

人权理事会  
第十七届会议

议程项目 3

增进和保护所有人权——公民权利、政治权利  
经济、社会和文，权利，包括发展权人权与赤贫问题独立专家马格达莱纳·塞普尔韦达·卡尔莫  
纳的的报告

增编

对爱尔兰的访问\* \*\*

## 内容提要

应爱尔兰政府的邀请，人权与赤贫问题独立专家马格达内·塞普尔韦达·卡尔莫纳于 2011 年 1 月 10 日至 15 日对爱尔兰进行了访问。独立专家的报告集中讨论了经济和金融危机在爱尔兰所产生的影响，以及复苏措施对于享受人权情况的影响。

独立专家认识到爱尔兰所面临的困难境况。但是，这场危机对于爱尔兰社会中最弱势的阶层影响尤其严重。独立专家重申，即使在经济困难的时候，爱尔兰对于人权方面的义务仍然适用，而复苏措施不能过于严重地冲击社会中最贫穷的阶层。

在本报告中，独立专家审视最为弱势的个人和群体享受人权、尤其是经济、社会和文化权利的情况，并对如何在爱尔兰落实基于人权的复苏而提出了具体的建议。

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\* 迟交。

\*\* 本报告的内容提要以所有正式语文分发。报告本身附于提要之后，仅以原文印发。

## Annex

### Report of the independent expert on the question of human rights and extreme poverty on her mission to Ireland

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## I. Introduction

1. At the invitation of the Government, the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, visited Ireland from 10 to 15 January 2011. During this mission, the independent expert collected first-hand information on the human rights situation of people living in poverty and experiencing social exclusion. She focused in particular on the impact of the recent economic and financial crises, and the Government's efforts to alleviate poverty and social exclusion at domestic and international levels. Her findings are documented in this report.

2. During her mission, the independent expert met with various Government authorities, including the Minister for Equality, Human Rights and Integration, and representatives of the Departments of the Taoiseach (Prime Minister), Foreign Affairs, Community, Equality and Gaeltacht (Irish language) Affairs; Social Protection; Justice and Law Reform; Health and Children; Environment, Heritage and Local Government; and Education and Skills. She also met with representatives of the Irish Human Rights Commission, the Equality Authority, the Family Support Agency, the National Disability Authority, the Training and Employment Authority (FÁS), the Irish Naturalisation and Immigration Service, and the Reception and Integration Agency, as well as the office of the Ombudsman for Children. The independent expert and her team also held meetings with representatives of the Oireachtas (Parliament); the Parliamentary Sub-Committee on Overseas Development and the Chairman of the Joint Committee on Foreign Affairs; representatives of Irish Aid; coordinators of the RAPID programme, based in Limerick; City Council; and the Dublin Homeless Consultative Forum.

3. The independent expert met with representatives of international organizations, non-governmental organizations, community activists and academic independent experts. The Independent expert also met with numerous people living in poverty and experiencing social exclusion, who shared their personal experiences.

4. The independent expert thanks the Government of Ireland for its invitation and for the extensive and full support provided to her mission. She also extends her thanks to the departments and agencies for their efforts to provide her with the information and materials she needed, and to the civil society organizations and individuals for their substantial contribution to the mission.

## II. The legal and institutional framework

5. The 1937 Irish Constitution guarantees a number of "fundamental rights"; primarily traditional civil and political rights such as equality before the law (art. 40(1)), the right to life, and freedoms of expression, assembly and association (art. 40(6)), as well as family rights (art. 41), property rights (art. 43), and the right to education (art. 42). Additionally, the Constitution refers to "directive principles of social policy," which represent a commitment to realizing social justice. However, according to the Constitution, these "directive principles" should guide the making of laws and "shall not to be cognisable by any Court under any of the provisions of this Constitution" (art. 45).

6. In addition to the rights explicitly provided for in the Constitution, Irish courts have identified a number of rights which, although not expressly referred to, are nonetheless implied by the Constitution, such as the freedom from torture,<sup>1</sup> the right to privacy<sup>2</sup> and the

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<sup>1</sup> *The State (C.) v. Frawley* [1976] IR 365.

right to earn a livelihood.<sup>3</sup> However, Irish courts have adopted a restrictive view of the role of the judiciary in relation to economic, social and cultural rights, in light of the constitutional “separation of powers” doctrine.<sup>4</sup>

7. Regardless of the limited protection accorded to economic, social and cultural rights in the Constitution, Ireland has voluntarily assumed several obligations under international law by signing and ratifying human rights treaties.<sup>5</sup> Considering that under the Irish Constitution, international treaties do not have direct applicability unless they have been transposed into legislation by the Oireachtas,<sup>6</sup> the independent expert calls on the Government to ensure that all rights protected under international human rights treaties, in particular economic, social and cultural rights, are given full effect in domestic law. The independent expert reminds Ireland that, given the character of international human rights obligations and the principle of good faith elaborated in the Vienna Convention on the Law of Treaties, it should comply with its treaty obligations in all spheres of activity, at the national and international levels, whether or not the specific wording of the treaty has been incorporated in domestic laws.

8. The independent expert stresses the need for Ireland to further its human rights commitments by ratifying and incorporating into domestic law international treaties to which it is not yet a party, such as the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The independent expert commends Ireland for putting in place several legislative reforms and institutional arrangements to protect the human rights of the Irish people, such as the Civil Aid Act (1995), the National Human Rights Commission (2000), the Equality Authority and Equality Tribunal, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, and the Ombudsman Commission (2007) of the Garda Síochaná (Police Service). These initiatives are crucial for the protection of those living in poverty, although there is still much room for improvement.

10. The legal aid scheme provided for under the Civil Aid Act (1995) plays an important role in enabling people living in poverty to access affordable legal assistance. Nevertheless, the independent expert is concerned that several areas of law that are particularly relevant for people living in poverty, such as eviction proceedings and local authority housing issues, are not included in the Act. The legal aid scheme does not provide for representation before the Employment Appeals Tribunal or the Social Welfare Appeals Office. The independent expert recommends that the Government consider including these tribunals in the legal aid scheme, as legal representation before them is vital for those living in poverty.

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<sup>2</sup> *Kennedy & Arnold v. Ireland* [1987] IR 587.

<sup>3</sup> *Cafolla v. O'Malley* [1985] IR 486.

<sup>4</sup> See for example, *Sinnott v. Minister for Education* [2001] 2 IR 545, and *T.D. v. Minister for Education* [2001] 4 IR 259.

<sup>5</sup> Namely, the International Covenant on Economic, Social and Cultural Rights, European Social Charter (revised), International Convention on the Elimination of all Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of the Child (CRC).

<sup>6</sup> Constitution of Ireland, art. 29.6.

11. The independent expert is concerned that recent budgetary cuts have affected the Irish Human Rights Commission (IHRC), the Equality Authority (the main statutory body tasked with monitoring the implementation of equality legislation<sup>7</sup>), the Ombudsman for Children and the National Disability Authority. These cuts have substantially reduced Ireland's capacity to protect the most disempowered segments of Irish society at a time when they are particularly susceptible to violations of their rights, and will have a negative impact on their enjoyment of economic, social and cultural rights in the long-term. The Government should take all measures to provide these institutions with adequate resources to enable them to efficiently and effectively exercise their duties and functions, which become even more significant during times of crisis.

12. The independent expert is also concerned about the dismantling of the Combat Poverty Agency, which played a key role in increasing awareness and understanding of poverty, and influencing government policies. While this agency was integrated into the Social Inclusion Division of the Department of Community, Equality and Gaeltacht Affairs, the Government must ensure that the full range of the agency's functions is transferred to the new division. In particular, the dissolution of the agency should not result in a reduction in the availability of independent research and evaluation of Government policies.

### III. Poverty in Ireland

13. Since 1997, Ireland has been implementing a strategic approach to alleviating poverty and social exclusion. At the time of the independent expert's visit, the strategy was guided by the National Action Plan for Social Inclusion 2007-2016 (NAP Inclusion), the National Development Plan 2007-2013, and the National Social Partnership Agreement, "Towards 2016". Together, these plans set out a coherent and comprehensive programme of action to address poverty and social exclusion, while concentrating on a small number of high-level goals targeting long-standing social problems using a life-cycle approach. The independent expert welcomes these comprehensive plans, which were prepared in consultation with social partners (particularly Towards 2016). While the independent expert acknowledges that these strategies may need to be adapted to take into account the worsening economic situation, she encourages the Government to ensure as a minimum that the 23 high-level goals of Towards 2016 continue to be the primary target for its policies. It is essential that significant progress in the implementation of these goals continues and is periodically measured, even if full implementation of the goals is delayed due to current financial constraints.

14. The independent expert based her assessment of Ireland on the concept of poverty used by the Government: "people are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally."<sup>8</sup> This definition refers to a relative concept of poverty that sets the threshold for assessment. Obviously, different countries have different levels of resources and their different circumstances must be taken into account when assessing efforts to combat existing levels of poverty and social exclusion. To assess compliance with economic, social and cultural rights obligations, the level of scrutiny for developed States, such as Ireland, is higher than for middle-income or low-income countries.

15. There are a number of indicators to measure progress in reducing poverty and social exclusion. The best known indicator at the European level is the "at risk of poverty" rate

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<sup>7</sup> Employment Equality Act (1998), Equal Status Act (2000), and Equality Act (2004).

<sup>8</sup> NAP Inclusion 2007-2016.

that measures the proportion of people receiving income at levels below 60 per cent of the median income. The officially approved measure used in Ireland is “consistent poverty” which identifies the proportion of people with an income below 60 per cent of the median income who are deprived of two or more goods or services considered essential for a basic standard of living in Ireland. The consistent poverty measure clearly identifies those who are most vulnerable, and therefore are the primary concern of the independent expert.

16. According to the latest Survey on Income and Living Conditions (SILC),<sup>9</sup> in 2009, the percentage of people “at risk of poverty” in Ireland was 14.1 per cent, while the percentage of people in “consistent poverty” was 5.5 per cent, an increase of 1.3 percentage points from the previous year.<sup>10</sup> The most notable change in 2009 was the increase in the number of people experiencing two or more forms of deprivation, rising from 29.3 per cent in 2008, to 38.8 per cent in 2009.<sup>11</sup>

17. The target set by the NAP Inclusion is to reduce the number of those experiencing consistent poverty to between 2 to 4 per cent by 2012, with the aim of eliminating consistent poverty by 2016. The independent expert welcomes the fact that the draft national reform programme for Ireland under the Europe 2020 Strategy for recovery from the global economic and financial crises adopts this target.<sup>12</sup> During the visit, the Government reiterated that the targets in the NAP Inclusion remained a Government priority.

#### IV. Protecting human rights in times of budgetary constraints

18. For many years Ireland benefited from significant economic growth, enabling the government to make sustained investments in the social protection system and significantly reduce the prevalence of poverty. Since 2007, however, growth has slowed dramatically due to a number of factors related to the global economic and financial crises, such as the collapse of the Irish construction sector and associated property bubble, the collapse of the banking system, and the subsequent over-commitment of State resources to the recapitalization of Irish banks.<sup>13</sup> Ireland’s economic and financial crises have wrought havoc on the country, with grave implications for the Irish people, increasing numbers of whom are unemployed and living in poverty and social exclusion. By the end of 2010, it was expected that Ireland would maintain an underlying deficit of 11.7 per cent of GDP.<sup>14</sup> Undoubtedly, Ireland faces real challenges in meeting the commitments of its poverty reduction strategies and improving levels of enjoyment of economic, social and cultural rights, particularly by the most vulnerable in Irish society.

19. In order to address the serious impact of the crises, Ireland has agreed to an assistance programme (loan) provided by the European Union (EU) and the International Monetary Fund (IMF), as part of which, it is required to take serious steps towards rectifying Ireland’s budget imbalances. Accordingly, in November 2010, the Government laid out a National Recovery Plan for 2011-2014 (NRP), which proposed a range of budgetary adjustments designed to reduce the annual deficit to less than 3 per cent by 2014.

<sup>9</sup> Central Statistics Office (CSO), *Survey on Income and Living Conditions 2009*, November 2010 (hereafter SILC 2009).

<sup>10</sup> SILC 2009, p. 77.

<sup>11</sup> SILC 2009, p. 59.

<sup>12</sup> Draft submitted to the European Commission, December 2010, p. 20.

<sup>13</sup> National Economic and Social Council, “Ireland’s Five-Part Crisis: An Integrated National Response,” No. 118, March 2009, p. ix.

<sup>14</sup> National Recovery Plan 2011-2014, p. 7.

The adjustments were to be front-loaded, with the Government intending to undertake 40 per cent of the adjustment in 2011. Two-thirds of all budgetary adjustments will take the form of reductions in public expenditure; one-third will be comprised of tax- and revenue-raising measures.<sup>15</sup>

20. On 7 March 2011, the new Government published their Programme for Government and National Recovery 2011-2016 (PGNR), to guide Ireland's economic and social recovery from the crises. The PGNR sets out a program of adjustments and policies, introducing a number of new initiatives and retaining some of the previous recovery policies. The PGNR indicates that the Government has chosen to delay the achievement of a 3 per cent deficit to 2015<sup>16</sup> and to seek the renegotiation of the EU/IMF loan, particularly the applicable interest rate.

21. From a human rights perspective, many of the recovery measures proposed and pursued in successive budgets and recovery plans are concerning. While human rights do not dictate exactly what policy and budgetary measures States should pursue, such measures must comply with States' international human rights obligations. Human rights are not a policy option, dispensable during times of economic hardship. It is vital, therefore, that Ireland immediately undertakes a human rights review of all budgetary and recovery policies and ensures that it complies with the following fundamental human rights principles.

#### A. Using the maximum resources available

22. States must devote the maximum available resources to ensure progressive realization of all economic, social and cultural rights by its population, as expeditiously and effectively as possible.<sup>17</sup> According to the Committee on Economic, Social and Cultural Rights (CESCR) (general comment No. 3, para. 12), this is so even during "times of severe resources constraints whether caused by a process of adjustment, economic recession, or by other factors."

23. Despite its economic troubles, Ireland remains an affluent country with a relatively high GNP per person. An assessment of whether or not a State is using the maximum available resources to ensure compliance with economic, social and cultural rights obligations depends on how the State generates and mobilizes resources. In this context, the independent expert is concerned about the low level of taxation in Ireland, indeed lower than most other European countries.<sup>18</sup> Low levels of domestic taxation revenue can be a major obstacle to a State's ability to meet obligations to realize economic, social and cultural rights. The Government must ensure that the recovery policies, which to date have mainly focused on instituting cuts to public expenditure without significantly altering the taxation rate,<sup>19</sup> are the most effective means of protecting the economic, social and cultural rights of the population, particularly the most disadvantaged groups in society.

24. While the State is entitled to decide the scale and pace of adjustments, the independent expert notes that seeking to achieve adjustments primarily through expenditure cuts rather than tax increases might have a major impact on the most vulnerable segments

<sup>15</sup> NRP, p. 5.

<sup>16</sup> PGNR, p. 16.

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights, art. 2.

<sup>18</sup> Ireland's total tax take is around 30 per cent of GDP. The only countries in the EU-27 with a lower percentage of GDP in tax revenue are Latvia, Slovakia and Romania. See *Taxation Trends in the European Union* (Eurostat, 2010), pp. 208-211 and 292.

<sup>19</sup> PGNR, p.16.

of society. Reductions in public expenditure affect the poorest and most vulnerable with the most severity, whereas some increase in taxation rates could place the burden on those who are better equipped to cope. It is critically important that Ireland adopt taxation policies that adequately reflect the need to harness all available resources towards the fulfilment of its economic, social and cultural rights obligations, while avoiding measures that might further endanger the enjoyment of human rights by those most at risk. By increasing its tax take, Ireland would decrease the need for cuts to public services and social protection, and thereby help to protect the most vulnerable from further damage.

25. Taxation reform that comes in the form of cuts, exemptions and waivers may also disproportionately benefit the wealthier segments of society, and discriminate against those living in poverty. In this respect, the independent expert welcomes some of the policy commitments in the PGNR that would ensure progressive taxation.<sup>20</sup>

26. The independent expert welcomes the efforts of the new Government to seek a reduction of the interest rate of the EU/IMF loan. A reduction in the interest rate would increase the funds available to Ireland to protect those most in need. The independent expert reminds member States of the European Union that, according to their obligations under the International Covenant on Economic, Social and Cultural Rights, they must do everything possible to ensure that their lending policies do not have a detrimental impact on the enjoyment of the Covenant's rights by those living in poverty in the concerned country.<sup>21</sup> She calls on members of the European Union to seriously consider acceding to Ireland's request for a reduction in the interest rate.

## **B. Ensuring minimum essential levels of economic, social and cultural rights**

27. As a State party to the International Covenant on Economic, Social and Cultural Rights, Ireland has an immediate minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights.<sup>22</sup>

28. This principle obliges Ireland to ensure that any programmes or policies which are integral to delivering essential services (e.g. health care and social assistance) are protected, to the greatest extent possible, from reduced expenditure. In this context, reductions to disability services, community and voluntary services, and Traveller supports, as well as cuts to social protection, all have the potential to impede the delivery of essential services to the most vulnerable.

29. Even during times of severe resource constraints, Ireland must demonstrate that every effort has been made to use all resources that are at its disposal, in an effort to satisfy, as matter of priority, minimum essential levels of human rights.<sup>23</sup>

## **C. Avoiding deliberately retrogressive measures**

30. Deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are, prima facie, a violation of the Covenant.<sup>24</sup> In this context, the

<sup>20</sup> PGNR, p. 16.

<sup>21</sup> See for example, CESCR general comment No. 14, para. 39.

<sup>22</sup> CESCR, general comment No. 3, para. 10.

<sup>23</sup> E/C.12/2007/1, paras. 4 and 6; see also CESCR, general comments No. 3, para.12; No. 12, para. 28; and No. 14, para. 18.

<sup>24</sup> See for example, CESCR, general comments No. 3, para. 9; and No. 4, para.11.



independent expert notes with concern the recent drastic budgetary reductions to, inter alia, the Department of Health and Children, the Office of the Minister for Children and Youth Affairs, Education and Skills, Equality Proofing, Disability Projects, and the Community and Voluntary Sector. These reductions have the potential to significantly undermine the effective and efficient functioning of health and education services and the social protection system, all of which are crucial for providing minimum essential levels of enjoyment of human rights, and protecting the rights of the poorest and most vulnerable members of society.

31. The independent expert welcomes the new Government's commitment to overturning the reduction in the minimum wage. Any reduction in the minimum wage has the potential to have wide-ranging detrimental ramifications for the poorest and most excluded, and thus would be at great risk of constituting a retrogressive measure in violation of human rights.

#### **D. Ensuring non-discrimination and equality**

32. Ireland must ensure enjoyment of human rights equally and without discrimination of any kind. This is a fundamental pillar of the human rights framework. The scarcity of resources in times of economic hardship is not an acceptable justification for failing to implement the duty of non-discrimination, which must take precedence, both formally and substantively, in all recovery measures. These principles require Ireland to take special and positive measures to protect groups in society that have suffered from structural discrimination and to diminish or eliminate conditions that cause or help to perpetrate discrimination.<sup>25</sup>

33. In the Irish context, despite a strong body of equality legislation, several groups remain particularly vulnerable to discrimination and exclusion, including single mothers, children, Travellers, persons with disabilities, migrants, asylum-seekers and the homeless. In accordance with the human rights framework, Ireland should be particularly mindful that policies do not exacerbate the situation of such groups, and should take positive measures to help these vulnerable segments regain their equal footing with the rest of the society.

34. A number of recent measures are concerning in this respect, especially reductions in child benefits and benefits for job seekers, carers, single parent families, persons with disabilities and blind persons. The impact of these measures will be exacerbated by funding reductions for a number of social services which are essential for the same vulnerable people, including disability, community and voluntary services, Travellers supports, drug outreach initiatives, rural development schemes, the Revitalising Areas by Planning, Investment and Development (RAPID) programme and Youthreach.

35. By adopting these measures, Ireland runs a high risk of excluding those most in need of support and ignoring the needs of the most vulnerable. In particular, due to multiple forms of entrenched discrimination, women are especially vulnerable to the detrimental effects of reductions in social services and benefits. The independent expert notes the commitment in the PGNR to refrain from further reducing social protection benefits,<sup>26</sup> but urges the State to take immediate steps to put in place protections to ensure that the situation of the most excluded and disadvantaged groups do not deteriorate further as a result of these measures.

<sup>25</sup> See for example, Convention on the Elimination of All Forms of Discrimination against Women, art. 4.1; International Convention on the Elimination of all Forms of Racial Discrimination, art. 2.

<sup>26</sup> PGNR, p. 52.

## **E. Allowing for participation, transparency and accountability**

36. At the core of the human rights framework is an overarching requirement that all States take into consideration the principles of participation, transparency and accountability in the design, implementation and evaluation of State policies.<sup>27</sup> These principles are integral both to ensuring effectiveness of the adopted policy, and responding to the obligations of States with regard to the rights to take part in public life, seek and receive information, and have access to effective remedies in cases of violation.

37. It is of real concern that Ireland did not undertake any meaningful efforts to ensure a broad national dialogue, with effective and meaningful participation of civil society and members of the public, when formulating its budgetary responses to the crises, and entering into the EU/IMF loan. This is particularly so given that a number of well-designed participatory mechanisms are already in place in Ireland which allow for the voices of the most vulnerable to be taken into account in the formulation of policy. Failure to ensure participation and transparency in the design of national policies seriously jeopardizes the 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.

38. The independent expert welcomes the new Government's commitment to making the budget process fully transparent and open to public scrutiny going forward, and encourages the utilization, support and strengthening of permanent structures and pathways for consultation with individuals, civil society, trade unions, community organizations, grassroots movements, and the academic community. She also urges the Government to reverse reductions in funding to the voluntary sector, and local and community development programmes, which further impede participation and thus compromise Ireland's compliance with human rights obligations.

## **F. Providing international assistance and cooperation**

39. State parties to the International Covenant on Economic, Social and Cultural Rights have a clear collective obligation to provide international assistance and cooperation towards the realization of economic, social and cultural rights. Developed States have a particular obligation to do so.<sup>28</sup> While there is no concrete legal requirement for States to provide any specific type or amount of overseas development assistance (ODA), States have repeatedly affirmed their commitment to achieving ODA of 0.7 per cent of GNP, as an initial objective. The successful achievement of the target should not be an excuse for those States with available resources to evade their ongoing obligations regarding international assistance and cooperation. Additionally, States must make efforts to increase their ODA, even during times when resources are constrained.

40. The independent expert commends Ireland for its impressive efforts to comply with its international assistance obligations. Irish Aid, the programme which administers the provision of Irish ODA, has a laudable reputation in the international donor community.<sup>29</sup> The independent expert welcomes the strong focus of Irish Aid programmes on social infrastructure and social protection initiatives, but recommends that Ireland strengthen its

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<sup>27</sup> For further information on how to operationalize these principles, see previous reports of the mandate available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx>.

<sup>28</sup> CESCR, general comment No. 3, para. 14.

<sup>29</sup> OECD, *Development Assistance Committee Peer Review – Ireland*, 2009, p. 14.

ODA provision by further incorporating human rights principles into its policy guidelines and strategies.

41. The great value that Irish society accords to international development assistance is reflected in the considerable efforts to increase Ireland's investments in ODA, which is now equivalent to 0.53 per cent of its gross national product (GNP).<sup>30</sup> In light of the important contribution made by Irish Aid, it is unfortunate that there has been a reduction in the budgetary allocation to ODA.<sup>31</sup> However, the independent expert welcomes the Government's commitment to continue to work towards the achievement of 0.7 per cent ODA by 2015.<sup>32</sup>

## V. Measures that pose a potential threat to the human rights of the most vulnerable

42. The independent expert recognizes the serious economic and financial difficulties that Ireland confronts at this time. However, these difficulties cannot be used as an excuse to disregard human rights obligations or prioritize other issues over the realization of human rights. The following measures may pose a specific threat to the enjoyment of human rights by the most vulnerable sectors of society.

### A. Eroding the social protection system

43. Ireland must be commended for its considerable efforts over the last decade to expand and improve the social protection system, which encompasses both contributory payments and non-contributory social assistance. From 2000 to 2009, total social welfare expenditure in Ireland increased more than three-fold. The beneficial impact of this on the prevalence of poverty and exclusion in Ireland is demonstrably clear: in 2009, social transfers decreased the number of people at risk of poverty by 69 per cent, and around one third of all people in Ireland were benefiting from some form of social transfer.<sup>33</sup>

44. The vital role that social protection systems play in facilitating the enjoyment of multiple economic, social and cultural rights has been detailed extensively by the independent expert in her previous reports,<sup>34</sup> and the importance of comprehensive social protection systems in overcoming the impact of the global economic and financial crises is elaborated at length in the independent expert's main report to the Human Rights Council (A/HRC/17/34). Reductions in the levels of social protection benefits will impede Ireland's ability to comply with its legally binding human rights obligations. By undermining social protection, the Government limits the enjoyment of minimum levels of economic, social and cultural rights by all groups in society.

45. The independent expert welcomes the indication in the PGNR that the Government will not further reduce the level of social protection benefits. She also calls on the Government to review some of the previous cuts in social protection and to address some pre-existing features of the system that restrict the ability of the poor and disadvantaged to enjoy their human right to social security. Of utmost concern is the requirement that many beneficiaries of social transfers must be "habitually resident" in Ireland in order to qualify

<sup>30</sup> Irish Aid, *Annual Report 2009 – Focus on Poverty and Hunger*, p. 5.

<sup>31</sup> NRP, p. 125; PGNR, p. 58.

<sup>32</sup> PGNR, p. 57.

<sup>33</sup> SILC 2009, pp. 5-6.

<sup>34</sup> See for example, A/HRC/11/9, A/HRC/14/31, A/64/279 and A/65/259.

to receive benefits.<sup>35</sup> The habitual residency status requirement represents a considerable obstacle for members of vulnerable groups, particularly people experiencing homelessness, Travellers, asylum-seekers and refugees, migrant workers and returning Irish migrants, to access services to which they are entitled. Any unfair exclusion from the protection of social transfers is unacceptable from a human rights perspective.

46. The independent expert notes the Government's decision to amalgamate employment and training services and social protection measures under an all-inclusive National Employment and Entitlements Service within the Department of Social Protection, replacing the Irish National Training and Employment Authority (FÁS).<sup>36</sup> It is vital that the Government ensures that this Service is designed and implemented from a human rights perspective, such that it improves beneficiaries' access to assistance and does not create further administrative barriers to claiming their entitlements. The independent expert recommends that the Government ensure widespread consultation with beneficiaries when establishing the Service in order for it to adequately respond to their needs.

47. The independent expert is concerned about the lack of standard implementation of eligibility criteria in the social protection system, which results in a large number of appeals to the Social Welfare Appeals Office being ultimately decided in favour of the appellant.<sup>37</sup> The transparency of the social protection system should be enhanced so that beneficiaries have access to clear information about the criteria and process by which decisions are made. The decisions of the Social Welfare Appeals Office should be published in a form which allows for broad dissemination and understanding among existing and potential beneficiaries. Efficiency in making and publishing decisions should be a priority, thus the Government's commitment to clearing the backlog of appeals pending before the Office is a welcome move.

## **B. Undermining public service delivery**

48. While reforming the public service to ensure that resources are utilized effectively and services delivered efficiently is an essential measure, particularly in times of crisis, States must ensure that such measures do not impact on the quality and availability of services provided to the most vulnerable segments of society.

49. The independent expert stresses that considerable reductions in public sector staff and wages may severely impede the delivery of social services. Limited or decreased staff numbers, and reduction in remuneration to the providers of public services, particularly education and health care, could drastically impact on individuals' ability to easily and effectively access such services. These measures may impact disproportionately on people living in poverty, particularly those in rural areas and the most disadvantaged, who already face numerous barriers in accessing health care and education services. By adopting such policies, Ireland may jeopardize its ability to enable the widest possible enjoyment of economic, social and cultural rights, and runs a risk of violating the prohibition against unjustified retrogressive measures.

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<sup>35</sup> Social Welfare Consolidation Act 2005, sect. 246.

<sup>36</sup> PGNR, p. 8.

<sup>37</sup> In 2009, 48.2 per cent of appeals were finalized in favour of the appellant. See Social Welfare Appeals Office, *Annual Report 2009* (June 2010), p. 2.

### C. Regressive taxation policies

50. As described above, the Government must ensure that taxation policies protect the most vulnerable from further disadvantage and do not take a disproportionate toll on those already experiencing poverty and exclusion. The independent expert notes with concern the introduction of the Universal Social Charge.<sup>38</sup>

51. While the independent expert encourages Ireland to rethink the extent to which taxation revenue is maximized in order to provide for the realization of economic, social and cultural rights, the Government must be vigilant in balancing the need to increase taxation revenue with its responsibilities to protect the most vulnerable and prevent against further engenderment of inequality. The independent expert welcomes the commitment of the new Government to review the Universal Social Charge and reduce some tax benefits, as well as ensure implementation of a minimum effective tax rate for very high income earners.<sup>39</sup>

### D. Adopting employment activation policies

52. Widespread unemployment has been one of the most harmful consequences of the economic and financial crises in Ireland. By January 2011, 13.4 per cent of the population of Ireland were unemployed, 116,400 more people than in January 2009.<sup>40</sup> This drastic increase has had many negative ramifications for Ireland's economy and society, including a marked enlargement in the number of people relying on unemployment benefits and other forms of income support provided by the social protection system.

53. As a means of addressing the added burden on public expenditure generated by increased unemployment, Ireland has taken measures to implement new, and scale-up existing, employment and training activation schemes that require participants to participate in community employment or training programs in order to receive unemployment benefits. While the independent expert welcomes the Government's efforts to tackle unemployment by addressing skills development and reinserting people into the labour market, she reminds the Government that employment activation policies must be implemented from a human rights approach.

54. States should recall the obligations of non-discrimination and equality which oblige them to ensure that activation policies do not represent a larger burden to certain individuals or groups in society, such as single parents and persons with disabilities. This is particularly important when individuals are required to enter the job market in times of recession and high unemployment. The State must also ensure that vulnerable groups have equal access to training programmes, and that gender concerns are taken into account. Considering that women undertake a disproportionately large share of child care and household tasks, measures must be in place to ensure that they are not unjustifiably excluded from programmes. Activation policies should be designed to increase the participation of women in the labour market, while enabling them (in particular, single mothers) to balance employment and parenting. Employment schemes and training programmes must provide child-care and after-school facilities. Furthermore, activation policies should be complemented by participatory mechanisms through which individuals can provide feedback and input. Information about activation policies must be widely

<sup>38</sup> NRP, p. 93; and PGNR, p. 16.

<sup>39</sup> PGNR, p. 16.

<sup>40</sup> CSO, *Live Register*, January 2011, p. 6.

disseminated in order to ensure that participants understand their responsibilities and entitlements.

55. While job creation is an integral part of any economic recovery, it is vital that Ireland direct its efforts towards generating opportunities for sustainable, productive, decent work in which individuals can exercise and realize their human rights. To this end, the independent expert welcomes the introduction of the Commission of Taxation and Social Welfare to examine the interaction between employment and social protection to ensure that work is financially worthwhile.

## VI. The situation of people vulnerable to poverty

### A. Children

56. Historically, Ireland has had a relatively high rate of income poverty among children, by international standards. The Government has made laudable efforts to address this situation, resulting in significant decreases in the prevalence of child poverty and deprivation for most of the past decade.<sup>41</sup> The primary factor in the reduction of child poverty has been the considerable investments in social protection measures, including the tripling of child benefit payments between 2000 and 2007,<sup>42</sup> increasing payments to single-parent families, and introducing the Early Childcare Supplement. The proportion of children living below the 60 per cent threshold fell by 20 per cent from 2005 to 2009, and the consistent poverty rate among children decreased between 2006 and 2008.<sup>43</sup>

57. In recent years significant policy attention has been given to addressing child poverty, which is reflected in the NAP Inclusion's identification of "adequate income support for children" as a high-level goal.<sup>44</sup> However, despite the advances made, since 2008, child poverty has again been on the increase. Today, children are the group most vulnerable to poverty in Ireland. In 2009, 8.7 per cent of children were living in consistent poverty, an increase of 38 per cent over the previous year.<sup>45</sup> One in every six children in Ireland (18.6 per cent) is at risk of poverty.<sup>46</sup>

58. The independent expert is concerned that recent budgetary adjustments will pose an additional threat to the already precarious situation of children in Ireland. According to UNICEF, were it not for government intervention in the form of social transfers and taxes, child poverty rates in Ireland would triple.<sup>47</sup> The reduction of the child benefit payment by 15 per cent in 2011 (on top of a 10 per cent cut in 2010) will undoubtedly lead to an additional increase in child poverty rates. While measures have been taken to compensate families with low incomes for the reduction in child benefits,<sup>48</sup> these payments are subjected to restricted eligibility criteria that may exclude children in need of support. Moreover, these cuts represent a move away from the universal child benefits, which have been an effective and non-stigmatizing tool to address child poverty.

<sup>41</sup> See SILC 2004 and SILC 2009.

<sup>42</sup> See NAP Inclusion, p. 32.

<sup>43</sup> See Office of the Minister for Children and Youth Affairs and the Department of Health and Children, *State of the Nation's Children – Ireland 2010*, pp. 158-160 (hereafter *State of the Nation's Children*).

<sup>44</sup> NAP Inclusion, chapter 2.

<sup>45</sup> SILC 2009, p. 77.

<sup>46</sup> *Ibid.*, pp. 35 and 77.

<sup>47</sup> UNICEF Innocenti Research Centre, *The Children Left Behind: A league table of inequality in child well-being in the world's rich countries*, 2010, p. 22.

<sup>48</sup> Through the Qualified Child Increase, and the Family Income Supplement.

59. While cuts are affecting all families with children (across all income brackets) they will have a disproportionate impact on children living in households that rely on other forms of social protection assistance, particularly those with single parents, jobless households and households with persons with disabilities. These households are hit harder by the cumulative impact of reductions to a range of social protection payments and the rising costs of child-related expenditures.<sup>49</sup>

60. Combating child poverty requires a set of comprehensive measures, including adequate income support and investments in public services such as education and health. Reduction in funding to public services will impact the accessibility and quality of health and education services for children. For instance, the recent cuts to the school transport scheme, and the introduction of additional fees for post-primary pupils, will place additional financial burden on struggling families.

61. The independent expert notes that Ireland has allocated additional funds in recent budgets to meet the rising demand for medical cards, an initiative that improves access to health services for children living in low-income families. However, the introduction of a 50-cent charge on all prescription medicines means that families with children who require regular prescription medication for chronic illnesses will pay more for vital medication each month.

62. As a State party to the Convention on the Rights of the Child, Ireland must ensure, inter alia, that each and every child in the country has a standard of living adequate for his/her physical, mental, spiritual, moral and social development, and full access to the best available health-care services, free primary education and social protection (arts. 24, 26-28). The State must comply with these obligations to the maximum extent of its available resources (art. 4), even during times of economic hardship.

## B. Older persons

63. Older people, the majority of whom are women, constitute 11 per cent of Ireland's population;<sup>50</sup> by 2050, they will be 29 per cent.<sup>51</sup> Due to a substantial increase in recent years in contributory and non-contributory pensions received by older people, they have among the lowest level of poverty of any group in Ireland. The protection offered by pensions and other social transfers is so significant that it represents 60 per cent of older persons' income, and reduces their risk of poverty rate from 88 per cent to 9.6 per cent.<sup>52</sup>

64. Considering the vital role of social protection in providing older people with income security, and the great dependency of older people on the provision of quality social services (such as health services, home-care packages and accommodation), it is crucial that Ireland maintain its investments in social protection benefits, as well as the provision of public services provided to older people. In this regard, the independent expert notes with concern proposals to progressively reduce pensions paid to public service pensioners<sup>53</sup> at the same time as immediately increasing the pension age to 66 and gradually to 68. There is real concern that these measures will have a major impact on poverty rate among older people.

<sup>49</sup> CSO, *Consumer Price Index*, June 2009.

<sup>50</sup> CSO, *Census 2006, Volume 2 - Ages and Marital Status*, p. 31, table 7.

<sup>51</sup> NAP Inclusion, p. 49.

<sup>52</sup> SILC 2009, p. 37.

<sup>53</sup> NRP, p. 73.

65. Moreover, many older people will suffer the cumulative effect of several austerity measures, including the introduction of a prescription charge, means-tested access to medical cards, reduction in home-care hours and services, and in day care services. These measures will have a disproportionate impact on older people who depend on these services in order to enjoy a minimum essential standard of living and to remain in their own homes and communities.

### **C. Persons with disabilities**

66. A significant number of people with disabilities in Ireland are living in consistent poverty.<sup>54</sup> Persons with disabilities face discrimination in the education system and in the labour market. They are significantly under-represented in the labour market and in the achievement of educational qualifications, which constitute significant areas of exclusion, making them especially vulnerable to poverty, particularly due to the other social and financial burdens that they encounter.

67. Poverty and social exclusion among persons with disabilities is an ingrained, structural problem in Ireland, requiring a comprehensive approach from the State. In this regard, the independent expert welcomes the comprehensive approach of Ireland's National Disability Strategy (NDS), which includes many of the rights and obligations enunciated in the Convention on the Rights of Persons with Disabilities. For example, there have been significant developments in special education over the last decade, through enhanced provision, and new structural and legislative frameworks for the delivery of services to pupils with special educational needs. However, further efforts must be made to ensure that the NDS is fully and effectively implemented. In this regard, the independent expert welcomes the commitment in the PGNR to publishing a realistic plan for the implementation of the NDS.

68. The need for a fully implemented comprehensive NDS is particularly pressing in light of the clear threat that Ireland's budgetary adjustments pose to the human rights of persons with disabilities. The decision to reduce the disability allowance, in conjunction with other budgetary measures that disproportionately affect the poorest and most vulnerable, will have serious consequences for persons with disabilities. Of particular concern are the successive reductions in funding to the community and voluntary sector, which provides nearly 60 per cent of health and personal support services to persons with disabilities.<sup>55</sup>

69. The Government is urged to heed the advice of the National Disability Authority to establish a statutory framework of standardization and regulation of residential services for persons with disabilities. The independent expert also calls on the Government to meet other commitments in relation to persons with disabilities, including increasing the employment, training and education of persons with disabilities in order to ensure they receive adequate levels of income, as committed to in the NAP Inclusion,<sup>56</sup> and developing a Recession Implementation Plan for the NDS in order to ensure its continued delivery.

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<sup>54</sup> Including 8.8 per cent of people aged 15 years or over with chronic illness or health problem. See SILC 2009, p. 83.

<sup>55</sup> Disability Federation of Ireland, Pre-Budget Submission 2011, p. 3.

<sup>56</sup> NAP Inclusion, p. 57.



## D. Single parents

70. Approximately one in six children in Ireland lives in a single-parent household,<sup>57</sup> 86 per cent of which are headed by single mothers.<sup>58</sup> Poverty rates among single-parent households are alarming: in 2009 almost 17 per cent of people living in single-parent households were in consistent poverty, the highest consistent poverty rate for any household category in Ireland.<sup>59</sup> People living in single-parent households were also the most vulnerable to poverty, experiencing the highest risk of poverty rate (35.5 per cent) in 2009.<sup>60</sup>

71. The One Parent Family Payment (OPFP), the single parents' weekly means-tested social welfare payment, has been subject to consecutive reductions over the past two years, and in January 2011, it was cut by a further 4 per cent. In a climate of rising unemployment and scarce job opportunities, and in combination with cuts to other social welfare payments relied upon by single parent families, this substantial loss of income will undoubtedly affect the vulnerability of single-parent households to poverty, and seriously diminish the possibilities of these parents to provide for their children's basic material needs.

72. The independent expert notes that the new Government intends to gradually phase out the OPFP, and replace it with a parental allowance, in order to eliminate disincentives to taking up employment or getting married which are inherent in the OPFP. She cautions the Government to ensure that implementation of the parental allowance does not result in the exclusion of beneficiaries or the creation of further barriers for them.

73. Single mothers, representing the vast majority of single parents in Ireland, encounter specific obstacles preventing them from participating on an equal basis in the work market. Research shows that even during times of economic growth in Ireland, single mothers with pre-school children were one of the few exceptions to the general rising tide of labour-market participation.<sup>61</sup> One of the major obstacles to employment for single parents is the cost of child-care services in Ireland, which are among the highest in Europe. In this context, the independent expert welcomes the recent introduction of the one-year Early Childhood Education Scheme, and calls on the Government to ensure that the universal pre-school year is of high quality, fully implemented and expanded.

74. An additional area of concern for single-parent families is the issue of adequate housing. In 2008, 36 per cent of all single-parent households were on the waiting list for social housing. One fifth of all people who relied on a rent supplement to meet their rental costs were single parents.<sup>62</sup> The independent expert calls on the State to ensure that single parents have access to adequate housing as a matter of priority, and to eliminate requirements of the rent supplement payment that could disproportionately impact them.

## E. Travellers

75. Many social stereotypes and prejudices against Travellers persist in Irish society, and are manifested in discrimination that greatly restricts their access to social and

<sup>57</sup> State of the Nation's Children, p. 19.

<sup>58</sup> CSO, *Census 2006, Volume 3 – Household composition, family units and fertility*, p. 13.

<sup>59</sup> SILC, 2009, p. 77.

<sup>60</sup> SILC, 2009, p. 35.

<sup>61</sup> H. Russell et al., *Monitoring Poverty Trends in Ireland 2004-2007: Key Issues for Children, People of Working Age and Older People* (Dublin, Economic and Social Research Institute, 2010), p. 32.

<sup>62</sup> Department of the Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2008*.

economic opportunities. Despite policy efforts in recent years, the Traveller community continues to suffer from structural discrimination that causes and perpetuates their vulnerability to poverty. Particularly striking is their unequal health situation. According to recent studies, Traveller men can expect to die 15 years earlier than the average Irish male,<sup>63</sup> and Traveller infants are 3.6 times more likely to die than infants in the general population.<sup>64</sup> This level of inequality is simply unacceptable in Ireland, and must be the immediate focus of State action.

76. It is not sufficient to simply rely on mainstreaming Travellers in the Irish health system; addressing structural disadvantage requires affirmative action to eliminate conditions which have caused or helped to perpetrate inadequate access to health services in the past. The independent expert urges Ireland to develop, with the meaningful participation of the Traveller community, a new National Traveller Health Strategy in order to support the Traveller community's enjoyment of the right to health on equal footing with the rest of Irish society.

77. One factor contributing to the diminished health status of Traveller communities is the lack of well-equipped halting sites accessible by nomadic Traveller groups. Some Travellers are forced to halt on unauthorized halting sites with poor conditions and minimum sanitary facilities,<sup>65</sup> which impedes their enjoyment of an adequate standard of living, and places them at risk of criminal charges.<sup>66</sup> The Government should ensure that local authorities take steps to provide safe, authorized halting sites with adequate amenities, in consultation with Traveller organizations and groups.

78. Another crucial area of concern is the Traveller community's lack of access to, and equal participation in, the education system. More than two thirds of Travellers aged 15 or over have no secondary or tertiary education.<sup>67</sup> While the independent expert acknowledges the Government's well-intentioned efforts to mainstream Traveller children in the education system, she stresses that mainstreaming is not sufficient to rectify the serious structural lack of inclusion which leads to the imbalance in access to education. The independent expert recognizes that in many cases Travellers make a conscious decision, based on a number of cultural and social factors, not to remain in higher education. The State should be respectful of this decision while removing barriers to education and encouraging Traveller children to remain in education where possible. Ireland should also support efforts by adult Travellers who wish to return to education or training.

79. Lower education outcomes are one of the main barriers to greater levels of employment for Travellers. The drastic rise in general unemployment, as a result of the economic and financial crises, will undoubtedly exacerbate this situation even further, particularly because Travellers are generally employed in informal or seasonal jobs which are more vulnerable during times of economic hardship. Ireland should take measures to ensure that training and employment initiatives are available, and are economically and socially accessible by members of the Traveller community. The introduction of employment activation policies with respect to social protection benefits should take into account the difficulties that Travellers will experience meeting activation obligations, particularly those Travellers who continue to live a nomadic and extended family lifestyle.

80. To assist Travellers in overcoming the entrenched discrimination that they suffer, the independent expert echoes the recommendation of the Committee on the Elimination of

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<sup>63</sup> All Ireland Traveller Health Survey "Our Geels" (hereafter *Our Geels*), 2010, p. 95.

<sup>64</sup> Pavee Point Travellers' Centre, "Irish Travellers and Roma shadow report," January 2011.

<sup>65</sup> *Our Geels*, p. 12.

<sup>66</sup> Housing (Miscellaneous) Provisions Act 2002.

<sup>67</sup> CSO, *Equality in Ireland 2007*, p. 37.

Racial Discrimination that the Irish Government should adopt the principle of self-identification and officially recognize the Traveller community as an ethnic group (CERD/C/IRL/CO/3-4). This may help to enhance the respect and legitimacy accorded to Travellers and to minimize the social exclusion they experience.

## **F. Migrants**

81. The migrant population in Ireland has increased dramatically over the last decade, with migrants now representing over 10 per cent of Ireland's total population (CERD/IRL/C/3-4, para. 16). Because migrants tend to be in informal employment, under often precarious conditions, they have been particularly exposed to wage decreases and lay-offs during the crises, especially since many migrants were attracted to Ireland by the boom in the construction sector, and were thus vulnerable to the burst of the housing bubble. The situation of migrants in Ireland, in the aftermath of the crises, is even more precarious as they suffer from a lack of access to social protection due to the requirement that beneficiaries be habitually resident in Ireland. Without adequate income to support them in Ireland or enable them to return to their home countries, many migrants have fallen into poverty and even homelessness since the onset of the crises.

82. The Government must ensure that special measures are in place to support and assist the migrant population in Ireland, a process which should begin with ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The independent expert welcomes the Intercultural Education Strategy 2010-2015 (IES) aimed at developing an intercultural learning environment, based on inclusion and integration throughout the education system.<sup>68</sup> Education is a key means of ensuring poverty reduction and social inclusion, and the Government should continue to pursue policies which facilitate the education and integration of Ireland's migrant children, who comprise 6 per cent of the total child population of Ireland.<sup>69</sup> The Government should also ensure that budgetary adjustments do not adversely affect the migrant population who are already experiencing economic and social disadvantage. Recent measures to reduce the number of language-support teachers in schools stand in blunt contrast to the high-level goals of the IES, and jeopardize migrant children's chances of attaining sufficient educational support and social integration.

## **G. Homeless people and people living in substandard housing conditions**

83. The need for social housing in Ireland has escalated dramatically in recent years, so that in 2008, 56,249 households were in need of social-housing support (an increase of 30 per cent from 2005) but were not currently receiving it.<sup>70</sup> This urgent need is still not being met and waiting lists continue to grow as the ramifications of the crises are felt by the most vulnerable. The fact that such waiting lists exist in the context of a housing crisis which has created a large surplus of housing stock throughout the country, is evidence of the complexity of the problem.

<sup>68</sup> Department of Education and Skills, *Intercultural Education Strategy 2010-2015*.

<sup>69</sup> State of the Nation's Children, p. 28.

<sup>70</sup> Department of Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2008*, p. 98.

84. The recent 36-per-cent reduction in the allocation to social housing<sup>71</sup> will impact significantly on the capacity of local authorities and housing associations to both finish existing projects and provide new housing to those who have lost their jobs and their homes, as well as groups with special needs, at a time when demand for social housing is soaring.

85. Ensuring that everyone in the country enjoys adequate accommodation is an obligation with which Ireland must comply without delay, giving priority to vulnerable groups, such as families headed by single parents, persons with disabilities, older people and the homeless. Doing so will require innovative and comprehensive solutions, including greater utilization of existing housing stock, provision of additional units by local authorities, and greater use of private, voluntary and cooperative housing sectors. In this respect, the independent expert is pleased that the Government has indicated its intention to introduce a staged purchase scheme to increase the stock of social housing, and to enable larger housing associations and local authorities to access private-sector funding for social housing.<sup>72</sup>

86. The independent expert appeals to the Government to fully implement its existing strategy to address the root causes of homelessness.<sup>73</sup> In particular, she stresses that the State must honour the commitment made in Towards 2016 to eliminate “long-term homelessness” (people in emergency accommodation for more than six months) by the end of 2010. The independent expert also welcomes the recent decision to reduce reliance on the rent supplement and move eligible applicants to the Rental Accommodation Scheme (RAS), an additional housing option enabling local authorities to provide accommodation. She calls on the State to ensure that this process is done efficiently and in accordance with a human rights approach.

87. Despite current financial constraints, Ireland must take measures to solve the long-term housing needs in the country from a rights-based approach, which necessitates focus on the type and quality of accommodation being provided. In this vein, the independent expert is alarmed by the information that she received during her mission on the substandard housing conditions in some of the rent-supplement accommodations, and urges the Government to ensure the effective enforcement of the Housing (Standards for Rental Houses) Regulations 2008 and 2009.

88. During her mission, the independent expert visited the Fatima regeneration project in Dublin. This project provides a good example of community participation in the decision-making process that should be ensured in other projects, such as the Dolphin House project in the Rialto area. The State should consider adopting a legislative framework for a National Public Housing Estates Regeneration Programme to ensure that international human rights standards and community participation are ensured in all regeneration projects in the country. The independent expert also calls on the Government to ensure sustained funding and support to homeless centres, such as Sundial House and the Focus Ireland Coffee Shop and Housing Advice Centre in Dublin, which provide vital support and assistance to the homeless community.

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<sup>71</sup> Department of the Environment, Community and Local Government, “Budget for 2011 to protect the most vulnerable, protect the environment and promote a sustainable economy,” 7 December 2010.

<sup>72</sup> PGNR, pp. 45 and 50.

<sup>73</sup> Department of Environment, Heritage and Local Government, *The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008-2013*, August 2008.

## H. Asylum-seekers and refugees

89. Ireland has historically displayed considerable solidarity towards asylum-seekers and refugees. While welcoming this generosity, the independent expert is concerned about some aspects of the situation of asylum-seekers.

90. The independent expert is concerned that today, more than one third of asylum-seekers supported by the Direct Provision System (DPS) – which provides asylum-seekers with accommodation and support at all stages of the asylum process and beyond, up to resolution of the case, and which was originally designed to support asylum-seekers for short period of time (up to 6 months) only –, spend more than three years in such accommodations.<sup>74</sup> While the facilities are generally reported to be in good condition, and asylum-seekers receive full-board accommodation and a small weekly allowance,<sup>75</sup> the DPS limits the autonomy of asylum-seekers and impedes their family life, as most accommodation centres have not been designed for long-term reception of asylum-seekers and are not conducive to family life.<sup>76</sup> Moreover, asylum-seekers under the DPS are denied access to social welfare (e.g. rent supplement and child benefit) and the right to work.<sup>77</sup> Ensuring access to the labour market is an essential element of complying with the International Covenant on Economic, Social and Cultural Rights (art. 6), which set out compulsory obligations for all States and which should take priority over political concerns such as the “pull factor” for new asylum-seekers.

91. Living under such conditions for an extended period of time severely affects the social inclusion of asylum-seekers, as well as their capacity to return to work (in Ireland or in their country of origin), and could have a major impact on the realization of their right to physical and mental health. The independent expert reminds Ireland that asylum-seekers and refugees must be guaranteed the enjoyment of all human rights, including the right to privacy and family life<sup>78</sup>, an adequate standard of living,<sup>79</sup> and adequate standards of physical and mental health,<sup>80</sup> rights that complement the provisions of the 1951 Refugee Convention.

92. The independent expert calls on the Government to quickly adopt a single procedure for determining refugee and subsidiary protection claims, with strong protection elements, and to ensure that asylum-seekers enjoy the full range of economic, social and cultural rights, including the right to work. She also calls on the State to fully implement the

<sup>74</sup> In December 2010, an estimated 2,778 of the 6,107 people living in Direct Provision Centres had been there for more than 36 months, and more than 1,200 had been there for between 24 to 36 months. See RIA Monthly Report, December 2010, pp. 8 and 20.

<sup>75</sup> The Direct Provision allowance is €19.10 per adult, and €9.60 per child. In addition to this allowance, asylum-seekers receive a medical card providing free medical services for them and their family members.

<sup>76</sup> Most of the centres were not built for the purpose of accommodating asylum-seekers and only 8 per cent of residents are in self-catering centres where they are allowed to cook their own food. See RIA Value for Money Report, May 2010, p. 21.

<sup>77</sup> Refugee Act 1966, sect. 9.4(b).

<sup>78</sup> International Covenant on Civil and Political Rights, art. 17; International Covenant on Economic, Social and Cultural Rights, art. 10.

<sup>79</sup> International Covenant on Economic, Social and Cultural Rights, art. 11.

<sup>80</sup> *Ibid.*, art. 12.

European Union Asylum Procedures Directive to ensure better protection of asylum-seekers.<sup>81</sup>

93. The independent expert is also concerned about the impact that the consecutive cuts to the budget of the Irish Naturalisation and Immigration Service (INIS) may have on the status determination procedure for asylum-seekers. She calls on the State to ensure that it has the appropriate resources to deal with all cases in a timely and fair manner.

94. The independent expert welcomes the recent introduction of provisions to place unaccompanied separated children in foster care,<sup>82</sup> and calls on the State to ensure that appropriate training and monitoring mechanisms are in place to ensure the best interests of the child are given priority in all matters affecting asylum-seeking and refugee children.

## VII. Conclusions and recommendations

95. **The independent expert recognizes the difficult situation that Ireland faces in the aftermath of the economic and financial crises, but reminds the State of its continuing obligations to comply with human rights standards. While Ireland has made impressive advances in poverty reduction over the past decade, these gains will be reversed if those living in poverty and social exclusion are not protected during the recovery. The crises provide an opportunity for Ireland to put human rights at the heart of the recovery, and to meet some of its long-standing social goals. The burden of the crises must be shared by all segments of Irish society, while those living in poverty and social exclusion must be protected as a matter of priority.**

96. **The report includes detailed recommendations in each of its sections, but the independent expert would like to especially urge Ireland to take the following steps:**

**(a) Strengthen the legal and institutional framework by giving domestic legal effect to Ireland's international human rights obligations, and ratifying and incorporating into domestic law international, treaties to which it is not yet party;**

**(b) Review its Programme for Government and National Recovery to ensure that it complies with human rights principles, particularly the obligation to use the maximum resources available and to not take retrogressive measures in the protection of economic, social and cultural rights, and consider reversing those measures which will disproportionately impact on the most vulnerable and excluded, particularly reductions in social protection payments and funding to public services; and**

**(c) Strengthen the social protection system, infrastructure and social services to ensure the full enjoyment of all economic, social and cultural rights of the population, and remove barriers that prevent the most vulnerable segments of society from accessing their entitlements.**

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<sup>81</sup> The Court of Justice of the European Communities recently held that Ireland has failed to comply with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Case C-431/10, 7 April 2011).

<sup>82</sup> Office of the Minister for Children and Youth Affairs, Report of the Commission to Inquire into Child Abuse, 2009.