

# OPERA IN PRACTICE: HUMAN RIGHTS IN IRELAND'S ECONOMIC MELTDOWN

This brief case study examines the use of OPERA, CESR's monitoring framework, to analyze Ireland's economic crisis and the Irish government's subsequent austerity policies. It is part of a series of case studies produced by CESR to share insights and learning from the use of OPERA in a variety of contexts and settings.

## ECONOMIC AND SOCIAL RIGHTS MONITORING



Published in 2012, “Mauled by the Celtic Tiger” was a research report that assessed the Irish government's response to the global financial meltdown and the effects that response had on economic and social rights. The goal of this report was to encourage key policy makers—both in Ireland and internationally—to include human rights principles in their responses to the crisis. Further, we hoped to complement and augment the efforts of individuals and groups in Ireland who struggled to have human rights included in remedies to the economic collapse.

The report tells the story of Ireland's economic meltdown chronologically: it first explores the contextual factors and policy failures which paved the way for the country's economic demise; then addresses how the crisis was handled from a human rights perspective; and finally, it analyses the impacts on specific rights. So while the structure of the report does not mirror the four steps of OPERA, the framework influenced the analysis in each section and the way that we highlighted the links between them. The report was compiled from an analysis of secondary data made available by governmental and non-governmental sources, with additional information provided through interviews.

### Assessing outcomes

The economic collapse in Ireland dramatically impacted countless lives. People lost their jobs, sources of income, and therefore, the means to provide for their basic needs and those of their families. The government's response to the collapse seemed to intensify the impacts of the collapse or create new problems. This real life impact

of the crisis is what we endeavored to illustrate in Section III of the report. Accordingly, we focused on a number of different rights: the right to work; the right to an adequate standard of living; the right to adequate housing; and the right to health.

**What were we trying to measure?** To produce a clear picture of the impact the country's economic crisis on the level of rights enjoyment we interpreted socio-economic outcome indicators in light of the following human rights standards:

**Non-retrogression:** Has there been backsliding in rights enjoyment among significant portions of the population?

**Non-discrimination:** Do disparities in rights enjoyment suggest either legal discrimination (*de jure*) or discrimination in practice (*de facto*)? These disparities could include those based on age, disability, or inclusion in a particular social group.

**How did we measure?** To understand the impact of the crisis, we focused the report on a number of different rights: the right to work; the right to an adequate standard of living; the right to adequate housing; the right to health; and the right to education.

- With regard to the right to work we considered employment and unemployment rates.
- The right to an adequate standard of living was assessed by analyzing poverty rates and the number of people requiring social assistance.
- To understand the right to adequate housing we examined



waiting lists for social housing, estimated need for social housing, and the number of homeless.

- The right to health was assessed by exploring data on health outcomes in areas such as mental health, heart disease, and life expectancy.

Much of the information used to evaluate standards of equality and discrimination in Ireland came from the Central Statistics Office of Ireland provided. Data published by other government agencies and by international organizations, such as the Organization for Economic Cooperation and Development (OECD), EuroStat, and the Office of the High Commissioner for Human Rights (OHCHR) were also used to assess outcome indicators.

Tracking data over a period of time allowed us to determine how much rights enjoyment had been undermined since the crisis began. In the report, we paid special attention to sectors of the Irish population that faced particular risks during and after the economic downturn. These groups included children and youth, women and single parents, older persons, Travelers, non-nationals, and those living outside urban centers. Disaggregated data was extremely valuable in this regard.

**What did we find?** There were serious shortfalls in the overall levels of rights realization in Ireland and these deprivations had the greatest impact on the most disadvantaged.

The right to work was particularly hard hit by the financial crisis, with the long-term unemployment rate rising significantly. Between 2007 and 2011 the unemployment rate in Ireland had risen 250%. In addition, significant parts of the population were unable to realize their right to an adequate standard of living. In 2010, the number of people classified as 'materially deprived' (unable to afford basic needs, like food and clothing) had increased 90% compared to 2007.

The data demonstrated that these impacts were felt unequally. The deepest impacts were felt by the most disadvantaged, which included children, the elderly, women, Travelers and non-nationals, and people with disabilities. For instance, people under 25 faced an unemployment rate more than double the overall rate. The unemployment rate for women increased 15% compared to an increase of 3.5% among men. Some 35,000 children were forced into poverty between 2007 and 2009. The life expectancy for Traveler men was fifteen years less than the national average.

## Assessing policy efforts

We scrutinized the laws and policies enacted by the Irish government—in the lead up to and following the economic downturn—to determine whether or not they complied with its human rights commitments.

**What were we trying to measure?** To assess the government's policy efforts, we measured them against three norms:

- **Obligation to take steps:** What legal, policy and programmatic steps had Ireland made to ensure its population enjoy their economic and social rights? These steps must demonstrate deliberate, concrete and targeted efforts.

- **AAAAQ principles:** Have legislation, policies and programs translated into necessary goods and services that meet the standards of availability, accessibility, acceptability, and adequate quality? Availability requires that the necessary goods and services exist and are reasonably available to all people in the country. Accessibility means that needed goods or services are accessible to all, without discrimination, both physically and economically. Acceptability requires that they be culturally and socially acceptable, and quality means that goods and services must be appropriate and adequate in standards and safety.
- **Participation, transparency, accountability, and the right to a remedy:** Does the government allow for active participation by the public in the creation and implementation of laws and policies? There should be a fair, transparent, and accessible system to hold policymakers accountable for their decisions. People who suffer violations of their rights must have a method of seeking redress for these violations in a fair and open manner.

**How did we measure?** We identified the legal commitments and government policies that Ireland had made in regards to economic and social rights, evaluated the content and effectiveness of those policies, and considered whether these policies were developed and implemented fairly and openly.

To see how these policies had been implemented in practice, we looked at the kinds of goods and services that were available for each economic and social right, their quality, where they were available and who was using them. For example, we gathered information on issues such as the availability of social housing; rental subsidies; the staff and services available at health care facilities; health insurance coverage; and access to education. This information came from government statistics, analysis conducted by the OECD and other organizations, and academic sources.

These policies were also examined for transparency, participation and accountability. To do this we used qualitative literature, newspapers, reports from civil society groups, and government studies on accountability and transparency, as well as analysis from international sources such as the UN Special Rapporteur on Extreme Poverty and Human Rights.

**What did we find?** While Ireland had ratified international human rights treaties and passed national legislation to support core economic and social rights, the content of some of the legislative and policy steps taken did not fully support these obligations. Further, these steps had not translated into maintaining and providing accessible goods and services on the ground, especially among marginalized communities, throughout the course of the economic downturn, and the processes that guided these policies did not provide for sufficient accountability, transparency or participation.

The Irish government's obligation to take steps to ensure the full realization of rights was established in a number of international conventions, its national constitution, and several domestic programs. For example, Article 42 of the Constitution protects the right to primary education and Article 45 states that laws must be created and implemented in a manner that ensures social justice. Nevertheless, the Irish government had yet to create legislation explicitly protecting

the rights contained in these documents. UN treaty monitoring bodies had repeatedly called for Ireland to incorporate provisions from UN human treaties into their domestic governance.

Ireland had created a series of public programs directed at addressing economic and social issues, such as the National Action Plan for Social Inclusion 2007 – 2016. However, Ireland had changed course on a number of programs as a result of the financial crisis. According to the government, the National Action Plan was no longer feasible and the National Recovery Plan (NRP) became the central reference point for policy making. During the crisis, these programs had not sufficiently translated into the provision of goods and services necessary to realize Ireland's legal obligations. For instance, the number of social housing units built or acquired by local authorities had plummeted; inefficiencies in the delivery of health services meant that primary care centers were sparse and there was a low number of doctors available to the public; class sizes were among the highest in the OECD in 2008.

Civil society, especially representatives of disadvantaged populations, reported having little input into policymaking. As highlighted by the UN Special Rapporteur on Extreme Poverty and Human Rights following her visit to Ireland, there was a clear lack of popular participation in both the design and implementation of the NRP. In addition, the reluctance of Irish courts to hear cases on social and economic rights meant that individuals had little opportunity to hold their government accountable for violations. State welfare and rights institutions have suffered extreme budget cuts, undermining their ability to provide meaningful oversight and accountability, while others have been closed completely.

## Assessing resources

States must show they have dedicated the 'maximum available resources' towards rights realization. This obligation applies even in times of economic crisis. Thus, a major focus of the report was determining whether Ireland was using its resources—before and after the crisis—in a manner that complied with human rights norms.

What were we trying to measure? In order to evaluate whether or not Ireland had addressed the crisis to the maximum of its available resources, we focused on:

- **Maximum available resources:** Which social programs were funded? How much funding did they receive, and which, if any, sectors saw a decrease in funding? States are obliged to allocate a reasonable amount of their spending to policies and programs that improve economic and social rights outcomes.
- **Availability of resources:** How are resources, typically taxes, sourced? Governments are obliged to generate maximum resources available and the burden of generating revenue should be distributed fairly and equitably.
- **Participation, transparency, accountability, and the right to remedy:** Was the public allowed to voice their concerns and desires regarding revenue expenditure and generation? Public voices should be taken into account when budgetary decisions are made, and the process should be transparent.

**How did we measure?** Our analysis considered how much the government allocated to economic and social issues compared to other areas; the way that money was generated; and whether the budgetary process was open and transparent.

The report focused heavily on reductions to public agencies that allowed or assisted people in claiming their rights. Our analysis of the country's tax policies relied on indicators such as the tax-to-GDP ratio; the amount of potential government revenue lost to tax breaks; effective income, property and corporate tax rates; and Value-Added-Tax (VAT) as a percentage of income. To gather data on these indicators we relied on reports made available by the Irish government, UN bodies (and other international organizations, such as the OECD and IMF), and civil society organizations. We compared this data against regional averages and other European countries. Interviews with civil society groups and documents from international monitoring groups such were used to provide evidence on the amount of civic input into budgetary processes.

**What did we find?** After the use and misuse of resources contributed greatly to Ireland's financial collapse, the government's recovery plan prioritized deep social spending cuts over revenue-generating reforms to an unjust and regressive tax system.

In 2012, the country had already witnessed five "austerity" budgets, characterized by severe cuts to welfare payments, social housing, healthcare and education—despite the fact that Ireland already spent relatively low amounts on these sectors compared to regional averages. Further, the types of cuts made had a disproportionate impact on particular groups, with reductions in maternity leave benefits; benefits paid to people with disabilities; winter fuel payments, which affected the elderly more acutely; and the budgets of agencies assisting immigrants and asylum seekers.

With regards to resource generation, Ireland was one of the lowest-tax economies in the European Union, with a total tax take of only 28% of GDP (compared to a regional average of 36%). Further, the income tax rate for Ireland was highly inequitable, due largely to the number and scale of tax breaks. For example, nearly 4000 individuals making over €100,000 did not pay any income tax in 2007 thanks to tax breaks on property, business investments, and trading losses. In 2010, tax breaks on mortgage interest alone were equal to the amount cut from social programs. Although it is widely known that VAT negatively impacts low-income individuals and families more than the wealthy, VAT generated around 41% of all tax revenue in Ireland. This was coupled with one of the lowest corporate tax rates in the EU.

Finally, there were a multitude of barriers to participation. A financial institution established in the wake of the crisis, the Irish Fiscal Advisory Council (IFAC), was charged with providing fiduciary oversight for the national government. Even as it called for additional and more severe spending cuts, the IFAC did "not enjoy civil society participation". Secondary literature revealed that many civil society organizations, especially those representing vulnerable communities, believed their voices were not being listened to by policymakers.

## Assessment

Drawing conclusions about the government's actions prior to and during the economic downturn, as they related to economic and social rights, required synthesizing all the information from the previous analysis and considering contextual issues that might inhibit people's ability to claim their rights and the government's ability to fulfill its obligations.

**What were we trying to measure?** The final assessment of the impact of the government's fiscal and budgetary policies during the economic crisis included an analysis of other social, political and cultural factors. To conduct that assessment we considered:

- Contextual factors that limit the enjoyment of the right: What other factors may be inhibiting people from enjoying social and economic rights? This analysis considers social, economic, political and cultural features that may be stopping people from realizing their rights.
- Constraints placed on the state by outside actors: Have third parties or structural issues impacted the state's ability to fulfill the right? States could be limited in their ability to realize rights by outside structural factors or other actors.

**How did we measure?** Our analysis considered the political and economic climate in which the policies were created. We considered institutional factors that could be limiting people's ability to realize their own rights such as levels of education, issues of judicial and social discrimination, and levels of civic participation. This analysis also included domestic and international constraints that could prevent the Irish government from being able to realize rights. We used qualitative sources to gain insight into the political economy of Ireland. We also considered information about IMF/EU loans and the politics surrounding the role of Ireland's international creditors in relation to the crisis. Information about these issues came from news articles and expert interviews.

**What did we find?** The economic downturn and corresponding policies which limited people's access to essential services such as health care and education also meant that people were less empowered to advocate for themselves and claim these rights through political processes.

Governance structures in the country were another factor that had acted as a barrier to reform. Ireland had an institutional culture that emphasized very strict boundaries between branches of government. As a result, courts were not able to compel governments to enact legislation which would provide for the enjoyment of social and economic rights.

Large banks and corporations exerted heavy influence on the Irish government. Due to this influence, corporate tax rates were extremely low and tax loopholes were plentiful. The economic downturn in Ireland was so severe that the country required the assistance of the IMF and EU in the form of an €85 billion loan, the majority of which

was dedicated to providing support for the banking sector. The terms and provisions of this loan left the government hamstrung, and limited in its ability to fund or enact social programs that might support economic and social rights.

## Outcomes, conclusions and lessons learned

The report pinpointed certain key areas where austerity policies contributed to a lack of enjoyment of social and economic rights. Evaluation of outcomes found low levels of enjoyment. Analysis of policies, based on the OPERA Framework, indicated that these low levels were caused by opaque, weak, and discriminatory policy efforts. Examination of resources, guided by the OPERA Framework, showed an inequitable method of resource generation and allocation. Analysis of contextual factors indicated that the economic downturn and the draconian austerity measures pushed by international institutions limited the ability of the Irish government and people to realize rights. Our overall assessment concluded that the actions of the Irish government "may amount to a generational regression in the enjoyment of fundamental human rights."

Since the publication of our report, Ireland has continued to grapple with the aftermath of the financial crisis. Ireland passed the European Fiscal Compact in 2012 and was forced to comply with a number of measures which placed restrictions on the debt-to-GDP ratio, forced budgets to be balanced or operate in a surplus, and installed correction mechanisms if budgets were found to deviate from what is allowed, among other things. Since then, the Irish economy has rebounded, and progress has also been made with regard to including ESCR in the Irish constitution. Between 2012 and 2014, a Constitutional Convention was held in Ireland to discuss, among other items, the formal inclusion of ESCR as justiciable rights. In the end, the convention called for "the rights to housing, social security, and essential health care to be "expressly stated" in the constitution...". The government has yet to act on this recommendation. Nonetheless, youth unemployment remained high and many homeowners were (and are) unable to make payments on their homes due to increased prices. In 2015, the Irish government introduced a budget which included tax cuts and spending increases. Nevertheless, much work lies ahead if Ireland is to respect, protect and fulfill the economic, social and cultural rights of its people.

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