Committee to recommend that the Minister for Housing, Environment and Local Government immediately review the Guidelines published in 1998 in relation to Traveller Accommodation to update guidance in relation to the design and delivery of Traveller Accommodation standards and in addition to amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites, including transient, temporary and permanent halting sites.

- **Evictions:**

Section 19C, Criminal Justice (Public Order) Act 1994;
Section 10 of the Housing (Miscellaneous Provisions) Act 1992;
The Roads Act 1993;
Planning and Development Act 2000, and
Local Government (Sanitary Services) Act 1948

² E. Barry (2015) ‘Non-Discrimination and equality’ in Making Rights Real: A Children’s Rights Audit of Irish Law, Dublin: Children’s Rights Alliance and Law Centre for Children and Young People, pp.20-21.

FLAC asks the Seanad Committee to seek ask the Minister for Justice and Equality review of all of the legislative provisions allowing for summary evictions and introduce reforming legislation that ensures that except in the most exceptional of circumstances, a family home can never be interfered with in the absence of a merits based determination by a Court, accompanied with a requirement to offer alternative appropriate accommodation to homeless families.

POSITIVE DUTY:

Section 42 of the Irish Human Rights and Equality Act 2014 introduced the Public Sector Duty and provides one of the most important national mechanisms for mainstreaming equality and human rights for Travellers.

FLAC believes that the very wide range of public sector bodies who are covered by section 42 will not be able to establish that they have complied with the duty unless they have engaged in meaningful ongoing consultation with groups representing the discriminatory grounds that are covered by the equality legislation, including Traveller NGOs. A comprehensive implementation of the public sector duty would ensure that Travellers are at the heart of public policy and procedure.

HATE SPEECH:

When Ireland signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)³ it entered a reservation in relation to Article 4 of the Convention which deal with incitement to hatred and discrimination. The CERD committee has said that the State has not provided compelling reasons for its retention⁴. The CERD Committee also reiterated its regret that Ireland has not incorporated the Convention into Irish law and restated its position from previous concluding observations that the State party should incorporate the Convention into its legal system to ensure its application before Irish courts in order to afford all individuals its full protection.⁵

FLAC requests the Committee ask the Government provide information on what purpose is served by the reservation to article 4, and consider withdrawing same.

FLAC recommends that the Committee propose the Government consider the CERD Committee's comments on the need to incorporate

³ in 1968 and ratified it in December, 2000 whereupon it became binding on Ireland in international law.

⁴ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.17

⁵ Concluding Comments of the Committee on the Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Reports, CERD/C/IRL/CO/3-4 , para.16

the Convention into the Irish legal system, and further conduct an analysis of public knowledge on the possibility of complaints being submitted by individuals and groups of individuals under Article 14 of CERD.

Further, the Committee should urge the Government to a detailed account of how, in the absence of direct incorporation, the protections under ICERD are mirrored in domestic legislation, also addressing the accessibility of any such remedies and any gaps in protection.

Fair and Accurate Treatment in the Media

Actions in defamation are expensive to pursue and the parties bear considerable risk in terms of outcome, which ultimately leads to the perception that it is a remedy for those with the means to pursue it, but not otherwise.⁶ There is a blanked exclusion of defamation proceedings from the Civil Legal Aid Act which means in effect that the protections of the Defamation Act are essentially elitist and distort the fact that the legislation not only regulates the private sphere, but is also intended to vindicate fundamental rights whether protected by the constitution or aspects of the individual's private life under the ECHR.

Further, the protection offered by the Defamation Act is limited in that it only protects an individual or a corporate entity targeted by the impugned statement, but other forms of more generalised speech, such as for example racist hate speech, against a particular group that nonetheless has the potential to damage the individual's reputation and standing in society, is not caught within its terms. The Defamation Act is inadequate to deal with statements that are racist in nature, but where the group concerned are too great in numbers for the statement to be considered to disparage any one member of the group over another. Nonetheless such statements may injure the reputation of the group in general within society, but at present no effective remedy is available to the individuals concerned.⁷

The domestic measure that is designed to deter and punish racist and other forms of hate speech - namely the Prohibition on Incitement To Hatred Act, 1989 - has been found to be limited in relation to the forms of behaviour it addresses and in any event has resulted in very few prosecutions and fewer convictions. It is understood that there has been an ongoing review of this legislation that has remained inconclusive.

⁶ Proceedings under the Defamation Act 2009 can only be commenced in the Circuit or High Court, but not the District Court. See Courts (Supplemental Provisions) Act 1961.

⁷ It may be observed in passing that this would appear to elevate the rights of individuals who come together as a corporate sole, above individuals who share a common social trait, such as their ethnicity, race or gender.

FLAC recommends that the Committee examines defamation issues in relation to prejudice and stigma faced by Travellers and further recommends that the exclusion of defamation from the Civil Legal Aid Act, 1995 be removed.

FLAC recommends that the Committee recommends that the Defamation Act, 2009 should be reviewed in tandem with the ongoing review of the Incitement to Hatred Act 1989, to ensure that a complimentary approach is taken to regulating hate speech, including the provision of accessible civil remedies to those targeted by such speech.

Racial Profiling

FLAC notes the lack of legislation proscribing racial profiling by An Garda Síochána and other law enforcement officers. The experience of the JustROM programme revealed that many Roma and Travellers perceive that their communities are disproportionately targeted by An Garda Síochána. However, there is no specific mechanism for ethnic or racial minorities to make a complaint if they consider that they have experienced racial profiling.

Recommendation:

FLAC requests that the Committee recommend the Government engage in periodic reporting outlining the monitoring of racial profiling in practice, including through the public sector duty under Section 42 of the Irish Human Rights and Equality Commission Act 2014 and in relation to any proposals to address deficits in the area,

It further recommends that consideration is given to the legislative measures that would allow individuals, or groups representing their interests to make complaints through GSOC and the WRC in relation to discrimination including discriminatory profiling that would allow for such allegations to be investigated and remedied independently.