

What would enforceable economic, social and cultural rights mean in housing, particularly for people experiencing homelessness?

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Ireland is currently experiencing a housing crisis across all housing tenures: private rented, owner occupier and public and voluntary housing. The extreme expression of this crisis has been the continual growth in the number of individuals and families becoming homeless. Introducing a right to adequate housing, through the Constitution or legislatively, would have a dramatic impact in how policy is formulated as well as a symbolic gesture on behalf of the State that expresses the value and worth of all citizens.

This paper examines the right to adequate housing, in particular what this right would mean for people experiencing homelessness. Section one of this paper outlines the right to adequate housing provided for in the International Covenant on Economic, Social and Cultural Rights alongside the current reality in Ireland. With an emphasis on homelessness section one shares some of the challenges and exclusions experienced by people who are homeless. Section two examines the impact of what enforceable rights would mean for people living in poor and substandard accommodation.

Before addressing the question, 'What would enforceable economic, social and cultural rights mean in housing, particularly for people experiencing homelessness?' a brief introduction to the Jesuit Centre's involvement in promoting housing issues is presented.

The Jesuit Centre for Faith and Justice

The Jesuit Centre for Faith and Justice is dedicated to creating a better society for all by promoting social justice and policy reform through research, awareness raising and advocacy. The Centre has campaigned for over 25 years on housing rights and the needs of people experiencing homelessness. In 1989 the Centre articulated homelessness as more than **not** just having a roof, but included the importance of security, the importance of a sense of home and community. This was a direct challenge to the conservative housing act that had been enacted the previous year. The Centre and individual Jesuits, including Peter McVerry SJ, have supported the need for housing as a right for many years.

The Centre's reports, publications and commentary have continually argued that housing should be people-centred in its development, which prioritises the needs of the most vulnerable and marginalised and is built upon the principles of dignity, rights and social justice. The hoped-for outcome: that all people will have access to a home in sustainable communities and a living environment. The Centre's June 2017 issue of *Working Notes*, the Centre's journal, provides an examination of the Government's

current housing strategy and also contains an article on the constitutional right to housing by Jerome Connolly.

Section One

The UN International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Right,¹ through article 11 (1) guarantees the right to housing as part of the right to an adequate standard of living. The Covenant was adopted in 1966 and came into force in 1976. More recently, in 1991, the Committee on Economic, Social and Cultural Rights (CESCR), which monitors member states on their compliance with the Covenant, elaborated and fleshed out what this right meant and that it should not be understood as minimum standards:

the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head Rather it should be seen as the right to live somewhere in security, peace and dignity.²

The Committee emphasised its centrality, 'The human right to adequate housing ... is of central importance for the enjoyment of all economic, social and cultural rights.'³ And that this right 'applies to everyone, individuals, as well as families. Regardless of age, economic status, group or other affiliation or status and other such factors.'⁴

The Committee's *General Comments* removed any ambiguity as to the responsibility of those states that had ratified the Covenant. Furthermore, states were obliged to provide housing to a standard based on their individual means. Therefore *developed* countries could not benchmark themselves against *developing* countries.

Our unfortunate reality

While Ireland ratified the Covenant on Economic, Social and Cultural Rights in 1989, in effect, it is treated as a moral obligation only. There is no comprehensive right to housing enshrined in Irish law. Specific entitlements to social housing and housing supports are set out in legislation and regulations, for example, Section 10 of the 1988 *Housing Act*⁵ provides for the provision of accommodation by authorities for those who are experiencing homelessness. More recently, Part 4 of the 2014 *Housing Act*⁶ provides

¹ United Nations (1966) *International Covenant on Economic, Social and Cultural Rights*, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

² Committee on Economic, Social and Cultural Rights (1991) *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, para 7, available at: <http://www.refworld.org/pdfid/47a7079a1.pdf>

³ *Ibid.* para 1

⁴ *Ibid.* para 6

⁵ Government of Ireland (1988) *Housing Act, 1988*, Section 10, available at: <http://www.irishstatutebook.ie/eli/1988/act/28/enacted/en/html>

⁶ Government of Ireland (2014) *Housing (Miscellaneous Provisions) Act 2014*, available at: <http://www.irishstatutebook.ie/eli/2014/act/21/enacted/en/html>

for the administration of the Housing Assistance Payment (HAP) which is deemed a social housing support but provided by a private landlord in the private rented sector.

Unfortunately there has not been a political push for the right to housing, despite there being large scale public support for such a right, expressed in the recommendations of the Constitution Convention in February 2014. The Convention recommended that the right to housing be inserted into the Constitution of Ireland with 84 per cent in support.⁷ The 2016 programme for government,⁸ which outlines the policy and legislative objectives of the government, declined to take action on the Convention's recommendation; instead it decided to refer its Report to an Oireachtas Committee for consideration. The Joint Committee on Housing, Planning, Community and Local Government, has yet to examine whether or not a right to housing should be inserted in the Constitution.

Similarly, at Government policy level, the Department of Housing's *Re-building Ireland: Action Plan for Housing and Homelessness*, a strategy document from the Department to address the housing crisis skilfully avoids using rights language.⁹

The Irish Reality

The number of women, men and children becoming homeless has increased dramatically over the past 18 months. A right to adequate housing may just have the necessary 'jolting effect' for policy makers to intervene more effectively. The current default position is that the minimum requirement is to provide shelter which has led to an expansion of emergency hostel accommodation and the use of hotel rooms and more recently 'family hub' accommodation. Being presented as an innovative solution to family homelessness, 'Hubs' provide shared communal space for families to live in a shared environment. In reality hotels and other buildings are being retrofitted to provide this shared accommodation. With a right to adequate housing the default minimum would be considerably higher; it would not be single room or shared accommodation. Families do not want to co-habitat with other families. Or put another way, they do not want to live in shared accommodation with strangers.

Figures from the Department of Housing showed that there are 7,472 children, women and men homeless living in hotels, B&Bs and hostels. This figure includes 1,256 families.¹⁰ Department of Housing figures, collated by Focus Ireland, shows that the upward trend in the number of families becoming homeless started in January 2015

⁷ Constitution Convention (2014) 'Constitutional Convention Votes in Favour of Reforming Economic, Social & Cultural Rights in the Constitution', *Press Release*, available at: <https://www.constitution.ie/AttachmentDownload.ashx?mid=adc4c56a-a09c-e311-a7ce-005056a32ee4>

⁸ Government of Ireland (2016) *A Programme for a Partnership Government*, available at: [http://www.taoiseach.gov.ie/eng/Work Of The Department/Programme for Government/A Programme for a Partnership Government.pdf](http://www.taoiseach.gov.ie/eng/Work%20Of%20The%20Department/Programme%20for%20Government/A%20Programme%20for%20a%20Partnership%20Government.pdf)

⁹ This point was raised by Jerome Connolly (forthcoming) 'A Constitutional Right to Housing: A Tale of Political Sidestepping', in Jesuit Centre for Faith and Justice *Working Notes*, soon to be available at: www.workingnotes.ie

¹⁰ Department of Housing, Planning, Community and Local Government (2017) *The Department of Housing, Planning, Community & Local Government Homelessness Report March 2017*, available at: http://www.housing.gov.ie/sites/default/files/publications/files/homeless_report_-_march_2017_0.pdf

when there were, nationally, 401 families homeless.¹¹ Today's figures represent a three-fold increase. The effect has been a 196 per cent increase in the number of children experiencing homelessness, increasing from 865 in January 2015 to 2,563 in March 2017. It is also important to note that these are snapshot figures, they do not account for the total number of children experiencing homelessness over the period.

In addition to those who are experiencing homeless there are tens of thousands at risk of homelessness. It is difficult to quantify how many are at risk, but housing needs assessments produced every three years by the Department of Housing remind us that the most common factors at play is low income and unemployment – essentially being priced out of housing. Nationally, housing needs assessments for 2016 show that 91,600 households are on Local Authority housing waiting lists. 13,740 of those are deemed in need of housing (of which 5,159 are homeless).¹² It is important to note that these are household figures, not individuals. While a large proportion of these are individuals in need, and some may be double counted or later to be found no longer in need, it would not be an exaggeration to say that over 150,000 people have an immediate housing need.

Those affected by mortgage arrears, be it their own home, or tenants in a buy-to-let where the landlord is in arrears, are at risk of repossession. While the numbers have fallen, there were 42,031 principal private residential mortgages in arrears for 360 days or more at the end of last year.¹³ Nineteen per cent of all buy-to-let mortgages at the end of last year were in arrears. Of the 25,218 accounts in arrears, 18,905 were in arrears for more than 180 days, of which 14,028 were in arrears of over 720 days.¹⁴

What has been the response?

The response to this crisis has revolved around encouraging private landlords to house people who would previously have been provided housing through their local authority. The result of this approach now means that local authorities, who historically were *de facto* landlords for low income households, now have a residual role in the provision of housing.

While housing output by local authorities, as well as private housing output, rapidly reduced from 2008 onward, future policy does not see a role for local authorities being the dominant provider of housing to low income households. In 2015 only 75 housing units were built by local authorities, another 1,185 were acquired; while 401 new housing units were provided by the Community and Voluntary Sector.¹⁵ These low

¹¹ Focus Ireland (2017) *Focus Ireland Research Hub*, 'Number of Families Homeless Monthly (National)', available at: <https://www.focusireland.ie/resource-hub/latest-figures-homelessness-ireland/>

¹² The most recent Housing Needs Assessment for 2016 is available at: <http://www.housing.gov.ie/housing/rebuilding-ireland/needs-assessment/summary-social-housing-assessments-2016>

¹³ Central Bank (2017) *Press Release: Residential Mortgage Arrears and Repossessions Statistics: Q4*, <https://www.centralbank.ie/news-media/press-releases/mortgage-arrears-and-repossessions-statistics-q4-2016>

¹⁴ *Ibid.*

¹⁵ Department of Housing (2017) 'Competitions by Sector Annually': <http://www.housing.gov.ie/housing/statistics/house-building-and-private-rented/construction-activity-completions> and 'Social Housing Output 2015: Addendum to Main Report', available at:

output figures must be seen in the broader context where there was only 12,190 private houses were built in 2015.¹⁶ Many of the twelve thousand would have ended up as buy-to-let properties, with some being made available through the state housing support scheme, the Housing Assistance Payment scheme.

Towards the end of March 2017 Minister for Housing, Simon Coveney, announced that 650 housing units were built in 2016 by local authority and voluntary and co-operative housing while 14,282 private housing units were built.¹⁷ The Government's plan is to have a total of 25,000 housing units built year-on-year, while ambitious compared to preceding years, is just not enough. The reality is that 30,000 to 40,000 are needed annually.¹⁸

Emotional as well as physical impact of homelessness

The impact for people experiencing homelessness, of not having a right to adequate housing is emotionally and physically damaging. For many they feel that their dignity has been stripped away from them. Talking to people experiencing homeless you will realise that:

- Many feel like they belong nowhere, are in despair, isolated
- Anxious about which hostel they will be placed in ... whether it's safe
- Frightened, threatened about having to share a room with strangers
- Being told that you cannot use the main entrance to the hotel that you have to use the side entrance
- To a large extent they are excluded from decent private rented accommodation
- Told that friends cannot come and visit you because that is against the rules of the hotel or hostel
- Having a nightly curfew, having to wander the streets
- Having no privacy, worrying about where to use the toilet
- Being told to move on by the Gardaí

http://www.housing.gov.ie/sites/default/files/publications/files/social_housing_output_in_2015_-_addendum_to_main_report.pdf

¹⁶ *Ibid.*

¹⁷ Coveney press statement on housing supply, <http://www.housing.gov.ie/housing/homelessness/minister-coveney-re-affirms-his-commitment-tackling-homelessness-and>

¹⁸ Ronan Lyons' submission to the Oireachtas Sub Committee on Housing and Homelessness, *A Right to a Home for All: Towards a Housing Strategy for Ireland, 2016-2020* (May 2016), available at: <https://www.oireachtas.ie/parliament/media/committees/32housingandhomelessness/A-Right-to-a-Home-for-all---Ronan-Lyons-Oireachtas-submission-2016-05.pdf>

Lorcan Sirr's presentation at the MacGill Summer School, 'What we don't talk about when talking about the housing crisis (July 2016), available at: <http://www.macgillsummerschool.com/what-we-dont-talk-about-when-talking-about-the-housing-crisis/>

- Nowhere to put their belongings, personal items being stolen
- Daily discrimination, being followed in shops, not being allowed in shops, being kicked and spat at

Section Two

Examining what the impact of an enforceable right to adequate housing would mean to people experiencing homeless four outcomes can be identified.

1. People experiencing homelessness would be prioritised

People experiencing homelessness, in any assessment, are those with the greatest housing need. The United Nations Special Rapporteur on Adequate Housing, Leilani Farha, has said ‘Homelessness is an extreme violation of the rights to adequate housing’.¹⁹ If there were enforceable rights, people experiencing homelessness would be the *priority*. It would oblige the legislature and executive to define housing needs and standards, to develop necessary policies, and as per Article 2 of the Covenant, provide a timetable, for the progressive realisation of these rights.

Furthermore, obligations under Article 2 and Article 11 would require Ireland, as a developed country, with greater means, and higher living standards, to provide adequate housing in line with national norms.

For those at risk of homelessness, identified earlier, they could not be threatened by eviction. In 2009 the Committee on Economic, Social and Cultural Rights (*General Comments No. 20*) noted that Article 11 of the covenant protects people against eviction into homelessness.²⁰

2. A shift from managing homelessness to providing adequate housing

An enforceable right to housing would create a shift away from charity towards social justice and principles of human rights. There would be a shift from the current policy framework of managing homelessness to providing adequate housing to those in need.

During Christmas 2016 our “good” news stories²¹ were the opening of homeless hostels. In fact, since early December, 238 new emergency beds have been made available with 100 more being provided soon.²² With each announcement of new emergency beds there was no discussion about the decency of having to share rooms, nor a voice

¹⁹ Leilani Farha (2017) *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/HRC/31/54, (18 January 2017) available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

²⁰ Committee on Economic, Social and Cultural Rights (2009) *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights*, available at: www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc

²¹ For example, ‘First of 165 emergency beds for Dublin homeless to open’, *RTE.ie*, available at: <https://www.rte.ie/news/2016/1209/837752-extra-emergency-beds/>

²² Pat Doyle (2017) ‘Leave all doors open in search for solution’, *The Examiner*, available at: <http://www.irishexaminer.com/ireland/leave-all-doors-open-in-search-for-solutions-446213.html>

concerned for personal safety or being expected to leave the accommodation each morning, not allowed back until evening. This is not solving homelessness. Opening hostels is not a sign of progress. This is managing a problem.

The majority of accommodation being used to accommodate people experiencing homelessness is damaging to their welfare.

In political discussion and as presented regularly in the media, homelessness is portrayed as a complex problem: that there are a group of people, distinct from you and I that have complex needs. These are framed as personal needs (drug addiction and mental health) and that the main problem lies with the individual. We need to “fix” them before they can live independently.

This could not be further from the truth.

What we know

The statistics tell us that the overwhelming reason why people are experiencing homelessness is because they have been economically excluded from housing. The solution is therefore quite simple: provide adequate housing. It is not possible to cover housing provision within this paper, but others have provided solutions to the financing of housing (see for example NERI²³).

For the relative few who need additional support, a right to adequate housing would see an end to flawed ‘pathway models’ out of homeless, replaced instead with a ‘housing first model’. Supports would be tailored to individual needs and people experiencing homelessness would no longer be expected to enter either emergency hostels or ‘transitional housing’. The housing first approach provides people with security of tenure in their own home and a wrap-around of services as required. Housing first has come to Ireland but plays a small role, unfortunately, in the provision of housing and housing supports.

3. A realisation of all other rights

The right to housing is interdependent with other rights, if enforced it would allow people experiencing homelessness to realise other rights. The reality of homelessness is that peoples’ experiences include exclusion from not just adequate housing, but many other rights. The most fundamental human right, the right to life, understood as the right to enjoy life and the right to feel safe is impossible to enjoy for many people who are homeless.

Not having an address, not being able to have a place to feel secure, impacts on the right to work, to health, to education, to forming and sustaining relationships, to be free from discrimination and stigma. Recently the UN Special Rapporteur on the right to adequate housing highlighted that people experiencing homelessness, are as a group, subject to

²³ Tom Healy and Paul Goldrick-Kelly (2017) *Ireland’s Housing Emergency – Time for a Game Changer*, available at: http://www.nerinstitute.net/download/pdf/irelands_housing_emergency_time_for_a_game_changer.pdf

discrimination, stigmatisation and criminalisation.²⁴ Housing is therefore fundamental so as to enjoy all other rights.

4. Housing is no longer seen as a commodity

An ideological shift is needed nationally and internationally so that housing is seen first and foremost as serving a social function and not as a commodity. An enforceable right to adequate housing would go some way towards realising this. Homelessness results from structural policy failures, not the fault of individuals who cannot afford to pay market rent and end up homeless.

The UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, highlighted in a 2017 report the correlation between homelessness and the commodification of housing. Housing, Farha points out, has increasingly become a commodity, whereby

*capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity and hence undermines the realization of housing as a human right ... markets are oblivious to people and communities, and the role housing plays in their well-being.*²⁵

Worryingly, Farha notes, housing and commercial real estate have become the “commodity of choice”. Today, the current value of global real estate is about 217 trillion US dollars, representing 60 per cent of the value of all global assets; residential real estate comprises 75 per cent of the 217 trillion.²⁶

In her report Farha calls upon governments to stop being so deferential to the markets, that their role is to emphasise the social function of housing over anything else. As Amory Lovins, an American environmental scientist said ‘The markets make a good servant but a bad master.’²⁷ The financialisation of housing makes this a considerable challenge for our legislators’ capacity and, indeed will, to challenge those with vested interests.

Conclusion

Homelessness is an egregious violation of human rights and the failure to provide adequate housing in Ireland is shameful. A legally enforced right to adequate housing would have a significant impact on the responsibility of local authorities, policy makers and in particular the Minister for Housing. Housing focused solutions rather than emergency provision would have to prevail. As the Committee on ESCR highlighted in 1991, the right to housing should not be interpreted narrowly. Therefore definitions which talk of ‘shelter’ are in contravention of the right. The right is a right for adequate housing, which should reflect societal norms of what is a home, is safe, and is a place

²⁴ Leilani Farha (2015) *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/HRC/34/51 (30 December 2015), available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

²⁵ Leilani Farha (2017) *op cit.* p.3.

²⁶ *Ibid.*

²⁷ Amory Lovins in interview with Lucy Siegle (2008) ‘This much I know: Amory Lovins’, *The Guardian*, available at <https://www.theguardian.com/environment/2008/mar/23/ethicaliving.lifeandhealth4>

where a person can live in peace with dignity. Homeless accommodation in the form of hotels, hostels and co-habitation does not fulfil these requirements.

Adequate housing is central to enjoying all other rights; exclusion from housing has resulted in thousands unable to enjoy other rights including the right to life, understood as the right to enjoy life, to have a relationship, access to employment and health care as well as freedom from discrimination. Unfortunately the default position has been to manage homelessness through additional emergency accommodation rather than providing solutions through housing provision.

Perhaps the greatest challenge in Irish society is to recognise the true purpose of housing. We need to value housing as providing a social function, not a commodity, and afford our citizens with a right to adequate housing. Housing – adequate housing – is not a want, it is a need and should be a right. Finally, a right to adequate housing in the current context would include a social housing building boom.