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# **Making the Case for a Right to Housing in Ireland**

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*Simon Communities in Ireland*

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## Making the Case for the Right to Housing - Foreword

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Housing is the issue of our times. Homelessness – a gross violation of the right to adequate housing – is on the rise virtually everywhere; evictions continue unabated worldwide as volatility and insecurity of tenure go unaddressed; and often unregulated private actors are filling the void left by governments that are continuously receding from the housing sector, thereby leaving unchallenged the prevailing paradigm that housing is a commodity rather than a social good.

Ireland is firmly in the throws of these phenomena. Between 2017 and 2018, homelessness dramatically increased by 35%; social housing supply remains scant; and rents are spiralling upwards forcing people out of their homes for lack of adequate protections. Meanwhile, the government has financialized its housing market, opening it up to international investors with negative results for affordability and the availability of housing.

*Making the case for the right to housing in Ireland* highlights that if Ireland stays on its current path, it will not be able to fulfill its international human rights obligations.

Alongside governments from around the world, Ireland has affirmed its commitment to ensuring access for all to adequate, safe and affordable housing by 2030 under the Sustainable Development Goals. Furthermore, through the New Urban Agenda, Ireland has committed to housing policies that support the progressive realization of the right to adequate housing for all; that address all forms of discrimination and violence and prevent arbitrary forced evictions; and that focus on the needs of the homeless, persons in vulnerable situations, low-income groups and persons with disabilities.

To meet these weighty commitments will require most States to adopt a paradigmatic shift in the way housing is understood. It is for this reason that all States, including Ireland should adopt human rights based housing strategies which have the capacity to be transformational.

In keeping with the thrust of this article, rights based housing strategies have as a central principle the recognition of the primacy of the right to housing as a legal right subject to effective remedies. Such recognition ensures basic and consistent standards regardless of political whims and recognizes as rights holders those who are homeless or inadequately housed rather than just as recipients of charity.

The benefit of a human rights based housing strategy is that it can flesh out the legislative provisions of the right to housing through the inclusion of a number of other principles. For example, such strategies demand that immediate steps be taken to eliminate homelessness. They require the allocation of maximum available resources towards implementation of the strategy as well as measures to address inequalities and injustices in the tax system. Further, they clarify the obligations of private actors and ensure regulation of financial, housing and real estate markets.

*Making the Case for the Right to Housing* underscores the importance of many of these principles if Ireland is going to move forward, protect the rights of its residents and ensure that no one in Ireland is left behind.

## 1. Introduction

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It is clear that new approaches are required to end the housing and homelessness crisis and to prevent its recurrence for current and future generations. Through this paper, we hope to contribute to the ongoing conversation on the possible routes to deliver greater protections and obligations with regard to housing and homelessness in Ireland. We firstly consider Ireland's obligations under international human rights law and to what extent these obligations can guide further progress on this important issue. Thereafter we discuss the Constitutional issues found at the core of any discussion on the right to housing including private property rights, their balancing provisions and the separation of powers. This is followed by a brief examination of alternative legal avenues to deliver a right to housing from neighbouring and distant jurisdictions. The paper concludes by outlining our hope, ambition and desired impact of a right to housing in Ireland.

## 2. Our housing and homeless crisis and our shared values?

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In Ireland in 2018, almost 10,000 people are stuck in emergency accommodation while many more have no other choice but to share with family and friends doubling and tripling up, resulting in overcrowding.<sup>1</sup> These are our families, friends, neighbours and colleagues. Still more people join them each month, further victims of our dysfunctional housing system. These 10,000 people are the visible and statistical embodiment of this broken system, but represent just the tip of the iceberg in terms of housing instability and insecurity. Recent Government strategies and combined policies have not worked to stem the tide of homelessness and housing insecurity, combat poverty or reduce inequality. A rights-based approach to housing is required, an approach built on our society's collective values of fairness, equality and social justice. This approach would serve to protect those at risk of homelessness across tenure types, preventing homelessness and offer sustainable solutions to people trying hard to exit emergency accommodation.

The increasing volatility and precariousness of tenure in the private rental sector is just one example of housing instability and insecurity within our fractured housing system. As a society, we must ask ourselves difficult questions and be constructively critical of current approaches. Is it fair that people are stuck in emergency accommodation, their lives on hold, their futures uncertain, living in limbo? Is it fair for people in the private rented sector to face spiralling rents, restricted supply and choice, limited security of tenure, overcrowding and dangerous and substandard accommodation? For many amongst us, these issues are the breaking points that lead to the trauma of homelessness and uncertainty as to when we can return to a place we can call home. A rights-based approach would improve security of tenure, rent certainty and accommodation standards in the private rental sector and in doing so would work to prevent homelessness across this tenure type.

Linked yet distinctive fault lines run through the State system of social housing support and provision. Unbound by a statutory obligation to house people with pressing housing need on social housing waiting lists, State social housing construction has faltered with only 780 new units built in 2017.<sup>2</sup> Between 2008 and 2014, funding for new social housing provision fell by over 88% resulting in a 91%

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<sup>1</sup> DHPLG March Homelessness Report, [http://www.housing.gov.ie/sites/default/files/publications/files/homeless\\_report\\_-\\_march\\_2018.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/homeless_report_-_march_2018.pdf).

<sup>2</sup> DHPLG, Local Authority Build by Area, 2017, [http://www.housing.gov.ie/sites/default/files/attachments/1b1-la-bld-by-area\\_12.xlsx](http://www.housing.gov.ie/sites/default/files/attachments/1b1-la-bld-by-area_12.xlsx).

decline in output of new dwellings in this tenure type.<sup>3</sup> In the place of strategic long-term investment in social housing construction, the State has turned to the overburdened private rental sector for the delivery of tenancies through private subsidies that are in effect social housing support. Is it fair that people deemed eligible for social housing support are reliant on this turbulent private rented sector to have their needs met through the Housing Assistant Payment (HAP) when the volatile nature of the market makes them much more vulnerable than every other private rented sector tenant? The expectation is that the vast majority of the 86,000 households on the social housing waiting list and the more than 10,000 people in emergency accommodation will find secure and sustainable housing solutions within this overburdened market. The numbers simply do not add up. The current supply of social and affordable housing does not meet the well-documented demand and the situation is unsustainable. We must question whether the policies implemented to date represent the best approach to addressing the problem effectively and the best use of State resources. How can we achieve better outcomes and sustainable solutions for people and prevent the recurrence of this crisis of such magnitude?

To date, an emergency led approach has formed the basis of Ireland's response to the homeless crisis including the use of private hotels, B&Bs and emergency dormitory shelter beds. This wholly inadequate response is symptomatic of the lack of clarity about the State's statutory obligation under the Housing Act 1988, which is often interpreted in the narrowest way. In addition to adversely influencing State primary responses to homelessness, the lack of clear statutory obligations has precluded people impacted from seeking improved conditions, better outcomes and more sustainable housing solutions through the courts.<sup>4</sup> We must transition from emergency-led responses to a statutory homelessness preventative model underpinned by State obligations to respect, protect and fulfil citizen's basic right to adequate housing.

The absence of State constitutional or statutory obligations with regard to housing has contributed to the record levels of people entering homelessness. To tackle the housing and homelessness crisis meaningfully and to prevent its recurrence, the Simon Communities believe the State must fully embrace the right to housing. To do so, significant constitutional and or statutory reform will be required. The chosen pathway must provide a clear floor of protection in respect of access to basic adequate housing for all, and should significantly guide all future State housing policy, decision-making, implementation and budgetary allocation. To demystify what this might entail, the remainder of this paper will seek to answer a number of key questions that often arise in discussions surrounding the right to housing:

- What are our international obligations with regard to the right to housing?
- What are the constitutional issues to overcome in order to deliver a constitutional right to housing?
- What other statutory legal models are available and can they work in the Irish context?
- What are the desired outcomes from the introduction of a constitutional or statutory right to housing?

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<sup>3</sup> Michelle Norris, 'Social housing's role in the Irish property boom and bust', November 2016, <http://www.ucd.ie/geary/static/publications/workingpapers/gearywp201615.pdf>.

<sup>4</sup> MLRC, 'No Right to Emergency Accommodation for Homeless Families in Ireland', <https://mercyllaw.wordpress.com/2018/04/20/no-right-to-emergency-accommodation-for-homeless-families-in-ireland/>.

### 3. Our International obligations

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The Irish State has signed and ratified several International human rights treaties that acknowledge to some extent a right to housing. Foremost of these treaties is the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11.1 of the ICESCR contains the pertinent text regarding the right to housing:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*<sup>5</sup>

Homelessness is the most visible and severe violation of this right and clearly illustrates the failure to deliver on the right to an adequate standard of living. Under Article 2.1 of the ICESCR, states that have ratified ICESCR, including Ireland, have an obligation to progressively realise the right to housing. While it may not be possible to deliver on all aspects of the right to housing straight away, States must be able to show they are doing everything they can within the resources available to them to protect and promote the right to housing. Furthermore, they must immediately take steps towards fulfilling this right to ensure minimal essential levels and, critically, report on this progress.<sup>6</sup> In 2015, in response to the Irish State's periodic reporting obligations under the ICESCR, the treaty watchdog (the UN Committee on Economic, Social and Cultural Rights (Committee)) pointed out a number of areas with which they expressed concern. These include issues around social housing demand<sup>7</sup>, the costs of renting a home<sup>8</sup>, the ineffectiveness of social support schemes like Rent Supplement and HAP<sup>9</sup>, mortgage arrears<sup>10</sup>, and the growing numbers of families and children at risk or having already entered homelessness.<sup>11</sup>

Offering guidance to States Parties, the Committee has said that the right to housing should be interpreted broadly as "the right to live somewhere in security, peace and dignity"<sup>12</sup>. Further detailed guidance provided on the key characteristics of this right includes the following:

- Freedoms including:
  - Protection against forced evictions.
  - The right to be free from arbitrary interference with one's home.
  - The right to choose where to live.
- Entitlements including:
  - Security of Tenure.
  - Housing, land and property restitution.
  - Equal access to adequate housing.

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<sup>5</sup>International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>7</sup> Office of the High Commissioner for Human Rights, Committee on Economic Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, July 2015 at para 26, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement>,

<sup>8</sup> Ibid at para 26 (b)

<sup>9</sup> Ibid at para 26(c)

<sup>10</sup> Ibid at para 26(e)

<sup>11</sup> Office of the High Commissioner for Human Rights, Committee on Economic Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, July 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> at para

<sup>12</sup> Office of the High Commissioner for Human Rights and UN Habitat, 'The Right to Adequate Housing', Fact Sheet No. 21, p3, [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

- Participation in housing-related decision-making.

The Committee has provided further guidance to States Parties on the conditions that must be met for shelter to be considered adequate housing:

1. Security of tenure.
2. Availability of services, materials, facilities and infrastructure.
3. Affordability.
4. Habitability.
5. Accessibility.
6. Location (in relation to employment, education, health and social opportunities).
7. Cultural Adequacy.<sup>13</sup>

The principle of progressive realisation considered alongside the provision of Article 11.1 on the right to housing, and the guidance from the monitoring body of ICESCR, provide a valuable template for States Parties, including Ireland, to comply with their obligations to realise the right to housing.

#### 4. The constitutional conversation

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Eighty-one countries around the world have a constitutionally protected right to housing. This holds true for several of our European counterparts including Belgium, Finland, Greece, the Netherlands, Portugal, Spain and Sweden.<sup>14</sup> Amending Bunreacht na hÉireann to include a right to housing raises a number of legal issues that often form the basis of any conversation on this particular subject. Foremost of these legal issues is the balancing of any future constitutional or statutory right to housing with current constitutional protections of the right to private property as contained in Articles 40 and 43 of the constitution. Under these articles, a person's private property is protected from 'unjust attack'. The authors of the Constitution also inserted provisions that somewhat balance this strong protection for private property based on the principles of 'social justice' and 'common good'. A referendum seeking to insert a right to housing in the Irish Constitution would have to overcome the protections contained in Articles 40 and 43, if not incorporate the amendment of these articles to strike a balance between these protections and the intended beneficial outcomes of a right to housing. In 2014, the Constitutional Convention – a body comprised of 100 randomly selected members of the public to consider future Constitutional reforms, recommended the inclusion of legally enforceable socio-economic rights in the Constitution including the right to housing.<sup>15</sup> This recommendation formed the basis of the 2017 Right to Housing Bill, which sought to insert a right to housing into the Irish Constitution by amendment to Article 43. The Bill was defeated in the Dáil but referred for further consideration to the Joint Committee on Finance, Public Expenditure and Reform.<sup>16</sup> To date, the Committee has not considered the provisions of the Bill.

##### Unjust attack

It is helpful to unpack the concept of 'unjust attack' on property rights in the context of a future right to housing. How could a right to housing, and housing policy measures flowing from that right, be considered an attack on a person's private property? Similarly, under what circumstances can the

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<sup>13</sup> Ibid 3, at Pp. 3-4.

<sup>14</sup> MLRC, 'The Right to Housing in Ireland', p.3, <http://www.mercylaw.ie/fileupload/Right%20to%20Housing%20Report.pdf>.

<sup>15</sup> <http://www.thejournal.ie/constitutional-convention-economic-social-cultural-rights-1329652-Feb2014/>.

<sup>16</sup> <http://www.thejournal.ie/right-to-housing-bill-3609627-Sep2017/>.

principles of ‘social justice’ and ‘common good’ be used to balance private property rights in the context of housing policy development? Through the years, the courts have grappled with these legal issues. The primary case in which ‘unjust attack’ on private property rights was successfully invoked was *Blake v Attorney General*<sup>17</sup> in 1982. In this case, the Supreme Court found the Rent Restriction Act was an ‘unjust attack on the plaintiffs’ property rights. The Act in question sought to provide cheap rents and additional security of tenure for renters in an era of extreme austerity. The Court found that the current (early 1980s) effect of the Act was that a large and arbitrary number of landlords were forced to accept rents well below the prevailing market value. The Court based its conclusion of “unjust attack” on the arbitrary nature of how the Act applied – many rented premises were not subject to the controls – and the fact that the Act provided no compensation to landlords. In other words, the Court found that the Act had a disproportional impact on a comparative minority of landlords who were being forced to contribute to the ‘common good’ at their own personal expense and in an arbitrary manner.

### **Social Justice and the Common Good**

The primary case in which the principles of social justice and the common good were successfully invoked by the State as relating to State housing policy was in the case of *Re Article 26 and in the matter of Part V of the Planning and Development Bill, 1999*<sup>18</sup>. In this case, the Supreme Court upheld planning legislation that required building developers to cede up to 20% of their land to local authorities to use as social and affordable housing. Compensation to the value of the land before planning permission was granted to developers, which was significantly less than the current market value. In handing down its decision, the Supreme Court considered the proportionality test<sup>19</sup> and held that the legislation was clearly in line with the principles of social justice and in the common good. Chief Justice Keane stated that the provisions of the Bill

*“are rationally connected to an objective of sufficient importance to warrant interference with a constitutionally protected right and, given the serious social problems which they are designed to meet, they undoubtedly relate to concerns which, in a free and democratic society, should be regarded as pressing and substantial. At the same time, the court is satisfied that they impair those rights as little as possible and their effects on those rights are proportionate to the objectives sought to be attained.”*

### **The role of the Courts**

The future role of the judiciary in the protection of a new constitutional right to housing will very much depend on the breadth of the protection offered under a newly inserted article. The primary legal/judicial concern relating to the insertion of a right to housing in the constitution is that the Irish courts would lack the capacity to enforce the right or, at the other end of the spectrum would be too prescriptive, undermining the ability of the Oireachtas to formulate public policy as it relates to housing and homelessness. However, these concerns could be addressed if judicial enforcement of

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<sup>17</sup> [1982] I.R. 117.

<sup>18</sup> [2000] 2 I.R. 321

<sup>19</sup> Which means objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected rights. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must

1. Be rationally connected to the objective, not be arbitrary, unfair or based on irrational circumstance
2. Impair the rights as little as possible and
3. Be such that their effects on rights are proportional to the objective.

the State's duty to promote and fulfil a constitutional right to housing was based on a reasonableness standard incorporating a proportionality review.<sup>20</sup>

This is the standard Irish courts currently employ, which acknowledges the greater institutional capacity of the two other branches of government for formulating public policy. This separation of powers is enshrined in the Constitution, setting clear boundaries in terms of the roles and responsibilities of the Executive (the Cabinet), the Legislature (Dáil and Seanad) and the Judiciary (the Courts). Furthermore, it is argued that the courts in general have been more inclined to recognise first generation rights (traditional civil and political rights) as opposed to second generation rights (socio economic rights), holding with the doctrine of the separation of powers which sees decisions involving the distribution of state resources as legislative as opposed to judicial territory.

This approach of giving the courts an oversight role on grounds of reasonableness, as suggested by Whyte, would maintain the legislature and executive's primary role in law and policymaking. This approach suggests that the courts/judges lack the technical housing expertise when compared to the executive and the numerous State agencies that contribute to policymaking processes. Furthermore, the courts cannot respond quickly to changing situations, as they are dependent on litigants to bring issues to their attention.

Contrary to this approach, it is sometimes assumed that allowing the courts to enforce minimum standards is a more effective way of protecting socio-economic rights than simply requiring the courts to review public policy on reasonableness grounds. However, this assumption is not always valid as a court might fix a minimum standard below that seen as desirable by the beneficiaries of the right in question. In the context of housing, this could deliver accommodation standards or security of tenure below that required by those living in that tenure type.

## 5. Other legal models to consider

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Amending the Constitution is just one possible mechanism the Irish State could utilise to realise a right to housing. Across multiple jurisdictions, the right to housing has been delivered through both constitutional and statutory reform involving institutional and non-judicial mechanisms to vindicate the contents of the newly enshrined right. Mercy Law Resource Centre<sup>21</sup> explores these routes of reform in a report published in 2018. The findings of this report allay constitutional concerns surrounding the role of the courts and the separation of powers as obstacles to the realisation of a right to housing.<sup>22</sup> The report ultimately concludes that, the Oireachtas is the most suitable vehicle through which to make difficult policy and budgetary decisions pertaining to the right to housing.<sup>23</sup> With this in mind, it is useful to briefly explore some of the alternative right to housing mechanisms in place in other jurisdictions. These range from constitutional protection in Finland and South Africa to varying forms of statutory protection in France and Scotland.

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<sup>20</sup> Professor Gerry Whyte, *Providing for a Right to Housing in the Irish Constitution*, July 2017. Unpublished.

<sup>21</sup> Mercy Law Resource Centre, *Second Right to Housing Report: The Right to Housing in Comparative Perspective*, 2018, <http://www.mercylaw.ie/fileupload/MLRC%20Second%20Right%20to%20Housing%20Report.pdf>.

<sup>22</sup> *Ibid*, at P. 23.

<sup>23</sup> *Ibid*, at P. 24.



### **Alternative constitutional approaches**

As mentioned previously, 81 countries across the globe have enshrined a right to housing in their respective constitutions. Finland and South Africa are two primary examples that have adopted varying levels of constitutional protection of the right to housing.

#### ***Finland***

In Finland, the right to housing is enshrined in Section 19.4 of the Constitution of Finland<sup>24</sup>. Responsibility for upholding this right lies with both the elected legislature and an independent court system. The legislature's protective role occurs before a national law is passed, ensuring that its provisions do not contravene the rights contained in the national constitution, namely the right to housing. After the legislature pass such laws, the courts are entrusted with a limited form of judicial review to deal with any loopholes that may arise through the application of the law.<sup>25</sup>

#### ***South Africa***

The right to housing is enshrined in Section 26 of the 1996 South African Constitution. Under this provision, the State has both negative and positive obligations to protect individual's rights to adequate housing. Under Section 26, measures that interfere with the right to housing such as an eviction by the State or a private landlord must be proportional and form the basis of the State's negative obligations to protect the right to housing. The landmark case of *Grootboom*<sup>26</sup> found that mass evictions by the State in the absence of suitable alternative accommodation were disproportionate and contrary to the State's negative obligations.<sup>27</sup> With regard to the State's positive obligations to protect and promote the right to housing, the standard that must be met is one of reasonableness. Positive obligations under Section 26 require the State to take reasonable and other measures to achieve the progressive realisation of the right to housing within available resources. Reasonable measures are those deemed non-arbitrary, coherent, balanced, flexible, comprehensive and workable.<sup>28</sup>

### **Alternative statutory approaches**

Scotland and France have enshrined the right to housing through statutory provisions in recent years allowing for broad legal protection for individuals who are homeless or at risk of homelessness.

#### ***Scotland***

In Scotland, the Housing Act 1987 and the Homeless Act 2003 combine to provide a two-tier level of protection for individuals experiencing homelessness. Under these Acts, local authorities have a statutory duty to secure settled accommodation for all eligible persons who are unintentionally homeless. This duty is strengthened by a secondary duty to provide temporary housing until suitable permanent accommodation is secured under the first duty. In the fulfilment of this secondary duty, the Scottish Government has also delivered an executive order limiting the use of unsuitable accommodation for households with children and pregnant women, the effect of which is to reduce the use of B&B's and other unsuitable accommodation.<sup>29</sup>

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<sup>24</sup> Ministry of Justice, Finland. Unofficial Translation, <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>

<sup>25</sup> Mercy Law Resource Centre, 'Second Right to Housing Report: The Right to Housing in Comparative Perspective', 2018, <http://www.mercylaw.ie/fileupload/MLRC%20Second%20Right%20to%20Housing%20Report.pdf>, at P. 8.

<sup>26</sup> *Government of South Africa v Grootboom*, 2001 (1) SA 46 (CC) (S. Afr.)

<sup>27</sup> *Ibid*, at P.21.

<sup>28</sup> *Ibid*, at P. 22.

<sup>29</sup> *Ibid*. at P.13.

The beneficial impact of the Scottish rights-based approach to homelessness service provision was identified in a comparative study carried out by Watts.<sup>30</sup> Comparing the Scottish and Irish approaches to homeless service provision, the study found that a rights-based approach led to a more effective focus on homeless people's need to access settled housing. Furthermore, the Scottish approach was effective in reducing the stigma experienced by those experiencing homelessness and encouraged a sense of legitimate entitlement among this population.<sup>31</sup> Ultimately, the outcomes and experience of the Scottish population were more beneficial than those of their Irish counterparts. The Irish participants were characterised by passivity, a lack of agency and entitlement that is required to drive standards in homelessness services. Their Scottish counterparts experienced significantly greater satisfaction and higher standards in homelessness services provided. The supportive regulatory and legal framework drives this general experience.<sup>32</sup>

### **France**

Statutory protection for the right to housing in France is contained in the *Enforceable Right to Housing* (DALO) law from 2007<sup>33</sup>. The law provides for '*the right to decent and independent housing . . . guaranteed by the State to all people who reside in the French territory on a regular basis and in conditions of permanence and who are not able to access or maintain housing of their own.*' Similar to the Scottish experience, the DALO law provides a two-tier protection for individuals, including the right to secure long-term housing in addition to the right to temporary emergency accommodation in the interim period. Individuals can vindicate these complimentary rights, if necessary, using a two-stage process. The first stage involves filing a petition with the local housing mediation commission for urgent rehousing. If found to have an urgent need for rehousing, the applicant is referred back to the local authority who must find suitable housing for the applicant within a defined period. If not adequately housed within that timeframe, the applicant has recourse to an administrative court that can order the local authority to rehouse the applicant. It is possible to impose a fine on Government if they fail to comply with this order within the timeframe outlined by the court.

## **6. Our hope for a right to housing**

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What is our ultimate hope and ambition for a right to housing? The Simon Communities in Ireland believe that a right to housing will deliver affordable and secure homes in a manner that complements our collective values of fairness, equality and social justice. We know that a right to housing cannot secure home ownership or a house for all. This is an unrealistic expectation and a soundbite often used by those determined to undermine progress on this issue.

Underpinning future housing and homelessness policies and strategies with a human rights-based framework, building on our international obligations under the ICSCR, can positively contribute to the progressive realisation and enjoyment of a host of other rights including health, education and employment. Developing a national Housing First strategy within the context of a right to housing will ensure that the first route out of homelessness is suitable housing, combined with tailored supports,

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<sup>30</sup> Beth Watts, '*Rights, Needs and Stigma: A Comparison of Homelessness Policy in Scotland and Ireland*', August 2013, [http://www.feantsaresearch.org/download/bw\\_paper7468819885919133327.pdf](http://www.feantsaresearch.org/download/bw_paper7468819885919133327.pdf).

<sup>31</sup> Ibid, P. 62.

<sup>32</sup> Ibid.

<sup>33</sup> Further information on *Droit au Logement Opposable* 2007 is available from Clauzier, Julie, 'The DALO law: a step towards making the right to housing a reality', Housing Rights Watch, <http://www.housingrightswatch.org/content/dalo-law-step-towards-making-right-housing-reality>.

allowing people to return to the lives they knew in secure stable housing. Placing homelessness prevention on a statutory footing would place new obligations on Local Authorities to prevent people becoming homeless in combination with delivering rapid rehousing for those that do.

A right to housing can deliver significant change within the broader housing system. A constitutional right to housing akin to Finland or South Africa could deliver beneficial impacts across tenures from social housing tenants to homeowners. Increasing legal security of tenure across all tenure types is of paramount importance in this regard. In the private rental sector, this would mean legislating for indefinite leasing and the closing of current loopholes that undermine tenure security. For homeowners this would deliver statutory protections greater than current guidelines contained within the Central Bank's voluntary Code of Conduct on Mortgage Arrears.

Increasing security of tenure must be accompanied by increased State-supported social and affordable housing provision. Ambitious policies to develop cost and affordable rental sectors must be pursued with the necessary statutory protections in place for rent certainty, standards and security of tenure. Statutory Local Authority obligations to increase and maintain social housing stock within the confines of available resources could be balanced based on a reasonableness test, as per the South African experience.

Progressively increasing statutory accommodation standards across tenures would deliver higher quality State owned social housing stock, a safer, more equitable and cost effective private rental sector, and improved building standards and regulations for those who can afford to own their home. This reimagined housing system must champion access to housing across tenure types for historically marginalised and disadvantaged groups and sectors of society.

## **7. Conclusion – the impact of a right to housing**

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How would the inclusion of a constitutional or statutory right to housing work to end the current housing and homelessness crisis and prevent its recurrence for current and future generations? Building on this right, what additional safeguards and structures can be put in place to deliver secure and affordable housing for all? Below we outline our vision of what this impact could be, starting with the protection of people at greatest risk who require long-term sustainable solutions.

- At a minimum, we must ensure any future right to housing provides a solid floor of protection for people experiencing homelessness or at risk of homelessness similar to the Scottish and French experience.
- Underpinning future housing and homelessness policies and strategies with a human rights-based framework can contribute positively to the progressive realisation and enjoyment of a host of other rights including health, education and employment.
- It would provide a legal mechanism for people to vindicate their right to housing before the courts.
- Oblige the State to reasonably protect and fulfil the right, in the spirit of its obligations, under the ICESCR.
- Provide a guide and legal safeguard against which all State housing policy and decision-making can be measured and challenged.
- A recognition that a home is central to the dignity of every person.