Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown

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CENTER FOR ECONOMIC AND SOCIAL RIGHTS
SOCIAL JUSTICE THROUGH HUMAN RIGHTS

About Us

The Center for Economic and Social Rights (CESR) works to promote social justice through human rights. In a world where poverty and inequality deprive entire communities of dignity, justice and sometimes life, we seek to uphold the universal human rights of every human being to education, health, food, water, housing, work, and other economic, social and cultural rights essential to human dignity. Extreme poverty and rising inequality should not simply be considered an inevitable tragedy. Rather, they are often the result of conscious policy choices by governments and other powerful actors (such as corporations or international financial institutions) that undermine people's access to the full range of human rights. CESR therefore seeks to hold governments and other actors accountable to their obligations to respect, protect and fulfill economic and social rights, as well as civil and political rights.

About This Paper

This briefing paper is part of a series of publications produced by CESR on the human rights implications of the global economic downturn prompted by the financial crises of 2007 and 2008. These reports have analyzed the causes and consequences of the global economic crisis from a human rights perspective, as well as looking critically at global policy responses to the crisis and proposing rights-based alternatives to economic recovery. This briefing on economic and social rights in Ireland's economic meltdown is intended to persuade policy-makers in Ireland, and those in international institutions with key influence over Irish policy, to take human rights principles into account in all responses to the crisis. It aims to support and complement the efforts of Irish civil society in pressing for human rights to be properly considered in both budgetary debates and the design and implementation of crisis response measures. It builds on an earlier advocacy briefing, 'When the Celtic Tiger Falls: Economic and Social Rights at Risk in Ireland', produced by CESR on the occasion of Ireland's appearance before the Universal Periodic Review (UPR) of the United Nations Human Rights Council in Geneva in October 2011. Ireland pledged its commitment before the UPR to defend the human rights of people in the country despite financial constraints and welcomed recommendations made by other UN member states regarding the protection of economic, social and cultural rights in the wake of the crisis. CESR aims with this briefing to support efforts to monitor and follow up these commitments, and to urge the Irish authorities to reaffirm them at the Human Rights Council's 19th session in March 2012 and to translate them into concrete, rights-centered recovery plans, social programs and fiscal policies.

'Mauled by the Celtic Tiger' was written by Luke Holland, Researcher and Communications Officer at CESR. It draws on data and analysis from a range of governmental and non-governmental sources, as well as interviews with key informants carried out in Dublin in October 2011. CESR wishes to thank the following for their input in producing this report: Nat O'Connor, Director, Think Tank for Action on Social Change (TASC); Saoirse Brady, Policy and Campaigns Officer, Free Legal Advice Centres (FLAC); Rosalind McKenna, Coordinator, Human Rights in Ireland Programme, Amnesty International Ireland; Kirsten Roberts, Director of Research, Policy and Promotion, Irish Human Rights Commission; Fidelma Joyce, Senior Human Rights Awareness Officer, Irish Human Rights Commission; Paul Ginnel, European Anti-Poverty Network, Ireland; Maeve Taylor, Policy and Advocacy Officer, Irish Family Planning Association. The views of this briefing paper are those of CESR alone. Cover photograph supplied courtesy of William Murphy.

Previous CESR 'Rights in Crisis' publications:

Human Rights and the Economic Crisis (2009).
Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis (2009)
Bringing Human Rights to Bear in Times of Crisis (2010).
Documenting the Global Recession: Crisis and Opportunity (2010)
Human rights and economic crisis: the response of the United Nations system (2011).

These documents can be accessed on CESR's 'Rights in Crisis' webpage: http://cesr.org/article.php?list=type&type=139

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Executive summary

The human rights consequences of Ireland's economic crisis, along with its subsequent recovery policies, are just beginning to emerge. With further spending cuts expected to burden ordinary people with the costs of the crisis for years to come, the nation may be traversing stormy seas for quite some time. A poorly managed recession, followed by a series of austerity budgets characterized by retrogressive cuts to social spending and an aversion to tax increases have markedly undermined the rights to education, health, housing, work and an adequate standard of living. Poverty levels are rising fast, just as Ireland's already struggling health and education sectors are being stripped of their resources. Due largely to the government's lack of attention to an unsustainable property bubble, the right to housing has likewise been jeopardised, with waiting lists for social accommodation soaring just as many thousands of newly-built homes lie empty or uncompleted. The concomitant problem of unemployment is also tearing at the fabric of Irish society. Vast numbers who lost their jobs as the construction industry collapsed are now being joined by service sector workers who have seen their positions fall victim to the continuing quagmire. All the while, the most vulnerable populations, such as women, children, Travellers, migrants, older persons and the disabled, are suffering the human rights impacts of the crisis disproportionately.

The evidentiary data and statistics examined in this paper suggest that Ireland has disregarded its commitments under international human rights law in responding to the crisis. The National Recovery Plan 2011-2014 (NRP) prioritizes drastic cuts in social expenditures over progressive tax reforms in a country ranking among the lowest in Europe in terms of overall tax levels. The substantive human rights principles of progressive realization, use of maximum available resources and non-retrogression, along with the procedural principles of transparency, accountability and participation have meanwhile been largely ignored in Ireland's recovery measures, which have socialized losses incurred by incautious banks in a strategy that risks limiting the country's economic wellbeing, and the social rights of its population, for many years to come. CESR's assessment of Ireland's policy efforts meanwhile indicates that the government is not taking all necessary steps to comply with its international obligations to respect, protect and fulfill economic and social rights. In particular, fiscal policies (both budget and tax-related) do not appear to be in line with the obligation to devote the maximum of available resources to fulfill economic and social rights progressively, and to guard against retrogression and ensure the rights of the most vulnerable, even in times of scarcity.

Based on statistical evidence of deteriorating economic and social rights outcomes since the onset of the crisis and the subsequent austerity measures, this briefing paper analyzes both the causes and consequences of Ireland's economic meltdown from a human rights perspective, with a particular focus on the social and economic policy measures Ireland has undertaken in upholding its legal obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It then offers a series of legal and policy recommendations designed to ensure that the human rights of all people in the country are respected, protected and fulfilled in the economic recovery process. In this vein, Ireland should respond to civil society claims for fairer, rights-based policy processes and consider conducting a human rights impact assessment of economic recovery plans and policies, using these inquiries to inform a new human rights-centered National Recovery Plan. Progressive tax reforms would contribute substantially to a public budget under severe distress, liberating a substantial base of resources to finance economic and social rights, provide stronger protections for vulnerable sectors and reverse regressive social welfare cuts. State support should likewise be restored to human rights institutions with a critical oversight role to play in this context, while international human rights standards should be incorporated into domestic law. Homelessness due to over-indebtedness or unsustainable mortgages should be prevented, while adequate resources should be allocated to social housing. Countries that are home to Ireland's creditor institutions, count themselves among Ireland's creditors, or otherwise foreseeably affect the realization of economic and social rights in Ireland, should for their part comply with their extraterritorial obligations to ensure their conduct or influence, especially with regard to debt repayment and financial regulation, does not interfere with these rights.

At its October 2011 appearance before the United Nations Universal Periodic Review, the Irish government pledged its commitment to protect economic, social and cultural rights despite perceived financial constraints. If this promise is to be fulfilled, the new administration must urgently integrate human rights standards and principles at the center of its economic recovery strategy.

Introduction

For well over a decade the Celtic Tiger's roar sounded out across Europe, with ever-increasing economic growth and ever-decreasing unemployment. Having struggled for decades to achieve meaningful levels of growth, before accomplishing what was widely celebrated as an 'economic miracle' in the 1990s and early 2000s, Ireland enjoyed spectacular economic success for a time. The genesis of the country's economic crisis is, inevitably, a controversial and contested issue, as it is in most countries enduring a similar fate. But the majority of analysts agree the combination of a housing bubble, negligent banking practices, regulatory failures and deficits in governance combined to drive the economy - and the enjoyment of human rights - over the edge.[1] Long the dominant force in Irish politics, Fianna Fáil was in power almost continuously[2] - albeit in a series of coalition administrations - from 1987 to 2011. The party was responsible for the Ireland's transition from one of Europe's poorest countries to one of its wealthiest, but eventually fell from grace when the inherent flaws in its economic model became painfully apparent. The center-right Fine Gael, Ireland's second biggest political party, entered into a new coalition government with Labour after emerging victorious in the 2011 general elections.

Recovery policies implemented since the crisis began in 2007 have been markedly retrogressive in character, severely undermining prior advances with regard to the country's commitments under various human rights treaties. The National Recovery Plan 2011-2014 prioritizes drastic cuts in social expenditures over progressive tax reforms, despite the fact that Ireland is one of the lowest-tax economies in Europe. The health and education sectors have been the target of successive cuts, at a time when they are particularly needed, as has funding for social housing, just as waiting lists for social accommodation soar. Support to those who have found themselves out of work has likewise been reduced, despite the dramatic rise in levels of unemployment.

Statistical evidence indicates that cuts to social spending are having a disproportionately harsh impact on vulnerable groups, with the already pronounced levels of inequality rising as a result. In this context, sectors such as women, children, Travellers, migrants, older persons and the disabled, are suffering the human rights impacts of the crisis disproportionately.

Fiscal policies, both in terms of spending and revenue generation, suggest that Ireland has not devoted the maximum of its available resources to the progressive fulfillment of economic and social rights, as is required under human rights treaties to which it is party.

Fundamental human rights principles such as participation, transparency and accountability have likewise been sidelined, as there has been no meaningful citizens' participation in the design of budgetary responses to the crisis, nor indeed the agreement of the bank bailout deal with the European Union (EU) and International Monetary Fund (IMF). This briefing paper examines the causes of the 'Celtic Tiger' economy's collapse, the austerity measures implemented to address it and the resulting human rights consequences. Following an introduction to the normative framework and legal status of economic, social and cultural rights in Ireland, ***Section I*** explores the contextual factors and policy failures which paved the way for the debacle. ***Section II*** then addresses Ireland's handling of the crisis from a human rights perspective, while ***Section III*** analyses the impacts on specific economic and social rights, including employment, health, education, housing and adequate standard of living. The briefing concludes with a set of actionable recommendations for Ireland and the international community which, if implemented together, can help reverse the trend of retrogression in economic and social rights in the country, and build the foundations for human rights-centered economic, fiscal and social policies.

Much obliged: Ireland's economic and social rights commitments

Ireland is party to several key international treaties which are of significance to the economic and social rights enjoyment of its people. These include The International Covenant on Economic, Social and Cultural Rights (ICESCR), which it ratified on 8 December 1989, and the European Social Charter, which was ratified on 7 October 1974, along with several others.[3]

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, calls on state parties to:

> *[T]ake steps*, individually and through international assistance and cooperation … to the *maximum of its available resources*, with a view to *achieving progressively* the full realization of the rights recognized in the present Covenant.[4]

Understanding the principle of ***progressive realization*** is central to assessing states' economic and social rights obligations in both 'normal' times and periods of crisis. The Committee on Economic, Social and Cultural Rights (CESCR), the UN body which monitors states' compliance with the ICESCR, has established that although the full realization of economic, social and cultural rights may be achieved progressively, state parties have 'immediate obligations' that are not dependant on availability of resources.[5] This includes the duty to ensure non-discrimination as a cross-cutting dimension of states' obligations.[6] The Committee has also affirmed that states parties have a core obligation to protect 'minimum essential levels' of economic and social rights,[7] a concept particularly relevant to situations of crisis and emergency. The core objective of the principle is to establish that states must ensure a basic minimum floor of economic and social rights protection as a priority over other economic and policy considerations.[8]

Under the aforementioned provision of the ICESCR, Ireland is also required to use the ***maximum available resources*** for the progressive fulfillment of economic, social and cultural rights. The implications and dimensions of this principle are critical in assessing governments' ability and political willingness to comply with the obligation to fulfill these rights. Evaluating a country's 'available resources' entails not only looking at government expenditures but also revenue generation, including the extent and progressiveness of the tax structure and the resources that may be obtained through international development assistance.[9]

Policies concerning both the generation and allocation of resources must also be designed to realize economic, social and cultural rights for all without discrimination, as swiftly as possible and without any unjustified ***retrogression*** (backsliding). The CESCR has stated that any deliberate measures which reduce the enjoyment of economic and social rights are *prima facie* violations and constitute retrogression, unless these have been adopted 'after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the state party's maximum available resources'.[10] This is true regardless of whether the deterioration in rights enjoyment was an intended outcome of the measure deployed.[11] Even in the case where a measure unintentionally subverts enjoyment of a right, the state is obliged to take immediate corrective steps once the retrogression is recognized.[12] It must also be noted that the human rights principles of transparency, non-discrimination, participation, and universality are to be ensured in every step of the economic policy cycle.

In this sense, actions which lead to a deterioration in socio-economic outcomes, such as cutting public expenditure, may be regarded as acts of deliberate retrogression in rights fulfillment if alternative options such as tax reform are not fully considered, and can be said to be in violation of the Covenant.[13]

As a party to the Covenant, Ireland is obliged to respect, protect and fulfill the economic, social and cultural rights of all people in the country, without distinction. The ***duty to respect*** means that governments must refrain from actions that would impede people's enjoyment of their economic, social and cultural rights. The ***duty to protect*** meanwhile requires governments to prevent third parties (such as private businesses and financial institutions, foreign or domestic) from interfering with the enjoyment of these rights, while the ***duty to fulfill*** makes it incumbent on government actors to take positive legal, budgetary, administrative or other steps to facilitate and create the conditions necessary for the full enjoyment of rights.[14] The above principles are central to an analysis of Ireland's compliance with its human rights obligations in its handling of the crisis.

At the regional level, Ireland is party to the European Social Charter, which it ratified in 1964, and the Revised European Social Charter (RESC), which was ratified in 2000. These agreements require states to protect a broad spectrum of economic and social rights, including the rights to health, education and social security. The country is also party to the European Convention on Human Rights (ratified in 1953). However, Ireland has opted out of Article 31 of the European Social Charter, which commits states to 'promote access to housing of an adequate standard' and to 'make the price of housing accessible to those without adequate resources'.[15]

From the normative standpoint, three areas of concern arise from an assessment of the status of human rights in Ireland's national legal framework: (i) the failure to implement constitutional 'directive principles' in policy-making regarding economic, social and cultural rights, (ii) the non-incorporation of international legal standards in national legislation, and (iii) the resistance to making economic, social and cultural rights justiciable.

Ireland's Constitution[16] includes provisions for the protection of economic, social and cultural rights. The right to primary education is enshrined explicitly in article 42. The Constitution also includes a set of 'directive principles of social policy' (Art 45) stating that laws must be designed and implemented in such a way as to ensure social justice.[17] The principles require the *Oireachtas* (Parliament) to ensure that social policy-making is directed towards securing 'the right to an adequate means of livelihood' and that the state 'pledges itself to safeguard with especial care the economic interests of the weaker sections of the community'. However, the Irish Parliament does not appear to have considered these principles in framing social and economic policy in recent years.

The Constitution also states that the directive principles are intentionally directed at the policy-making process, and are 'not cognizable by any Court'.[18] At present this effectively prevents them being enforced more effectively and attempts to protect economic, social and cultural rights by deploying the provisions of the Constitution through legal mechanisms have been met with resistance. Reticence on the part of the judiciary is grounded in the perception that judicial enforcement of economic, social and cultural rights interferes with the principle of separation of powers, and a related view that questions of redistributive justice are strictly a matter for the executive.[19] As such, the question of whether the economic, social and cultural rights provisions of the Constitution of Ireland should be made justiciable in courts of law remains controversial, with the judiciary largely reluctant to uphold them.[20]

This situation stands in stark contrast to jurisprudence in other countries such as India, where similar constitutional directive principles have served to great effect in the protection of economic, social and cultural rights.[21] It should be noted that the Indian Constitution includes a similar non-justiciability caveat with regard to its directive principles of state policy, but the Supreme Court in that country has sought to protect economic and social rights by encouraging application of the directive principles in policy-making, as required by the country's foundational legal document. Furthermore, the Indian judiciary has also endeavored to protect economic and social rights, such as the right to food, by recognizing them as crucial preconditions to the provision of other constitutionally protected rights, such as the right to life.

The incorporation of international human rights treaties is another key issue in the Irish context, as the country operates a dualist legal system under which the treaties to which it is party are not automatically incorporated into national law. As such, it is necessary for the *Oireachtas* to pass separate legislation in order to give domestic effect to such treaties.

In recent years Ireland has faced repeated calls from various UN treaty monitoring bodies to incorporate the provisions of the ICESCR and other human rights treaties into domestic law. In 2002 the CESCR lamented that 'despite its previous recommendation in 1999, no steps have been taken to incorporate or reflect the Covenant in domestic legislation'. Nearly a decade later, as the country prepares to make its third appearance before the Committee, this situation remains unchanged. (Ireland submitted its Third Periodic Report to CESCR in December 2011,[22] but the date for its appearance had yet to be confirmed at the time of writing.) Concern over Ireland's failure to incorporate human rights treaties into domestic law was raised again in October 2011 at the 12th Session of the Universal Periodic Review (UPR), a relatively new mechanism through which states monitor each other's compliance with the human rights treaties to which they are party. In March of that year, the Committee on the Elimination of Racial Discrimination (CERD) likewise noted that Ireland had 'made no efforts to incorporate the Convention (on the Elimination of All Forms of Racial Discrimination) into the domestic legal order'.[23]

Appeals for Ireland to ensure national legislation adequately reflects it human rights commitments have also come from other quarters in the UN, not least the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda, who visited the country in January 2011.[24] In her mission report, the Special Rapporteur reiterated calls for Ireland to give legal effect to its international human rights obligations and to ratify and incorporate those treaties and mechanisms to which it is not yet party.[25]

The non-incorporation of human rights treaties has also contributed to Irish courtrooms' reluctance to recognize the principles they contain. According to the Irish Human Rights Commission, courts in the country have 'consistently rejected' arguments that international human rights treaties establish individual rights for Irish citizens,[26] with the Supreme Court of Ireland declaring that the Constitution 'establishes an unmistakable distinction between domestic and international law'.[27]

Opposition to the justiciability of economic, social and cultural rights in Ireland has generally been based on two concerns: (i) that the normative content of these rights is too vague to make them justiciable, and (ii) that making these rights justiciable would result in a flood of litigation. An increasing body of evidence and case law worldwide shows that neither of these charges are valid, however, and that national judiciaries can act in a crucial corrective role, ensuring that governments' socio-economic policies serve to protect, rather than hinder, the enjoyment of economic, social and cultural rights.[28] Moreover, judicial recognition of these rights imposes duties on policy-makers, and thus can bolster the democratic and accountable nature of the policies they create.

The Irish state has the primary duty to uphold the economic, social and cultural rights of people within its jurisdiction. Nevertheless, other states and inter-governmental institutions also have shared responsibilities in this regard. The obligation to provide international assistance and cooperation for the full realization of economic, social and cultural rights under Article 2.1 of the ICESCR applies in particular to countries that are home to Ireland's creditor institutions, or count themselves among its creditors. Such countries must ensure Ireland's debt agreements with them do not hinder the progressive realization of economic, social and cultural rights.[29] Countries that have particular influence over policies affecting the realization of these rights in Ireland– for example through their membership in international organizations such as the IMF or supranational governance bodies such as the EU- also have extraterritorial duties to refrain from actions or omissions which may nullify these rights directly or indirectly, in accordance with the UN Charter and Article 2.1. of the ICESCR.[30]

Finally, accountability is at the heart of the human rights framework, enjoining government to be responsive to constituents, responsible for its own policy choices, and answerable to those people who are affected by these policies. These legal obligations must also be enforced, with systems in place for monitoring performance, ensuring proper remedies and imposing sanctions should abuses occur.

I. Boom-time denial: Causes of the financial crisis

Despite its international obligations and the economic, social and cultural rights guarantees in its Constitution,[31] a review of the causes and consequences of Ireland's economic crisis reveals that a meaningful commitment to the protection and fulfillment of these rights has not been at the heart of government policy, either before or after the recession. This section examines the aspects of economic and social policy, along with broader contextual factors, which led to the predicament in which the country now finds itself.

A flawed model?

Few would question the fact that Ireland's growth figures – averaging 9.6 per cent from 1995 to 2000 – were impressive during the Celtic Tiger years. While there is some disagreement over the relative importance of factors driving the boom, there is a reasonable consensus over a number of the elements involved. Consistent investment in second and third-level education – one measure for which previous governments may be credited – fuelled productivity and provided an attractive resource for foreign investment.[32] The presence of English as the main language was also advantageous, as was Ireland's entry into the European Union, which supplied a steady flow of structural support while simultaneously offering access to new export markets.[33]

Probably the most central element in Ireland's short-term economic 'miracle', however, was its low taxation and lax regulatory regime. The Revenue Commissioner's tax take remained extremely low during the boom years. At 31.2 per cent of Gross Domestic Product (GDP) in 2007, it was 6 points below the EU average[34] (taxation is discussed in greater detail below). Ireland's corporate tax rate lies at 12.5 per cent, the lowest of the major European economies and a source of some consternation among its EU partners.[35] Though the economy as a whole was growing before the considerable cuts in top income tax rates,[36] there is little doubt that this comparatively diminutive tax rate helped attract the massive flows of US and other investment that poured into Ireland during the 1990s. By the end of the 20th century the Emerald Isle, having established itself as a base for computer giants such as Microsoft, Dell and Hewlett-Packard, had become the biggest exporter of software in the world.[37]

It was not only technology investors who were pumping resources into the country. Ireland's less-than-exacting standards of financial regulation helped establish it as a tax haven for global finance, with offshore financial services outpacing other types of inward international investment by approximately 3-to-1 in 2007.[38] The Irish Financial Services Centre (IFSC), located on the banks of the River Liffey in Dublin, became infamous for the empty and unused offices rented out by multinational corporations seeking to channel their finances through Ireland and thus avail of advantageous tax rates. Many of these organizations transferred their 'headquarters' from the Netherlands, which had previously been regarded as the top destination in Europe for companies seeking to avoid contributing to public coffers. By 2008, investment in the IFSC - most of which was quickly reinvested elsewhere and thus largely detached from Ireland's real economy and tax base - was over 13 times the size of foreign direct investment, and approximately 11 times larger than total Gross National Product (GNP).[39] Notoriously lax regulation, particularly in the banking and insurance sectors, famously prompted the *New York Times* to label the country the 'Wild West of European finance' and inevitably ruffled a few feathers among Ireland's trading partners, all the while helping major multinational corporations cut their taxes back home.[40] More importantly, Ireland's failure to adequately regulate this enormous influx of financial activity - exposing its economy to foreseeable yet under-investigated risks - may have proven a major contributing factor in the country's financial collapse.[41]

Successive governments justified this adherence to an economic policy based on liberalization, privatization and financial de-regulation by repeating arguments that it would result in economic growth lifting all boats and generating the needed revenue to consolidate Ireland's social and economic progress. Rising social welfare transfers during the Celtic Tiger years did make a significant impact on several economic and social rights indicators, but it was a quick-fix recipe built for disaster, redistributing the bulk of Ireland's newfound wealth to the country's existing elite,[42] and setting the stage for a financial and economic collapse. In as much as this financial crisis has resulted in severe economic and social rights cutbacks, the Fianna Fáil government's efforts to protect human rights against the activities of private financial institutions were at best questionable.

Homesick

A lack of concern for the provision of accessible, affordable, adequate and quality housing, in keeping with Ireland's human rights obligations, has characterized the policies of successive governments. One of the key causal factors of the current quagmire was a huge housing bubble, fuelled by government policies, which burst in spectacular fashion in 2007. While some commentators also point to cultural and sociological factors underpinning the boom,[43] it seems clear that demographic factors combined with low interest rates and high-risk lending to fuel a 'speculative mania' focused on the housing sector.[44] The average price of a second-hand home rose from €83,000 to €512,000 between 1994 and 2006.[45] Some 93,000 houses were built in 2006, representing 21 for every 1,000 people in the population, as compared to a European average of 5 per 1,000.[46]

Prices were also driven up by an oligarchy of landowners who manipulated the market to ensure they received a disproportionate share of the value of homes sold.[47] The behavior of these actors, who also benefitted from windfalls derived from rezoning decisions,[48] likewise pushed up the cost of infrastructural investments. The effects of such rezoning practices were foreseeable, having been the target of complaints for over three decades.[49]

Ireland's membership of the European currency also contributed to the soaring prices, as the state lost the ability to set interest rates, one of the tools that might otherwise have been used to dampen inflation in the housing sector. With a torrent of revenue flowing to its coffers from the construction and real estate sectors, the state failed to deploy other measures to slow down what had become a runaway train.[50] And as a larger and larger proportion of the population committed themselves to mortgages they could ill-afford, so public support for policies that might cool the market – such as the removal of tax breaks and subsidies – seemed less and less practicable. Warnings from the Organization for Economic Cooperation and Development (OECD) and the IMF[51] went unheeded as successive budgets provided more and more incentives to property developers and prospective buyers.

At its peak, the housing sector represented 16 per cent of gross national income, the highest level of any OECD country.[52] This left the Irish economy disproportionately exposed to fluctuations in the housing sector, which were to manifest fatefully when major property developers found themselves unable to pay back the enormous debts they had taken on, thus throwing the banking sector, and the country as a whole, into a protracted financial crisis.

Breaking the banks

Underpinning the frenetic building and buying of properties was the equally enthusiastic provision of credit to all those taking part in the enterprise, with little apparent concern for preventing and protecting against the human rights consequences that might come later. During the Celtic Tiger years, the capital for Ireland's eager developers was raised on international markets, with Irish banks importing vast sums in what Reinhart and Reinhart dubbed a 'capital flow bonanza'.[53] This in turn drove consumer demand to ever-higher levels, as Irish society dug itself into a deep hole of indebtedness.

When the international banking crisis hit in 2007, just as the property bubble was getting ready to burst, it became clear the Irish economy was about to enter very stormy seas. A great many Irish households would be pulled under by the rising tide, with the Irish think-tank the Economic and Social Research Institute (ESRI) predicting that most of those who bought during the boom would be trapped in negative equity for the next 20 years.[54]

While overzealous lending and development projects were both contributing factors, the government's failure to take measures to ameliorate and remedy the consequences of such practices was perhaps the most lamentable aspect of the debacle. Having allowed the exchequer to become over-dependent on revenues from stamp duty and other property-related taxes, the state was little inclined to question what had become a useful cash cow. When the government eventually did step in, it was too late to stop the country from falling over the edge.

Transparency in the banking sector has been questionable, at best. By the time Ireland's long economic boom reached its crescendo, the most controversial of the country's financial actors, Anglo Irish Bank - which was found to have manipulated its balance sheets for years while granting huge loans to its own directors[55] - was massively overexposed to debt default thanks to its heavy involvement in the property sector. Allied Irish Bank (AIB) and Bank of Ireland (BoI), the country's two biggest banks, were likewise teetering on the brink after overextending themselves in their relationships with developers. In a clumsy bid to quell growing anxiety in the markets, the Fianna Fáil government announced it would guarantee all deposits in Ireland's principal financial institutions. This September 2008 decision, effectively socializing the huge debts racked up by opportunistic lenders and overconfident developers, was to be one of the most controversial of an administration that would soon be voted out in a groundswell of public outrage. This bank guarantee was complemented a few months later by the establishment of the much-criticized National Assets Management Agency (NAMA). The institution was set up with the intention of addressing the credit crisis in the Irish economy. With the value of their loan assets having crashed, Ireland's major banks were facing difficulties in meeting capital requirements and their lack of collateral, which might otherwise have facilitated repurchase agreements to boost cash-flow, led to severe liquidity problems. Taken together, these factors were reportedly strangling credit provision in the Irish economy and, as a result, any chance of a return to meaningful growth. The government's response was to set up NAMA, which uses government bonds to purchase the banks' bad debts and in so doing socializes the costs incurred by their incautious lending. Though it claimed it would eventually run a profit while kick-starting free-flowing credit provision, NAMA's legacy may turn out to be a crippling level of national debt that serves to undermine the economic and social rights of ordinary people long into the future. In April 2011 it was decided, with the consent of both the IMF and EU, to halt asset transfers to NAMA, with Finance Minister Michael Noonan admitting there must be 'a better way of doing things'.[56]

In the time since, frequent comparisons have been drawn between Ireland and Iceland,[57] which for its part opted to adhere to traditional free market ethics by letting overextended banks fail.[58] Former World Bank Chief Economist Joseph Stiglitz dismissed justifications for the Irish bank bailout, stating that it was a straightforward transfer of wealth from taxpayers to bondholders, amounting to an act of 'highway robbery'.[59] Other countries such as Norway, Sweden and the United States, he argued, had allowed numerous 'bad banks' to fail without the devastation predicted by the financial sector ever coming to pass. Professors Baldur Thorhallsson and Peadar Kirby meanwhile demonstrate that, although the economic 'shelter' provided by membership of the European Union and European currency may have softened the impact of the banking crisis, concomitant limitations on domestic monetary and exchange rate policy options may have served to exacerbate it.[60]

It is noteworthy that Ireland's banking crisis grew out of a financial culture in which opportunism and impunity were ingrained. Ireland's financial regulator, having previously abdicated responsibility in the face of the Deposit Interest Retention Tax (DIRT)[61] and Ansbacher[62] tax evasions schemes, likewise failed to step in when it became aware of improper practices at Anglo, or indeed the dangerous lending strategies being deployed by the sector as a whole.[63] In this way, it continually disregarded the legal obligation of all state authorities to protect against human rights infringements by private actors.

Initial attempts to reform financial regulation in the country, by replacing the Central Bank and the Financial Services Regulatory Authority with a single institution,[64] were deemed an 'outright failure' with the challenge of revolutionizing Ireland's banking culture cited as the main problem.[65] More recent efforts to improve the Central Bank's effectiveness, with a renewed focus on risk management and executives' pay, have been more encouraging.[66] The yet-to-be-enacted Central Bank (Supervision and Enforcement) Bill[67] is designed to strengthen regulatory powers and provide protection for whistleblowers. In a similar vein, it is to be hoped that the recent establishment of an independent budget watchdog, the Irish Fiscal Advisory Council (IFAC), as demanded by the EU and IMF as part of a bail-out agreement, will be the first step towards creating effective regulatory bodies throughout the financial sector. The IFAC, which does not enjoy civil society participation, delivered its first report in October 2011, calling for even deeper cuts in spending than those already planned.[68]

As a result of the financial and economic crisis, Irish public sector debt skyrocketed from a comparably low 27 percent of GDP to a projected 119 percent of GDP by 2013.[69] A recent independent debt audit found that the lion's share of current government debt stems directly from the financial crisis, the decision in September 2008 to rescue the Irish financial sector *en masse*, and the subsequent bank guarantees.[70] As subsequent sections will show, the ongoing economic quagmire precipitated by the mishandling of the banking crisis has severely stifled economic and social rights in the country.

II. Rocky road to recovery: Austerity-driven cuts to economic and social rights protection

The government's response to the economic crisis looks set to worsen the economic and social rights situation in the country rather than improve it. This section explores Ireland's economic recovery strategy, with a particular focus on recent austerity budgets and the country's policy planning with regard to social welfare and other areas of relevance to economic and social rights. The National Recovery Plan, comprising €10 billion in expenditure cuts and €5bn in tax increases, is assessed along with the crippling impact of the EU-IMF bailout package and the decision to socialize losses incurred by overexposed banks. Ireland's tax regime, and its consequences for economic and social rights provisions, is also analyzed. While acknowledging some positive steps taken more recently, CESR's analysis argues that the substantive and procedural human rights principles of non-discrimination, non-retrogression, primacy of human rights, transparency, participation and accountability have been largely ignored in the design and implementation of recovery measures. Disproportionate cuts made to official human rights bodies in the face of retrogressive policy measures have allowed this process to go unchallenged.

The best laid plans?

Ireland's social policy framework is set out in a number of policy documents which set out strategies and targets in such areas as social inclusion, employment, health, education, housing and income support. These are referenced here as part of the assessment of government policy efforts to safeguard economic and social rights in relevant areas of socio-economic policy.

The National Action Plan for Social Inclusion 2007-2016 ('NAPInclusion')[71] sets the target of reducing the number of people experiencing consistent poverty[72] to between 2 per cent and 4 per cent by 2012. It also promotes primary health care teams and social housing, both important harbingers of economic and social rights fulfillment. Ireland's social protection and welfare programmes are also underpinned by the ten-year national partnership agreement 'Towards 2016'.[73] The latest in a series of accords negotiated between the government, business leaders, trade unions and the voluntary sector, the document aims to provide consensus on the nation's approach to development. It sets out 23 high-level goals on poverty, development and social inclusion. With regard to economic and social rights, one of the most important elements of 'Towards 2016' was the commitment to benchmark base social welfare payments at 30 per cent of gross average industrial earnings. This standard represented the fruition of years of campaigning on the part of Ireland's anti-poverty movement. Nonetheless, in the absence of explicit recognition of economic and social rights in national legislation, the failure to comprehensively frame these commitments in terms of the economic and social rights obligations of the state towards its people leaves these positive measures vulnerable to changes in government and largely defenceless in the face of weakened economic conditions.[74]

In contrast to previous development strategies, the National Recovery Plan 2011 – 2014 (NRP), which has now become the central reference for policy-making, is a product of negotiations with the IMF and EU (discussed further below) rather than domestic social partners. As highlighted by the UN Special Rapporteur on Extreme Poverty and Human Rights, there has been a clear lack of popular participation in both the design and implementation of crisis response measures.[75] In the context of a country that has one of the lowest tax takes in Europe, the NRP's reliance on expenditure cuts for the bulk of the necessary savings - rather than on progressive tax reforms - has undermined economic and social rights, as is demonstrated in subsequent sections. Backsliding on hard-fought commitments to basic social welfare protections amounts to making the poor and most vulnerable pay the consequences of a financial crisis spawned by the excesses of Ireland's irresponsible bankers and real-estate developers.

Considering the role lax regulatory practices played in bringing the crisis about, it is to be lamented that there have been no effective accountability processes in the aftermath of the debacle. Though it was promised that this issue would be addressed by *Oireachtas* inquiries and a Commission of Investigation into the Banking Crisis,[76] these have not resulted in anyone being legally held to account.[77]

Public outrage over the crisis eventually led to Fianna Fáil being ejected from power in February 2011. The successor government, a Fine Gael-Labour coalition, promptly published a new Programme for Government[78] covering a five-year period from 2011 to 2016. Some positive steps have been taken by the ruling coalition. It has pledged to renegotiate the EU-IMF deal, reversed the reduction in the minimum wage, and pledged to avoid further cuts to welfare payments while also confronting social housing shortfalls. Similarly, the new government's declaration that government agencies should take full account of human rights in how they do their work must be applauded.[79] Although there has been little detail on how this might work in practice, it is imperative that the administration fulfills this pledge. The new government has also made some modestly progressive reforms in the 2012 budget, such as increasing the minimum threshold for payment of the Universal Social Charge (USC).[80]

A job-creation initiative, comprising cuts to the value added tax and employers' social insurance payments, was unveiled in May 2011,[81] though at the time of writing its impact cannot be discerned. The employment and community services functions of the state training agency FÁS are meanwhile being incorporated into the Department of Social Protection to form a new National Employment and Entitlements Service (NEES),[82] which will tackle both welfare provision and training opportunities for the unemployed. Providing effective assistance to the unemployed in finding work will be a crucial challenge for the new institution. A recent OECD report branded previous government efforts in this area as 'deeply unsatisfactory'.[83] It should also be noted that, although the NEES is still in the development stage, initial planning documents suggest human rights concerns are not being mainstreamed as requested by the UN Special Rapporteur on Extreme Poverty and Human Rights.[84] The same criticism can be levelled at the aforementioned job-creation initiative.

With a new Fiscal Responsibility Act - expected to include multi-annual expenditure ceilings and budgetary oversight provisions - in the pipeline for 2012, the year ahead will prove a critical test of the Fine Gael-Labour government's commitment to transparency and participation. Civil society organizations in the country report that there has been some progress in these areas, with the administration publishing more information and NGOs being invited to consultations with *Oireachtas* committees, but as yet the impact of such engagement cannot be judged. There are also plans for a constitutional convention, but despite the Irish government's affirmed willingness to consider incorporating the right to health and housing into domestic law,[85] senior officials have told CESR that they are 'not hopeful' these rights will become part of the Constitution and that, at best, they would be aspirational 'directive principles'.

Straightened times: Ireland's austerity budgets

The 2012 budget – the country's fifth 'austerity' budget in four years[86] – continued the pattern of severe expenditure cuts and modest tax hikes set in previous years. With increases to Value Added Tax (VAT) expected to hit poorer households most severely,[87] and further retrenchment in social spending, levels of poverty, inequality and unemployment are likely to worsen yet more as a result. All the while, Ireland remains a dramatically low-tax economy, especially for corporations and high-income people.[88]

First among the cuts in 2011 were transfer payments to confront poverty. Between 2004 and 2008, when welfare payments increased in consecutive budgets, poverty levels in the country fell from 19.4 per cent to 13.9 per cent.[89] In the absence of social welfare provisions, poverty rates in Ireland would have stood at 46 per cent in 2009, rather than the actual 14 per cent, according to the Central Statistics Office.[90] The increasing importance of social transfers in the context of the crisis is evidenced by the fact this figure rose to 51 per cent in 2010, while the 'at risk of poverty' level jumped to 15.8 per cent.[91] But despite these facts, some €760 million was cut from the social protection budget in 2011, with a further €475 million removed in the 2012 budget. If the projections in the National Development Plan are adhered to, some €1.5 billion more will be extracted from social protection between 2013 and 2014.[92]

Given the pernicious problem of child poverty in Ireland (discussed in Section III), a €10 reduction in child benefit in 2011 provoked profound consternation. Jobseekers' payments were likewise cut, by €8, while the introduction of the Universal Social Charge, which replaced the somewhat complicated combination of income and health levies, represented an additional blow to low-income workers, as it shifted the tax burden away from high-earners and onto those with lower wages.[93] Among the few more progressive provisions included in Budget 2012 was a decision to raise the income threshold for payment of the USC from €4,000 to €10,000. Previously, the 2011 plan followed on from an earlier round of cuts in 2010 by targeting public sector workers along with poorer families in need of state support. Meanwhile, analysts have pointed out that the government could have generated the same savings by removing perverse tax breaks given to landlords rather than cutting welfare provisions.[94] Basic social welfare rates were left untouched in the 2012 budget, but changes to eligibility criteria were deployed which could further reduce state support to vulnerable people.[95]

Civil society participation in the design of Ireland's budgets is facilitated through a regular pre-budget forum staged by the Department of Social Protection. Those concerned with the welfare of vulnerable communities report that their voices have not been adequately taken into account in recent years, however, as the drive for austerity has taken precedence. The government has made rhetorical affirmations that the most vulnerable are protected under existing budget plans. Though the percentage drop in income may be less among low-income families,[96] the real impact on their welfare is likely to be much greater, however.[97] Assertions that welfare cuts are justifiable on the grounds that payments increased between 2004 and 2007 meanwhile fail to appreciate that these rises simply served to keep pace with inflation.[98] More importantly, Ireland's most vulnerable should not have to bear the costs of a crisis they had little hand in creating.[99]

The EU-IMF-ECB bailout: help or hindrance?

While the Irish state is ultimately responsible for the welfare of its people, the role of international organizations in prescribing policies which have risked undermining the economic and social rights of the Irish people must also be recognized. The rescue package agreed in late 2010 between the Fianna Fáil government, the International Monetary Fund, the European Union and the European Central Bank (ECB), unless effectively renegotiated, is likely to limit economic and social rights enjoyment long into the future.

In examining the bailout, it is important to consider the role of broader international pressures. When the crash came, English, French and German financial institutions were overexposed to the Irish financial markets, and it was feared that the collapse of the Celtic Tiger's banks would paralyze, or at the very least significantly weaken, the European banking system as a whole. Moreover, with yields on Portuguese and Spanish bonds rising, the view from Brussels was that it was imperative to shore up Ireland's banks in order to prevent contagion to the rest of the continent. In November 2010 the EU and IMF therefore stepped in with an €85-billion bailout deal, which according to one Dublin think-tank was 'not a bailout for Ireland', but rather 'a bailout of the European banking system by the Irish taxpayer'.[100] Comprising €35 billion for the banks – including €10 billion for immediate recapitalization and €25 billion for bank contingencies – along with another €50 billion to cover budget deficits between 2011 and 2015, the deal effectively committed the country to extracting close to €30 billion from the economy over a five-year period.[101] The only references to social provisioning in the Memorandum of Understanding (which essentially mirrors the aforementioned National Recovery Plan) take the form of demands for cuts and efficiency.[102] Ireland's human rights obligations, not to mention those of other EU or IMF member states, were hence ignored. Furthermore, Irish civil society was denied any meaningful input into the design of the plan. Since the deal was agreed, the IMF-EU-ECB 'troika' has engaged in dialogue with the social partners, including unions and selected non-governmental organizations,[103] but the concerns they express appear thus far to have been sidelined as the drive for further austerity measures continues.

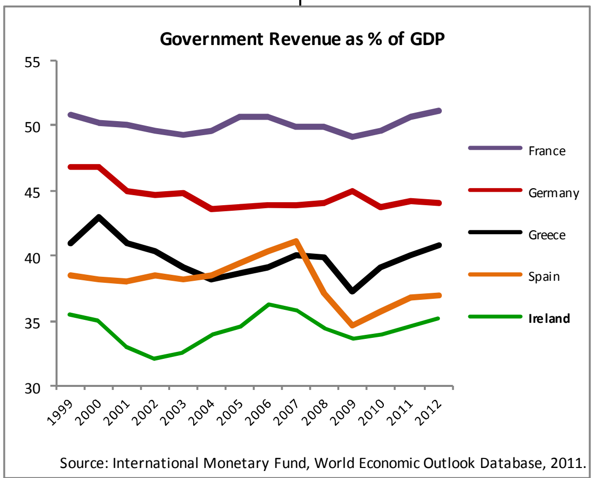
Given the magnitude of the debt crisis, which was clearly beyond the resuscitative capacities of the Irish economy alone, it can be argued some form of external assistance was inevitable. But with European banks having permitted and to some extent colluded in the excesses of the Irish banking sector, the argument has been made that the IMF and EU, rather than simply protecting these companies from the fiasco, should have recognized their respective responsibilities by pressuring those banks proven to have behaved irresponsibly to take on some of the debts themselves through an equity swap.[104] This would involve creditor banks agreeing to forego some proportion of outstanding debt in exchange for an ownership stake in the struggling debtor company. The ECB also had the option of taking over the debts itself, with the Irish government agreeing to pay back some proportion of the total amount,[105] or requiring the bondholders – who were likewise complicit in the debacle – to take some responsibility. Indeed IMF negotiators recognized that their organization was open to the latter option,[106] but the ECB was vehemently opposed. In the end, rather than considering any of these avenues, which might have gone some way to preventing the human rights consequences of the meltdown and the subsequent austerity trap, the ECB chose to place the entire bill on the doorstep of the Irish taxpayer, with most vulnerable facing the brunt of the predictable backsliding in social protections.[107]

The implications of having this financial millstone tied around the country's neck are only beginning to manifest. Along with successive rounds of cuts to health, education and social welfare spending, the economic and social rights of vulnerable Irish people will also be prejudiced by inauspicious levels of growth for years to come as the country struggles to keep up with repayments.[108] Moreover, the decision to source €12.5 billion for the package from Ireland's National Pension Reserve Fund,[109] plunging it into bank recapitalization, precluded the use of these resources for alternative stimulus measures such as job creation programs.

Ongoing renegotiation efforts by the new *Taoiseach* (Prime Minister), Enda Kenny, may go some way to easing the pain of economic 'restructuring', but it remains to be seen whether this will translate into a restoration of social spending. Meanwhile, hopes that the involvement of the IMF might usher in a new era of transparency in Ireland's traditionally secretive financial sector[110] have yet to come to fruition. Moves to protect whistleblowers may go some way to improving matters in this regard,[111] but progress overall remains incipient at best and the Fund itself has pressed for more openness.[112] Even the Irish Banking Federation's chief executive has recognized that the country's opaque financial sector still has a long way to go in achieving adequate transparency standards.[113]

Taxation: broken by breaks

In accordance with the ICESCR, the Irish government is obliged to dedicate 'maximum available resources' to the provision of economic and social rights. Availability of resources refers not only to how the government allocates its resources, but also how it generates them, in particular through taxation. Comparably low tax rates often prevent countries from realizing the economic and social rights of their people – hitting low- and middle-income families who rely more on government programs the hardest. Taxation regimes which rely heavily on indirect taxes on consumption rather than direct income taxes are often regressive, that is they place a greater burden on the poor and may be discriminatory in effect, particularly if proper exemptions and other safeguards are not in place.



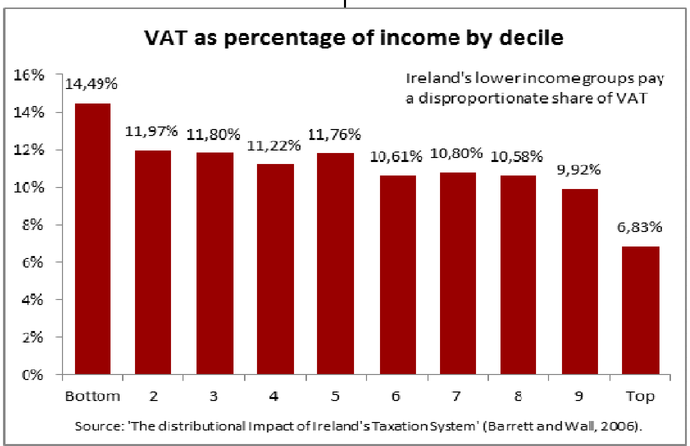
Source: International Monetary Fund, World Economic Outlook Database, 2011.

A central element of the Celtic Tiger's economic strategy was its tax regime, with especially low rates of corporate taxation, capital mobility and lax financial regulation. Despite being challenged,[114] the ingrained belief that low taxation rates have been singlehandedly successful in driving competitiveness and growth - allowing Ireland to outcompete other jurisdictions for investment inflows[115] - remains strong even in the wake of the deepest economic crisis in living memory. Indeed, Ireland remains one of the lowest-tax economies in the European Union (see box), with a total tax take of just 28 per cent of GDP, as compared to an average of 36 per cent across the EU. Only Latvia and Romania source less revenue from taxation.[116] Denmark and Sweden, two of the most economically competitive economies in the world,[117] meanwhile enjoy tax contributions of 48 and 46 per cent of GDP respectively.[118] By 2015, Ireland's total tax take when excluding high interest payments on debt is estimated to drop to 26 per cent of GDP, putting severe strains on public expenditures when they are most needed.[119] The country's insistence on low overall tax rates at any cost has now manifested in an economic recovery plan that prioritizes spending cuts over tax increases at a ratio of 2:1. Low and middle-income households in Ireland, who are facing substantial burdens due to cutbacks in social protections, have likewise been adversely affected by changes in the tax regime over the past 15 years, as described in more detail below.

Effective income tax rates: Referring to the amount of income tax paid as a proportion of overall pre-tax earnings, effective tax rates in Ireland have fallen substantially over the past 15 years, with slight post-crisis increases.[120] Ireland's complex matrix of tax expenditures makes it difficult to assess effective tax rates on different income earners,[121] yet it is clear that higher income groups are not contributing their fair share. A survey of high-earners who enjoyed an annual income of over €500,000 in 2008 showed they only paid 20 per cent in tax, despite facing a marginal income tax rate of 41 per cent.[122] Some 3,800 individuals with earnings of over €100,000 meanwhile paid no tax on their incomes whatsoever in 2007 due to tax breaks on property and business investment, along with tax reliefs on trading losses.[123]

A key factor sapping state finances is tax expenditures, meaning subsidies supplied through the taxation system in the form of tax breaks. Recent studies show that these reliefs cost the exchequer in excess of €11 billion in 2006, with the complexity and opacity of the system making it all but impossible to assess the precise impact on wealth distribution.[124] The largest single category of tax breaks go to private pension funds, which accrue almost entirely to the better-off.[125] Some 50 per cent of mortgage interest reliefs, another form of tax expenditure, meanwhile went to the top quintile income group in 2008.[126] One assessment found that the amount of revenue lost through tax breaks to landlords alone was equivalent to the social welfare cuts in 2010.[127] It is estimated that reforming tax expenditures to stand in line with European norms could raise €5 billion; this without even raising tax rates.[128] The new government's commitment to enforce a minimum effective tax rate of 30 per cent for very high earners is to be welcomed in this regard, although it is only one small step to preventing *de facto* discrimination in the income tax regime.[129]

Value-Added Tax: The Value-Added Tax (VAT) in Ireland is highly regressive, placing more burden on low and middle-income than higher income households. Even despite some laudable exemptions, the lowest income earners in Ireland pay 14.5 percent of their income in VAT, while top earners pay only 6.8 per cent of their income in this area (see box).[130] Ireland meanwhile relies on VAT for approximately 41 per cent of all tax income, as compared to the 34 per cent EU average.[131] In effect then, low income households are currently being asked to contribute disproportionately to Ireland's public coffers, while the top ten per cent are asked to contribute much less through this regressive tax. Provisions in the 2012 budget, which left income tax untouched but imposed a 2 per cent rise in the higher rate of VAT, indicate that the new administration is not considering the human rights principle of non-discrimination in its tax reform agenda.



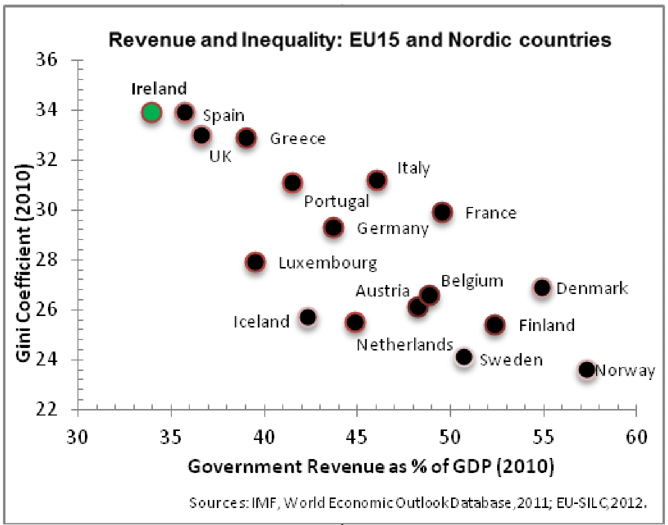
Property Taxes: Ireland is unusual in that it does not currently collect a residential property tax. Keeping in mind the regressive impact of tax breaks afforded to immovable property, the new administration's decision to introduce an annual household charge in 2012, ahead of deploying a full property tax in 2014, might initially be regarded as a positive step. While a value-based charge has been promised, the initial system involved a flat rate tax which risks prejudicing poorer households, however.

Social insurance taxation: The facet of Ireland's revenue regime that most clearly marks it apart from most of its neighbours is its extraordinary aversion to social security contributions.[132] In 2009 only 20.7 per cent of revenue was derived from this area, representing a mere 5.8 per cent of GDP – the second lowest level in the European Union and more than 5 points below regional averages.[133] By contrast, the EU average is 11 per cent. In this way, the compulsory collectivization of risk that characterizes most European countries is not reflected in Ireland, under a taxation system that deprioritizes social solidarity and thus the protection of economic and social rights.

Corporate taxation and tax evasion: Portrayed by the government as 'an essential pillar of enterprise policy', Ireland's exceptionally low corporate tax rate is, at just 12.5 per cent, one of the lowest in the EU.[134] The existing system is also open to abuse, with some multinationals paying much less than the paltry 12.5 per cent they are asked for.[135] At the same time, revenue collected from corporate taxes in Ireland represented 2.5 per cent of GDP in 2009, a figure comparable to that of other EU countries with much higher rates of corporate tax.[136]

The reason for Ireland's low tax rate resulting in higher revenues than some of its neighbours is that the country has used its low-tax regime to attract multinational businesses (especially financial institutions) from abroad, in theory taxing the profits gained in other countries. Several loopholes exist, however, allowing many multinationals to go almost untaxed. As discussed above, the ability of many companies to route profits through Ireland on the way to paying little if any tax in any jurisdiction has pushed Ireland into the realm of a tax haven, with pernicious effects in these companies' home countries, as well as in Ireland. An estimated €7.64 billion are lost to illegal tax evasion in Ireland, a substantial sum in what are perceived to be austere times.[137] This figure is several times the €1.24 billion removed from the social protection budget between 2011 and 2012. While Ireland has taken some initial steps to fight tax evasion,[138] the shadow economy remains a substantial player in Ireland, with direct impacts on the ability of

Ireland and other countries to meet human rights obligations.



With an overwhelming debt burden hovering over Ireland for the near future, revenue increases rather than cutbacks in public services are a matter of justice as much as they are a matter of economic necessity. In this regard, an incremental increase in the effective tax rates of corporations and high income households to European norms would, according to projections, result in substantial budget surpluses by 2015, liberating a significant base of resources to invest in economic and social rights fulfillment.[139] Indeed, had Ireland's total tax take been equal to EU average levels in recent years, there may have been no fiscal crisis to begin with.[140] Of course, untimely or excessive tax increases in an uncertain, fragile economic climate can have detrimental economic and public revenue impacts. In the Irish low-tax context however, there is substantial space to build more progressivity into the system, with beneficial results in boosting the public budget without placing the burden of deficit reduction on retrogressive measures such as social expenditure cuts.[141]

Oversight undermined: cuts to human rights institutions

Human rights are not a luxury good that can be dispensed with when the national coffers start running low. State institutions designed to protect the economic and social rights of Irish people were first in the firing line when the Fianna Fáil government began to tighten the purse strings, however. Disproportionate cutbacks levied against certain key welfare and rights institutions have provoked allegations that the Fianna Fáil administration deliberately sought to silence voices of dissent in the face of a deeply regressive policy programme.

Perhaps the most striking example of this was the decision, in the face of economic crisis, to close down the Combat Poverty Agency (CPA). This institution, which played an important role in the advances made in poverty reduction between 2003 and 2007, was decommissioned in 2009. Its functions were absorbed, on paper at least, into the Office for Social Inclusion, which subsequently became part of the Department of Community, Equality and Gaeltacht Affairs, leaving no independent statutory body focused specifically on poverty. Although the CPA's work was ostensibly to be continued, former employees inform CESR that it has been effectively dissolved, with most staff members who remained after the amalgamation being deployed to other areas, with associated losses in institutional knowledge.

The Irish Human Rights Commission (IHRC) has likewise come under budgetary attack, with funding tightened to such an extent that the institution has effectively been crippled. 'When the cuts began there was a general edict for a cut in spending of 10 per cent across all departments, but the IHRC was cut by 32 per cent,' explained IHRC member Michael Farrell. 'People are working beyond their capacity and there's no money at all for research, publications and so on. There's also a public service embargo so you can't replace anybody who has left, and because of the pressures staff have left; there's only one person left doing policy work.' The IHRC's budget was again reduced by 5 per cent in the 2011 budget, and by a further 3 per cent in 2012.

It is a similar story at the Equality Authority (EA) which was left hamstrung when 43 per cent of its funding was taken away in 2008. It was also decided to move the organization to the rural town of Roscrea in County Tipperary, less well connected to the communities it was set up to support. The Authority's CEO Niall Crowley resigned in protest at the move, asserting that senior civil servants viewed the EA as a threat and their real goal was to scupper its work. In September 2011 it was announced that the Equality Authority and the Human Rights Commission would be merged into a single body.[142] The new government's declared commitment to ensure the effectiveness of the new Human Rights and Equality Commission, and to reinforce its capacities in accordance with the Paris Principles, [143] is to be welcomed, though it remains unclear whether this will include the restoration of previous funding levels.

The National Consultative Committee on Racism and Interculturalism – a crucially important institution in a country that recently experienced its first significant waves of immigration – was meanwhile dissolved altogether. This last decision is all the more worrying given the country's increasing demographic diversity, despite the end of the boom that attracted so many foreign nationals to Irish shores, and the downturn is unlikely to help the delicate process of integration. Already, the lack of an appropriate institutional response to the problem of racism is being cited as a factor fuelling racist violence in the country.[144] Furthermore, the particular marginalization facing immigrant communities, and the barriers they face in accessing social services and welfare supports, makes the work of such institutions all the more important.

III. Double impact: Economic and social rights hit by downturn and austerity measures

A review of the various planning documents and policy measures implemented both during Ireland's boom years and in the wake of the crisis indicates that the country's human rights obligations have been largely ignored in economic governance in recent times. The new administration's declaration that human rights would be embedded in the functioning of all public bodies[145] is to be welcomed, though it remains to be seen how this commitment will be implemented and little guidance has been offered in this regard. Keeping in mind the standards and obligations set out in the human rights treaties Ireland has ratified, this section analyses specific economic and social rights and specific population groups particularly adversely affected by Ireland's pre- and post-recession policies. It highlights apparent links between the deterioration in human rights outcomes in recent years and the retrogressive policy measures taken in each area, particularly with regard to spending cuts in these areas. Comparing indicators of economic and social rights outcomes with data on corresponding policy and fiscal efforts is a critical step in assessing Ireland's compliance with its international human rights obligations.

Labour pains: the right to work

The devastating impact of Ireland's economic meltdown is nowhere more evident than in growing queues outside job centres and social welfare offices. For the people of the country, the return of mass unemployment represents the reopening of a barely-healed wound, with the 1980s jobs crisis and the huge waves of emigration that went with it hardly forgotten.

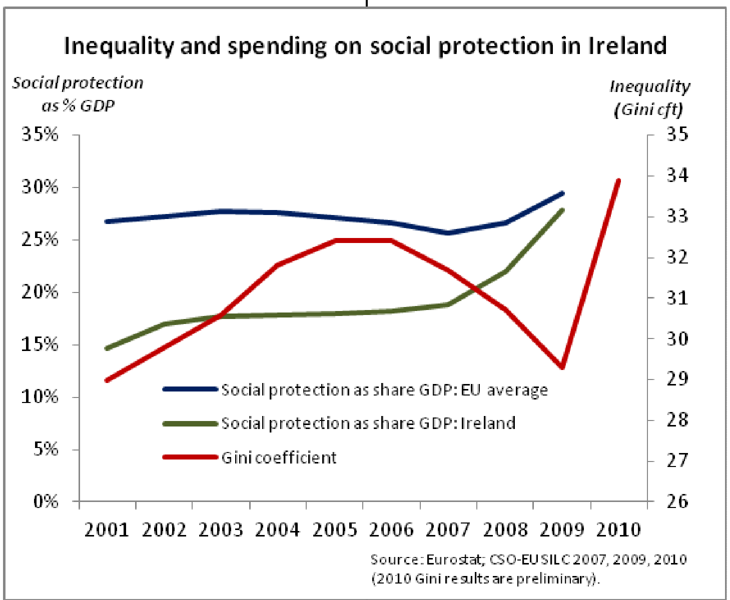
Employment figures in the boom years were astounding. As the country's economy grew through the decades of the 90s and 00s, the proportion of the adult population out of work went from being the highest in the EU to the lowest. In 2001 unemployment stood at an historic 3.6 per cent, in sharp contrast to the previous peak of 17 per cent recorded in 1986.[146] At the height of the boom, in the Spring of 2007, some 2,114,000 people were working in Ireland, the highest number in its history.[147]

Then came the crash. Of all the economic and social rights in Ireland, the human right to work was hit the most acutely in the initial onset of the economic crisis. Ireland's unemployment rate skyrocketed over 250 per cent, from 4.2 per cent to 14.1 per cent between January 2005 and January 2011, four-fifths of that increase coming just after the crisis in 2008.[148] The rate of long-term unemployment (those who have been unable to find adequate work for over a year) more than doubled between 2009 and 2010.[149] By the third quarter of 2011 it accounted for 56 per cent of overall unemployment, with devastating consequences for thousands of vulnerable households.[150]

Setbacks in the enjoyment of the right to work have not been evenly felt (see box). Construction workers were among the worst affected, with employment in this sector slumping by 53 per cent between Spring 2007 and Spring 2010.[151] Young people have also been hit disproportionately hard, with recent estimates putting the proportion of under-25s who are out of work as high as 29 per cent.[152] Women workers have likewise faced more vulnerability in the wake of the crisis, with official female unemployment rising some 15 per cent in the year to March 2011 while male unemployment went up by 3.5 per cent.[153] Other vulnerable groups, such as Travellers, migrants and people with disabilities, also face stiff challenges in acceding to the labour market.[154] The Irish government meanwhile denies asylum seekers the right to work in more explicit terms, through legislative prohibitions.[155] While the official rate at which unemployment is rising seems to be slightly tapering off at 14 per cent in early 2012,[156] the right to work will remain a critical problem for the foreseeable future.

Resurgent poverty: the right to an adequate standard of living

Significant progress was made in addressing poverty in Ireland during the latter years of the Celtic Tiger. Poverty levels dropped year after year between 2004 and 2008, with increasing social welfare transfers playing a crucial role. Of the 225,000 people who were lifted out of poverty over the past decade, the most marked falls have been among those who have received these transfers, such as the unemployed and retired.[157] According to Ireland's Central Statistics Office (CSO), in 2010 the 'at risk of poverty' rate would have been 51 per cent, rather than the actual figure of 15.8 per cent, were it not for social transfers.[158] Spending on education, health and other such in-kind services meanwhile reduced poverty in the country by some 60 per cent, according to the OECD.[159]



But despite these provisions, the onset of the economic crisis and the subsequent austerity-driven cutbacks in social services have contributed to the continued prevalence of poverty. Given that the crisis in Ireland is still unfolding, there will be some time-lag before the full impact on people living in poverty can be fully appreciated. Current trends suggest that the official target of eliminating consistent poverty by 2016 is in jeopardy. The most recent data from the Central Statistics Office shows that the proportion of the population 'at risk of poverty', meaning their annual income is below 60 per cent of the median income level, rose from 14.1 per cent in 2009 to 15.8 per cent in 2010.[160] Measures of consistent poverty (those on a low income and unable to afford basic necessities) showed a significant jump from 4.2 per cent in 2008 to 6.2 per cent in 2010,[161] and far gloomier outcomes are likely as social spending cuts continue to manifest in the years to come. The numbers of people experiencing material deprivation rose by a staggering 90 per cent between 2007 and 2010, with some 22.5 per cent of the population finding themselves unable to meet the costs of basic needs such as adequate meals and clothing.[162]

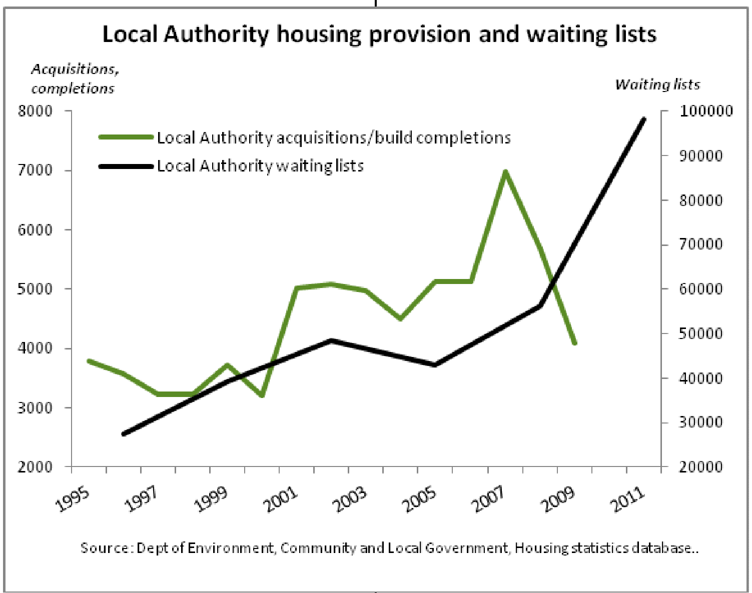
Of great concern is the fact that children are some of the worst affected, with the deprivation rate of under-17s jumping from 23.5 per cent in 2009 to 30.2 per cent in 2010.[163] Some 35,000 children are reported to have been forced into poverty between 2007 and 2009,[164] and this sector's right to live free of poverty is likely to be further undermined by cuts to child benefit payments in the 2012 budget.[165] Lone-parent households are the most vulnerable sector in Irish society, with 35.5 per cent at risk of poverty in 2009.[166] In the context of rising fuel and health costs, the decision to freeze the state pension until 2015 will meanwhile have a particularly pernicious impact on older people, who are particularly dependent on transfers from the social welfare system.[167] According to CSO calculations, 88 per cent of this sector would face poverty in the absence of social welfare provisions.[168] Non-nationals are disproportionately marginalized, too, with 18.4 per cent at risk of poverty, as compared to 14.4 per cent in the general population.[169]

Inequality is also rising as the crisis ramifies through vulnerable communities (see box), with the ratio between the highest and lowest income quintiles jumping nearly 30 per cent in just one year, from 4.3 in 2009 to 5.5 in 2010.[170] This trend is all the more worrying given that Ireland already ranks among the most unequal countries in the EU,[171] and that inequality actually worsened during the boom years as higher earners increased their share of overall income.[172] Income inequality in Ireland is estimated to have gone up by some 11 percentage points since the onset of the crisis.[173]

Meanwhile, the Habitual Residence Condition (HRC), which requires recipients of social assistance to prove their connection to Ireland, seems to prejudice migrants, asylum seekers, Travellers and returning emigrants. It also implies that certain 'universal' payments, such as child benefits, are not in fact universal in real terms.[174] Long delays in formal social welfare appeals procedures, often running to more than a year, meanwhile suggest welfare entitlement accountability systems are failing.[175] Ireland also faces stark regional divergence in the incidence of poverty, with communities in the Midlands and Mid-West experiencing poverty levels more than twice as high as those in Dublin.[176]

Home truths: the right to adequate housing

The enjoyment of the human right to adequate housing has also suffered setbacks during the economic crisis. The number of households on waiting lists for social housing has risen by 75 per cent post-crisis, from 56,000 in 2008 to 98,000 in March 2011 (see box).[177] The lack of foresight or integrated planning that characterized the decline of the Celtic Tiger is meanwhile embodied in the country's 'ghost estates' – entire housing complexes, built amidst the giddy excesses of Ireland's property boom, that now lie empty or uncompleted.[178] In 2010 it was estimated that nearly one in five Irish homes were vacant.[179]



Source: Dept of Environment, Community and Local Government, Housing statistics database..

Despite the crash in the property market, affordable housing remains out of reach for many Irish people. As far back as 2004, the National Economic and Social Council warned that an extra 73,000 social housing units would have to be built by 2012 if the state was to keep pace with the country's needs.[180] While over 22,000 new properties were either bought or acquired by local authorities between 2005 and 2008[181] in order to provide sufficient levels of social housing, this measure still appears to fall far short of what is actually needed to fulfill the right to adequate and affordable housing. Waiting lists for social housing continue to soar, and much of the accommodation provided to those in need is substandard.[182] Moreover, the number of acquisitions dropped dramatically – from 2,002 in 2007 to 787 in 2008 – as the economic crisis began to take hold.[183] The new Fine Gael-Labour coalition has promised a staged purchase scheme to increase the stock of social housing, though details of the plan remain vague at the time of writing.[184] Astoundingly in this context, the social housing budget was slashed by 36 per cent in 2011,[185] and the allocation for capital expenditure in this area received a further cut of 26 per cent for 2012.[186]

The 2002 decision to amend the Planning and Development Act (PDA), which required developers to dedicate 20 per cent of all housing to social purposes, represented a more explicitly regressive step. The amendment allowed developers to provide financial compensation in lieu of housing units, resulting in the relative number of social housing units built plummeting as a direct result. Moreover, tax incentives offered to private developers, along with their growing influence over planning decisions, were responsible for the soaring prices that placed adequate housing beyond the means of so many families (and eventually contributed to the broader economic collapse) in the first place.

Another key element of Ireland's provisions for housing is the Rental Accommodation Scheme, (RAS),[187] which provides subsidies for private domestic rent and aims to prevent substandard living conditions and long-term dependency on rent supplement. With close to 100,000 families currently in receipt of rental subsidies,[188] there is concern over the slow pace at which eligible households are being transferred from rent supplement to RAS,[189] and the as-yet unclear changes to each of these provisions that may be made in order to meet conditions of the IMF-EU bailout in the future. Furthermore, civil society groups complain that the 2009 Housing (Miscellaneous Provisions) Act,[190] which is designed to address unacceptable standards in rented housing, has not been properly implemented.[191]

Ireland's homeless, though relatively few in number, meanwhile remain the most shocking expression of the lack of enjoyment of the right to housing. It is estimated that around 5,000 people remain homeless in the country,[192] despite the target of eliminating homelessness by the end of 2010 established in the planning document 'Towards 2016'. This number reflects a rise of almost 100 percent on the number recorded in 1997,[193] and a regrettable reversal after significant falls in levels of homelessness between 2002 and 2005.[194] It is feared that unsustainable mortgages may be contributing to this problem,[195] as over-indebted homeowners find themselves unable to keep up their payments. Furthermore, there was no civil society participation in the Interdepartmental Working Group on Mortgage Arrears,[196] which was set up to tackle the growing problem of families unable to meet their mortgage commitments.[197]

In sum, the policies put in place during the Celtic Tiger years, rather than protecting the right to housing, have had an undermining effect. Incentives supplied to property developers, combined with poor planning and regressive legislation, served to make decent accommodation unaffordable for many thousands of families. Inadequate budgetary, policy and legal provisions suggest that the country is still falling far short of its legal obligation to fulfill the right to adequate and affordable housing. And with rising levels of mortgage default expected to continue for some time,[198] grey skies look set to hang over the issue of affordable housing in the country well into the future.

The right to health: in need of a remedy?

Ireland's health care system has been struggling for some time. And the 'age of austerity' now being faced by the Irish people looks set to bring continued suffering. The €543 million (or approximately 4 per cent) adjustment announced in the 2012 budget followed on from a reduction in spending of €746 million (5 per cent) in 2011, and €800 million (5 per cent) in 2010. Moreover, with only 10 per cent of households in lower income groups enjoying private medical cover, as compared to 55 per cent of higher income households,[199] it is likely that less-well off sectors will be particularly hard hit by these downward adjustments to health provision.

The Irish health service was not in a particularly strong position to start with. While expenditure on health rose significantly between 1997 and 2007,[200] helping bring the country into line with OECD averages in terms of health spending as a proportion of GNP, chronic inefficiencies in the delivery of services reportedly continue to hinder protection of the right to health.[201] In this regard, the challenge facing the Irish health system is not just protecting resource flows, but also ensuring that fiscal inputs are efficiently translated into improved health outcomes. The weak system of primary care currently results in high numbers of avoidable hospital admissions. Progress in the creation of primary care teams, which bring health care professionals in an area together to facilitate a more integrated and accessible service, has been much slower than expected.[202] Similarly, broader use of generic drugs would help tackle the wastefulness that currently besets the system.[203] Ireland must also address the low number of general practitioners, and other types of doctors, available to the public,[204] along with the insufficient number of consultations per doctor. Though the country has a higher proportion of nurses than most other OECD members,[205] and has developed a range of nurse-led health services as a result,[206] this cannot be regarded as an alternative to fuller provision of doctors.

The current system is also riven with inequities. Some 19 per cent of the population does not have either a medical card, which enables holders to access free medical care, or medical insurance.[207] It is noteworthy that this failure in the provision of health coverage has been growing in the 25-34 age group in recent years.[208] Given that the income threshold to be eligible for a medical card is far below the poverty line, many people living in poverty are reportedly unable to afford healthcare.[209] For example, the percentage of Irish people living in poverty who decided not to attend a doctor due to the cost doubled between 2008 and 2009, according to official numbers.[210]

Furthermore, being granted a card is no guarantee of good health, as socio-demographic factors continue to dictate stark disparities in health outcomes. Irish men have the lowest life expectancy in the European Union, and Irish women are twice as likely to die of heart disease as their EU neighbours.[211] According to OECD experts, the Fine Gael-Labour government's goal of introducing universal health insurance may go some way towards reducing health inequalities, at the domestic level at least, but it may well fail to address the aforementioned problem of inefficiency.[212]

The treatment of people with mental health problems, long a source of controversy in Ireland, has likewise been highlighted as a cause for concern. Though the country has developed a Mental Health Strategy, civil society groups emphasize that this has not been meaningfully implemented.[213] In June 2011, an independent monitoring group appointed to assess progress on the Mental Health Strategy lamented that the rate of advance in specialist mental health services, such as rehabilitation and psychiatric care for older people, had been particularly lacking.[214]

Meanwhile, the Traveller Health Strategy, which expired in 2005, has thus far not been replaced, despite the recommendation of the UN Special Rapporteur on Extreme Poverty and Human Rights.[215] Furthermore, the outdated National Health Strategy fails to consider access to health facilities and services from a human rights perspective and ignores the crucial principle of non-discrimination, as has been noted by the UN Committee on Economic, Social and Cultural Rights.[216]

Against this backdrop, the policy trend of prioritizing cutbacks in social spending over revenue-generating tax increases in efforts to address the economic crisis is likely to seriously undermine the already under-protected right to health. Vulnerable groups such as the Traveller community, asylum seekers and the disabled, who face particular difficulty in accessing health services, are likely to face even greater marginalization as a result.

Class politics: the right to education

Ireland's efforts to establish its reputation as a leading 'knowledge economy' was one of the hallmarks of the Celtic Tiger years. In addition to the intrinsic value of education in and of itself, the importance of investment in 'human capital' for long-term economic success and sustainability is well documented. One might therefore expect the right to education to be well-provided for in modern Ireland. Unfortunately however, this area of the country's socio-economic life has not escaped the ongoing economic storm.

Despite a political discourse that appeared to indicate the contrary, governments during the years of prodigious growth did not demonstrate in budgetary terms their stated commitment to educating the population. Even at the peak of the boom, Ireland invested just 4.7 per cent of GDP in education, ranking 30th out of 33 comparable countries examined by the OECD. The Czech Republic, Slovakia and Italy were the only nations to spend less than Ireland in the rankings.[217] While lower spending levels do not necessarily translate into poorer performance, Ireland's low position in the rankings does raise questions over political commitment to the right to education. The OECD's study revealed an education system suffering meagre investment at primary, secondary and tertiary level, along with class sizes that were among the highest in the OECD in 2008.[218]

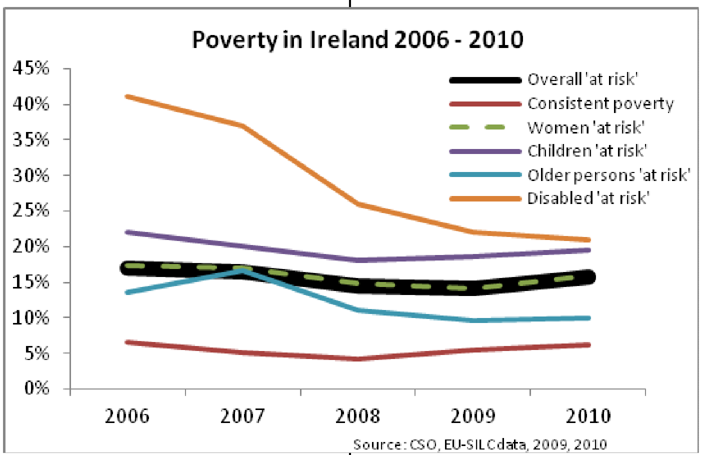
This uncomfortable assessment of Ireland's fiscal commitment to education was based on figures from 2007, before the system came under attack from four consecutive years of austerity budgets. Unions and rights groups estimated that the cuts to education in the 2009 budget would cost the average family up to €2,000 per year.[219] Subsequently, the 2010 spending plan saw teachers' pay reduced, along with an estimated €134 million removed from the annual spend through cuts including student grants and support for disadvantaged areas.

There was to be no let-up in the squeeze, however, as the National Recovery Plan, announced in November 2010, set out plans for a further €690 million in cuts over the following four years. Thus far, the current government has not reversed this trend, with the €132 million reduction announced for 2012 following on from a €170 million cut in 2011. Hikes in student fees,[220] along with further cuts to grants and reductions in the number of teachers, throw serious doubt on Ireland's commitment to making education equally accessible and free for all. Immigrant children, who make up 6 per cent of the school age population,[221] have also found themselves particularly affected by the cutbacks. Although the Intercultural Education Strategy 2010-2015,[222] which aims to promote inclusion and integration in the education system, is to be welcomed, cutbacks to extra language resources have hit this group particularly hard. Such potentially regressive measures are all the more worrying given that demographic trends show the number of school-age children in Ireland will increase dramatically in the coming years. Universities have likewise seen their resources severely undermined just as the number of students they must cater to rises fast.[223]

The country's pronounced levels of social inequality will very likely be exacerbated by this decline in financial support for its schools. The independent Think Tank for Action on Social Change (TASC) warns that there is already a marked 'education premium' in the country, with those who receive little schooling struggling to survive on a gross median income of €13,489, while those with university degrees or higher earn a median income of €45,707.[224] Taken together, the efforts to tackle the economic crisis are liable to significantly weaken what is already an underfunded and struggling education system.

Vulnerable sectors at risk

Though everyone in Ireland has been affected by the economic meltdown, those who benefitted least from the boom are likely to suffer most now that the Celtic Tiger years are over. Statistics show that **children** are particularly exposed in the country, with one in five of all Irish children – or 185,000 in total – deemed to be at risk of poverty by EU-SILC standards.[225] One in every 13 is meanwhile classified as living in consistent poverty – meaning that they are forced to go without basic necessities.[226] This situation has understandably been branded a 'disgrace' given that in 2007 Ireland enjoyed the second highest level of GDP per capita in Europe.[227] Rapidly rising levels of deprivation among households with children between 2008 and 2010 would seem to indicate that the wellbeing of Ireland's young is deteriorating yet further as the economic quagmire continues.[228] It was against this troubling backdrop that the Fianna Fáil government cut child benefit by €10 per month for first and second children, with the reduction rising to €20 for subsequent children, in the 2011 budget. This news followed on from an across the board retrenchment to the tune of €16 the previous year. Payments for first and second children were not touched in the 2012 budget, but hopes that the new administration might reverse earlier cuts were quashed with the confirmation of a further reduction in payments for third and subsequent children.[229]



Having been criticized in 2006 by the UN Committee on the Rights of the Child over its failure to incorporate the UN Convention on the Rights of the Child (CRC) into domestic law, and with growing public pressure for better legal protections for children, the 2011 budget allotted funds for a referendum on an appropriate constitutional amendment explicitly enshrining children's rights. Although the Oireachtas Committee on the Constitutional Amendment on Children affirmed that the wording of the amendment should bring Ireland's domestic legal framework into line with its commitments under the CRC, there is some discord as to whether the economic and social rights provisions set out in the Convention will in fact be afforded adequate protection.[230] The decision to replace the early childcare supplement with a free year of pre-school education is to be welcomed,[231] as is the state's reiterated commitment to ratifying the Optional Protocol on the Rights of the Child on the sale of children, child prostitution and child pornography.[232] These more heartening legislative developments contrast sharply with the policy and budgetary steps backwards Ireland has taken with regard to children's rights.

The aforementioned cuts to child benefit will likely have a similarly disproportionate impact on **women**,[233] who are the primary carers of an overwhelming majority of the country's children and who likewise account for most lone-parent households.[234] The One Parent Family Payment has been the target of successive cuts, despite the fact that single-parent households suffer the highest consistent poverty rate of any household category.[235] Maternity leave benefit has likewise been subjected to successive reductions. An across the board €8 cut in 2011 followed on from measures in the 2010 budget that saw €10 removed from the maximum rate and €4.50 from the lower rate. There is also concern that provisions for maternal and reproductive health are being undermined. The Irish Family Planning Association reports that funding cuts have impaired its capacity to deliver crucial services, particularly in disadvantaged areas, while increasing numbers of women are finding themselves unable to afford sexual and reproductive health services.[236]

Meanwhile, severe reductions to both salaries and staff numbers in public services, where a large share of working women are employed, mean Irish women are again bearing the costs of the crisis in this arena.[237] Even before the recession took hold, women were more at risk of poverty. In 2008, some 17 per cent of women received incomes that placed them below the poverty line, while consistent poverty among female-headed households was twice as pervasive as it was among male-headed households.[238] Levels of deprivation (defined as enforced exclusion from two or more basic indicators considered the norm among others in society)[239] suffered by women rose from 17.7 per cent in 2009 to 23.4 per cent in 2010.[240] The exorbitant cost of childcare in Ireland, which acts as a tremendous obstacle to female participation in the workforce, further contributes to this sector's marginalization.[241] Nevertheless, international suggestions that the Irish government implement a gender-targeted income tax reduction of 5 per cent, with the dual aim of reducing inequality and boosting growth, fell on deaf ears.[242] Further, the government has dramatically reduced budgetary support for women's advancement since the crisis began. The National Women's Strategy has lost the bulk of its funding since 2008,[243] and some €10 million in European Union funding for gender equality measures has been redirected to other labor market programs.[244]

Having long been subject to discrimination in all spheres of social and economic life, the **Traveller community**'s economic and social rights are particularly precarious. On average, Traveller men live 15 years less than their counterparts in the wider population.[245] Three out of 10 adults in this sector, which numbers approximately 40,000 in Ireland, meanwhile have literacy problems, while a substantial minority do not progress beyond primary education.[246] Barriers to access to education, housing, and employment, along with widespread discrimination and poverty, fuel the desperate circumstances confronting this community. According to some indicators the health status of Irish Travellers showed little or no improvement during the Celtic Tiger years.[247] Societal and judicial antipathy with regard to Travellers' nomadic lifestyle means that their right to culturally adequate housing has gone unrecognized, as halting site facilities are frequently substandard and the courts are less than sympathetic to those who choose to stop on alternative sites of their own choosing. The right to education is likewise undermined by de jure and de facto discrimination in the school system,[248] which may be further exacerbated by recent cuts to educational supports provided to Traveller children.[249] Although Ireland accepted calls at the Universal Periodic Review to address the inequalities facing Travellers in the spheres of health, education and housing,[250] there is a pressing need to improve the voice and representation of this sector in order to confront the structural determinants of their marginalization. In its most recent review of Ireland, the UN Committee for the Elimination of Racial Discrimination (CERD) criticized the country for its 'persistent refusal' to recognize Travellers as an ethnic group, and noted that its previous recommendations concerning Travellers' participation in public life had been ignored,[251] thereby hindering their access to justice with regard to the entire spectrum of rights.[252]

People with disabilities have likewise been negatively affected by recent budgets. This group has experienced a long history of mistreatment at the hands of the Irish state, which has yet to ratify the UN Convention on the Rights of Persons with Disabilities. Ireland's disabled population was severely affected by both the 2010, 2011 and 2012 budgets, with successive cuts to the disability allowance. The 2012 spending plan sees the allowance paid to people with disabilities aged 18 to 21 reduced from €752 to €400 a month,[253] though this measure has been put on hold pending a review by the Commission on Taxation and Welfare.[254] The disablement pension has also been slashed, along with the carer's allowance, thus creating a situation in which many disabled persons may be effectively 'imprisoned in their own homes'.[255] Needless to say, those with disabilities have also been disproportionately affected by the aforementioned cuts to education services, such as student support grants and teacher support services, which have been subject to successive reductions. Civil society's capacity to respond in the face of regressive policy measures has simultaneously been weakened by drastic reductions in state support to the voluntary sector, with a recent Disability Federation survey finding over three quarters of member organizations had been either 'significantly' or 'very significantly' hit by the recession.[256] Although such cuts affect other groups as well, it must be underlined that people with disabilities are particularly reliant on the support of the voluntary sector.[257] Meanwhile, Ireland's disabled population continues to wait for the governing coalition to publish an implementation plan for the National Disability Strategy, as promised in its Program for Government.

Concern over the wellbeing of Ireland's **older persons** is likewise rising, with the majority of this sector living on incomes that are close to the poverty line.[258] Poverty levels among older persons fell dramatically under the Celtic Tiger, with the proportion considered at risk of poverty[259] dropping from 44.1 per cent in 2001 to 9.6 per cent in 2009.[260] Though the state pension has not been cut as severely as other areas of social spending,[261] recent austerity-driven cuts in welfare payments, along with reductions in public sector pensions[262] and the scrapping of Christmas bonus payments could easily reverse this trend. Data from the Central Statistics Office confirms that when social transfers are excluded, the proportion of over-65s deemed to be at risk of poverty rises from 10 per cent to 88 per cent.[263] Cuts to health services and rising heating costs affect older persons disproportionately as well.[264] In this regard, the decision in Budget 2012 to reduce the duration of winter fuel allowance payments from 32 to 26 weeks is particularly regrettable. The charity Alone, which provides support to marginalized older people, has reported a 50 per cent surge in demand for its services in 2010, as older persons suffering debt, poverty, sub-standard housing conditions, physical ill-health and/or disability and mental health issues struggle to make ends meet on reduced state payments.[265] The UN Special Rapporteur on Extreme Poverty and Human Rights has meanwhile voiced concern over plans to reduce pension payments while also raising the retirement age to 66 in 2014 (with the eventual goal of raising it to 68).[266] Increasing the age at which older people qualify for pensions represents a reduction in social transfers to a sector that is heavily dependent on such payments and, as such, a potential threat to their right to an adequate standard of living.

Immigrants and asylum seekers are also among those afforded least protection by the state. The delays in processing asylum applications have long been a cause for concern in Ireland, with upwards of 6,000 migrants detained in 'direct provision' accommodation sites, often for years on end.[267] It is unsurprising, therefore, that a cut in the Irish Naturalization and Immigration Service's budget by 21 per cent in 2011 provoked great concern among rights groups.[268] Resource allocations for asylum seekers' accommodation, which is already acutely substandard, was meanwhile reduced by 13 percent when €10 million was removed from the Reception and Integration Agency budget.[269] The weekly allowance of €19 paid to asylum seekers, who are not allowed to enter the workforce and cannot access primary social welfare payments,[270] has not risen in over a decade. Furthermore, the fact that a small number of Irish businesses such as private hostel owners are making substantial profits from the current asylum system, has led some to question who the real beneficiaries are.[271] Other immigrants, though not subjected to the same levels of mistreatment as asylum seekers, are likewise denied basic rights. Those who do not qualify for work visas are particularly vulnerable to exploitation, and their situation is likely to be worsening as competition for low-paid jobs increases. Concerns have also been raised that those immigrants who can access social welfare payments, and thus remain in their adopted homeland, are being used as scapegoats to justify regressive social protection policies.[272] At its recent appearance before the Universal Periodic Review, Ireland rejected calls to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[273]

Conclusion and recommendations

Economic and social rights are being seriously undermined in the wake of Ireland's severe economic downturn, with the rights of poor and marginalized sectors of the population particularly at risk. The lessons of the current crisis must be learned, however, if the country is to prevent further retrogression in the economic and social rights of its population, and achieve a recovery that is both just and sustainable.

From the assessment and analysis presented here it can be concluded that previous governments demonstrated a serious lack of foresight in the promotion of an unsustainable housing bubble, which was in turn facilitated by incautious banks unrestrained by proper government regulation. More alarming still has been the response to the crisis which, rather than safeguarding the economic and social rights of the population as a priority, may amount to a generational regression in the enjoyment of fundamental human rights. The decision to guarantee debts incurred by an irresponsible banking sector – while perhaps necessary to forestall a deeper economic crisis –, has come unjustifiably at the expense of basic social protections and necessary investments in education, housing, employment and health. The deficit could instead have been addressed through revenue-generating reforms to an unjust and regressive tax regime. A series of austerity budgets, in tandem with the EU-IMF bailout package, have for their part prioritized social spending cuts over progressive tax increases, undermining social protection programs aimed at ensuring the rights of vulnerable groups, while leaving those responsible for the crisis unaccountable. CESR's analysis of relevant indicators points to the conclusion that austerity measures implemented in the face of the crisis have severely reduced enjoyment of a range of economic and social rights. Underlying all of this is a political context in which international human rights treaties ratified by Ireland have been regarded as of scant relevance to economic and social policy-making. The same can be said of the economic and social rights provisions contained in 'directive principles' of the country's Constitution. Resistance to the enforcement of economic and social rights in Ireland's judicial sphere, along with disproportionate funding cuts and 'restructuring' of independent human rights bodies, have paved the way for further setbacks to human rights in the country. Taken together, these elements configure a pattern of unjustified retrogression in economic, social and cultural rights, which the government of Ireland is obliged to take immediate corrective steps to redress.

At its recent appearance before the United Nations Universal Periodic Review, Ireland proclaimed its commitment to protecting the economic, social and cultural rights of its people, despite financial constraints.[274] It also stated that it 'hoped to be in a position' to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in the near future,[275] and that it would 'give further effect' to international human rights instruments to which it is party in domestic law.[276] It is to be hoped these encouraging declarations will now find fruition in concrete steps and policies. In the search for more equitable pathways out of the country's ongoing troubles, the Irish government must urgently integrate the human rights principles of non-discrimination, equality, non-retrogression, progressive realization, transparency, participation and accountability into its economic recovery measures. Despite the government's repeated statements to the contrary, there do exist alternatives to the current economic policies which work to deprive the Irish people of their inherent economic and social rights entitlements. In order to bring human rights into the heart of post-crisis economic policy-making, the government of Ireland, and policy makers in other states or international organizations who play a key role in determining socio-economic policy in the country, should implement the following actionable steps. Taken together, these steps can move Ireland onto a path of a sustainable, just and rights-promoting economic progress.

1. Conduct a human rights impact assessment of economic recovery plans and policies as a basis for their revision

An ex-post assessment of recovery and austerity measures from the perspective of their human rights impact should be carried out and its findings should form the basis for a revised rights-centered national economic recovery plan. The assessment should review data on changing levels of economic and social rights enjoyment since the crisis, as well as evaluating social and fiscal policies over this period from the perspective of their compliance with the substantive human rights principles of non-retrogression, non-discrimination and progressive realization according to maximum available resources, as well as the procedural principles of transparency, accountability and participation. Economic and social rights indicators should be disaggregated so as to track the situation of disadvantaged groups, especially women, children, Travellers, older persons, immigrants, asylum seekers and people with disabilities. This exercise should inform corrective measures to address the current retrogression in economic and social rights. Full civil society participation must be ensured in the assessment, as well as in the design, implementation and monitoring of future economic recovery policies, especially with regard to priority-setting in the deployment of resources. The assessment findings and the data included in it should be a baseline reference for ex-ante human rights impact analyses of all future social, economic and anti-poverty policies.

2. Adopt a National Action Plan on Human Rights

For some time Irish civil society organizations, along with the National Human Rights Commission, have been calling for the adoption of a National Action Plan on Human Rights in order to fully integrate human rights standards and principles into Irish law, policy-making and practice. At its recent appearance before the United Nations Universal Periodic Review, the Irish delegation affirmed that governments must always act to respect the rights of the individual and human dignity and stated that it would consider developing a National Action Plan on Human Rights. Such a Plan should include specific objectives and plans to recognize, enforce and fulfill the full range of economic, social and cultural rights guaranteed in the human rights treaties to which Ireland is party.

3. Ireland should incorporate international human rights standards into national legislation.

In order to effectively protect economic, social and cultural rights and make them justiciable, these should be explicitly recognized as human rights in both the Constitution and relevant domestic laws. As outlined in Section I, Ireland has been called upon repeatedly by both UN bodies and Irish civil society to assimilate international human rights law, including the ICESCR, into its national normative framework. This remains a pending task. The Optional Protocol to ICESCR should also be promptly ratified, along with the Convention on the Rights of Persons with Disabilities. The directive principles enshrined in the Constitution must be implemented in practice in all relevant policy-making by Parliament.

4. Introduce progressive, non-discriminatory tax reforms and rights-based budget policies

Ireland should consider all options to increase incrementally the remarkably low overall tax base in order to mobilize the maximum available resources for economic and social rights and redistribute more equitably the social costs of the crisis. It should also limit tax increases, such as the Value Added Tax (VAT), which disproportionately affect the poorest and most vulnerable. As part of this process, Ireland's regime of social insurance contributions should be gradually brought into line with EU norms. Ireland should also push for an EU-wide minimum rate of corporation tax, in order to prevent a race to the bottom, and meaningfully protect its public budget against tax evasion. Tax expenditures (tax breaks) whose incidence can be shown to be regressive or discriminatory should be abandoned, and the system should be brought into line with European norms. Together, these measures would contribute substantially to a public budget under severe distress, liberating a substantial base of resources to finance economic and social rights. Social spending must be protected and should be aimed at fulfilling core human rights obligations as a priority, as well as ensuring no discrimination or backsliding in rights protection.

5. Guarantee social protection measures, particularly for sectors in situations of vulnerability, including women, children, Travellers, older persons, asylum-seekers, immigrants and people with disabilities.

Cuts to social welfare benefits such as jobseeker's allowance and disability, child and lone-parent benefits, should be reconsidered in light of the human rights obligation to take deliberate targeted measures to protect the rights of the most vulnerable in situations of limited resources and to explore all possible alternatives to retrogressive measures. Prohibitions on asylum-seekers entering the labour market should be removed, as should the Habitual Residence Condition requirement for social welfare payments. Human rights principles should likewise be fully incorporated into both the design and functioning of the new National Employment and Entitlements Service. Protecting and fulfilling economic and social rights, in particular the right to work and the right to a decent standard of living, should be taken as the core objective of the NEES. Temporary affirmative action measures should also be considered in order to protect the right to work of particularly vulnerable sectors.

6. Ensure the independence and adequate funding of the new Human Rights and Equality Commission.

Independent and adequately funded national human rights bodies are central to effective monitoring systems. Provision of resources and the protection of independence are also necessary to ensure the new body fully complies with the Paris Principles on national human rights institutions and can thus carry out its role effectively.

7. Establish an independent statutory body to address poverty.

In light of the Combat Poverty Agency being effectively dismantled and the increased prevalence of poverty, including child poverty, it is also imperative to ensure the existence of an effective and independent statutory body to focus on effective strategies for tackling poverty from a comprehensive and human rights-based perspective. Independence and effective resourcing are essential preconditions for the effective functioning of such an institution, whose role is all the more essential in the current context.

8. Adopt new targets for social housing provision, corresponding to increases in local authority waiting lists, along with the necessary budgetary allocations.

In addition to normative recognition of the right to housing, resources should also be progressively committed to eradicate homelessness. Adequate state support to prevent homelessness due to over-indebtedness or unsustainable mortgages should likewise be provided. Furthermore, comprehensive and regularly updated and disaggregated nationwide data on homelessness should be generated so as to facilitate protection of the right to adequate housing in the future. Culturally appropriate and acceptable accommodation provisions should be made for Travellers, so as to safeguard their right to adequate housing.

9. Adopt legislation and administrative measures to ensure accountability and transparency in the financial sector.

In accordance with Ireland's duty to protect human rights against infringements by private actors, systems to improve the regulation, accountability and transparency of the financial sector must be established, both to safeguard the economic and social rights of the population and the future stability of the Irish economy. The sustainable protection of human rights should be incorporated as key objectives of relevant new bodies, such as the Irish Fiscal Advisory Council, and related legislative measures, such as the Central Bank (Supervision and Enforcement) Bill.

10. Creditor countries and institutions should comply with their extraterritorial obligation not to impede economic and social rights protection in Ireland.

Governments in countries that either count themselves among Ireland's creditors, or are home to its creditor institutions, must take steps to comply with their extraterritorial human rights obligations by ensuring that the repayment of Ireland's debts does not interfere with the protection of economic and social rights in the country. International institutions that influence the enjoyment of economic and social rights in Ireland, in particular the EU and IMF, should likewise ensure all policy agreements with Ireland comply with human rights standards, and should consider renegotiating the terms of rescue loans where these have undermined economic and social rights. Similarly, the European Central Bank should take steps to protect economic and social rights in Ireland, including considering the recommendation to take on some proportion of the country's unsustainable debts itself and/or requiring bondholders to accept an appropriate level of responsibility. Those foreign banks proven to have behaved irresponsibly should meanwhile be pressured to take on a fair proportion of the debt through equity swaps or other similar means.

Endnotes

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[3] Ireland is also party to the International Covenant on Civil and Political Rights (Ratified: 08 December 1989); The [International] Convention on the Rights of the Child (Ratified: 28 September 1992); The [International] Convention on the Elimination of Discrimination Against Women (Ratified: 23 December 1985); and The European Convention on Human Rights (Ratified: 25 February 1953).

[4] International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), Article 2(1). Emphasis added.

[5] Committee on Economic, Social and Cultural Rights (1990), ‘General Comment No.3, The Nature and Scope of States Parties Obligations’, UN Doc E/1991/23 (14 December 1990), at para.1. In its General Comments, the Committee on Economic, Social and Cultural Rights offers guidance on how the provisions of the ICESCR should be interpreted. General Comment 3 expounds the Nature of States Parties Obligations, and is of particular relevance to the protection and promotion of ESC rights through broader economic, social and fiscal policy. See: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See: UN Independent Expert on Extreme Poverty and Human Rights, Report on Mission to Ireland. This report can be accessed at: http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx

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[27] See judgment: *Kavanagh v. Governor of Mountjoy Prison* [2002] 3 IR 123.

[28] An extensive database of economic and social rights-related cases can be found at: http://www.escr-net.org/caselaw/

[29] For further reference, see the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, especially principles 20 and 21 which state, '20. Direct interference: All States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories,' and '21. States must refrain from any conduct which: a) impairs the ability of another State or international organization to comply with that State's or that international organization's obligations as regards economic, social and cultural rights; or b) aids, assists, directs, controls or coerces another State or international organization to breach that State's or that international organization's obligations as regards economic, social and cultural rights, where the former States do so with knowledge of the circumstances of the act.' See: http://www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf. For specific reference to human rights obligations of debtor and creditor states in relation to external debt, see the work of the UN Independent Expert on the effects of Foreign Debt and Other Related International Financial Obligations of States, available at: http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx

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[204] 'Benchmarking Ireland's Health System', Oireachtas Library and Research Service, Houses of the Oireachtas, Dublin, 7 November 2010. See: http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/libraryresearch/spotlights/Benchmarking_Ireland's_Health_System.pdf

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[216] CESCR Concluding Observations: Ireland, June 2002. See: http://www.unhcr.org/refworld/publisher,CESCR,CONCOBSERVATIONS,IRL,3df61ba34,0.html. It should also be noted that, while the right to health is not enshrined in Irish law, in the 1998 case of Heeney v Dublin Corporation, the Supreme Court declared the right to health was second only to the right to life. For more on this see IHRC discussion document on ESC rights in Ireland, available at: http://www.ihrc.ie/download/pdf/escrdiscussiondocument.pdf

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[235] CSO, EU-SILC data, op cit.

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[237] For details of proposed public service staff cuts, see: Dept of Finance, 'Report of Special Group on Public Service Numbers and Expenditure Programmes', Dublin, 2008. Available at: http://www.finance.gov.ie/viewdoc.asp?DocID=5861; See also: National Women's Council of Ireland, 'Pre-Budget 2010 Submission', NWCI, Dublin, September 2009. Available at: http://www.nwci.ie/download/pdf/prebudget_submission_2010_final.pdf

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[247] Ibidem.

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[251] UN HRC, 'Draft Report of the Working Group on the Universal Periodic Review: Ireland', 10 October 2011, Geneva. Available at: http://www.upr.ie/Clients/CEGA/ UPRWeb.nsf/page/reports-en

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[263] CSO, op cit, 2010.

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[274] UN HCR, 'Draft Report of the Working Group of the Universal Periodic Review: Ireland', Geneva, 10 October 2011. Available at: http://www.ihrc.ie/download/pdf/ ireland_upr_outcome_report_10_oct_2011.pdf

[275] The Irish government stated at the UPR session that it hoped to sign the Optional Protocol before the end of the year. While it agreed to respond before March 2012 to the recommendation to sign and ratify the Optional Protocol, no target date has been provided for ratification.

[276] Ibidem, para 7; para 105.11.

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