

Simon Communities of Ireland submission to the Irish Human Rights Commission on Making Economic, Social and Cultural Rights Effective.

Introduction:

The Simon Communities of Ireland is the federation of eight Communities in Cork, Dublin, Dundalk, Galway, the Midlands, the Mid West, the North West, and the South East. Simon has been working with people who are homeless in Ireland since 1969.

We welcome the prioritisation of economic, social and cultural rights by the Commission, and the opportunity to make this submission.

Simon has had a mandate to campaign for a statutory right to housing for over twenty years. This work has taken many guises including the legislative campaign in the 1980's which resulted in the 1988 Housing Act. Our new strategic plan - Ending Homelessness, Creating Homes - outlines our organisations commitment to 'campaigning for legislative and policy changes and resources that will deliver on a right to housing and responsive services for people who have no homes'. In addition we articulate as a core value that 'people who use our services will be informed of their rights in Simon and in the wider community; we will proactively advocate with and for people to claim their human rights, in particular the right to housing.'

Scope of submission:

This submission will focus in particular on the right to housing, and how this can be made effective as it applies to people who are homeless. It is informed by our day to day experience of working alongside people who are homeless and draws on our previous submissions to the All Party Oireachtas Committee on the Constitution, the National Economic and Social Forum, the Office for Social Inclusion and our research in the area of justiciable ESC rights, particularly the efficacy of the 1988 Housing Act.

This submission does not cover in detail other ESC rights, as our resources have to date been focused on progressing the right to housing. We are particularly interested in progressing learning on the right to the highest attainable standard of health and would refer the Commission to the submission made by Simon to the Expert Panel on Mental Health in relation to Ireland's compliance in this area¹.

Simon believe that a three tiered approach to making ESC rights effective is necessary - constitutional enshrinement, legislative protection and practical enactment through those responsible for delivering goods and services be they statutory or voluntary organisations.

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1. Context of rights for people who are homeless

Given that the purpose of human rights is at its essence to protect the dignity and personhood of each individual, the experience of homelessness is arguably one of the grossest violations of human rights in western economies.

Homelessness is not inevitable. We believe that homelessness in Ireland can be ended. By an end to homelessness we mean no one will have to sleep rough because of a lack of appropriate services, no one will have to live in emergency accommodation for longer than is an emergency, and no one will become homeless due to a lack of services or inadequate housing provision².

Government through the National Anti Poverty Strategy and subsequent National Action Plans against Poverty and Social Exclusion have acknowledged that rights encompass social and economic rights including policies on access to education, employment, health, housing and social services. The Government has pledged to make explicit people's entitlements to these services and to ensure equality of access to quality services through robust standard setting and monitoring. We are not aware of any progress in relation to this commitment since it was first made in 2002.

Service delivery to people who are homeless - be it statutory or voluntary³ - in the main exists in a chasm of rights. Housing and health services are usually those most urgently needed by people who are homeless. In practice there exists no guarantee of access to a service, or any appeal or redress mechanism if a service is denied; there are no mechanisms to measure the quality of services someone may receive.

Many of the people who are currently homeless are in this situation because of a failure of public services to adequately meet their needs in the past. Many have experienced various forms of institutionalisation over their lives. Others have experienced family breakdown or mental ill health, and there have been insufficient responses to ensure that the person does not become homeless. Many people when they first 'present' as homeless have little other than a housing need, which with appropriate support, could be addressed immediately.

Once someone is classified as 'homeless' the traditional response is some form of emergency accommodation (usually funded entirely or in part by the state), which often becomes long stay accommodation. Some but not all emergency accommodation includes support services. For some, accessing a 'homeless' service may increase access to specific health and housing services. For others, the classification of 'homeless' effectively means that they are in no man's land, with statutory agencies unwilling to take responsibility and voluntary agencies often unable to meet the person's specific needs.

2. Parameters of the Simon submission to the All Party Oireachtas Committee on the Constitution

Simon believe that the right to housing should be enshrined in the Irish Constitution. We believe that a constitutional right to housing would:

² A target of ending rough sleeping by 2004 was set by Government in 'Building an Inclusive Society', 2002 and of ending long term stay in emergency accommodation by 2010 in 'Towards 2016'.

³ There are approximately 57 voluntary organisations delivering services to people who are homeless in Ireland. The majority of these services receive statutory funding. While all rely on charitable donations to maintain there services, all are in effect an integral element of 'public' services.

- Acknowledge in a meaningful way Ireland's commitment to the International Covenant on Economic, Social and Cultural Rights
- Establish an explicit statement of our society's values and concerns⁴
- Balance existing rights, and enhance the commitment to the exigencies of the common good and the principles of social justice
- Establish the accountability of Government to citizens and public bodies

While the exact phrasing of this constitutional amendment requires further discussion key elements of the amendment should include:

- That the right to housing is justiciable, that is where social policy or legislative measures fail the right to housing should be specified in such a way as to be arbitrated, determined and enforced by the courts
- That the right to housing make real our international legal obligations
- That the primary responsibility of the individual to meet their housing needs from their own resources is enshrined, ensuring the targeting of state intervention for those in most dire need

We stressed in our submission that in addition to a constitutionally enshrined right we also seek supporting legislation to strengthen local authorities obligation to house people experiencing homelessness; to give those who are homeless meaningful access to appropriate housing and to outline the standards and services, which embody housing rights. The parameters of such legislation are outlined below.

3. Critique of the 1988 Housing Act

The Act provides a legislative definition of homelessness; calls on local authorities to assess the numbers of people homeless and their housing need; enables local authorities to meet people's housing needs through their own housing stock or through funding other housing agents and calls on local authorities to develop a scheme of letting priorities. Crucially, the Act does not put a statutory duty on local authorities to meet the housing needs of people who were homeless⁵. In June 2005 Simon published an extensive independent assessment of the efficacy of the 1988 Housing Act in meeting the housing needs of people who are homeless. We submit this research to the Commission, and cite here some of it's key findings in brief.

- There is no agreement on the definition of homelessness, the legislative definition lends itself to interpretation, and some Local Authorities have classified people as 'intentionally homeless', despite the absence of a legal basis for this classification. Some Local Authorities also argue that if someone does not have a local connection they will not be classified as homeless.

⁴ A public opinion poll conducted by Simon in 2002 demonstrated that 71% of those polled (816 persons over the age of 18) believed there should be a right to housing in the constitution.

⁵ During the Dáil debate on the Bill the then Minister for the Environment argued that while a statutory duty would place an unfair legal burden on local authorities he, as Minister would not approve a scheme of lettings from any local authority which did not prioritise homeless people and further, that if the Act were proved to be ineffective it would be revised.

The legislation states that a person is homeless 'if in the opinion of the local authority' they meet certain criteria. There exists no appeals mechanism should an applicant disagree with the decision of the Local Authority.

- Most Local Authorities surveyed believed that the housing needs assessment was not an accurate reflection of the need of people who are homeless.

The 1988 Housing Act recognises ten categories of housing need including people who are homeless. A homeless count has taken place 'in conjunction'⁶ with the housing needs assessment for a number of years. This may be due to a very strict interpretation of Section 9 of the Act which specifies that the housing assessment should be 'of the need for the provision *by the authority* of adequate and suitable housing accommodation' [our emphasis]. However, this two-pronged process could only then be justified if it were assumed that local authority housing was not suitable for any person deemed as homeless.

- The research found that there was very little cross over between the assessment of need and the 'homeless count', ie if a person was counted as homeless it does not automatically follow that they have received a housing needs assessment or indeed that they have been placed on the local authority waiting list.⁷
- The research also found that in 2002 of those housed by Local Authorities only 10% were homeless. Further it demonstrated a bias against single people: 68% of those classified as homeless were single, only 43% of allocations went to single people. The waiting time for a Local Authority allocation for a person who was homeless was found to be two to eight years.

4. Proposals for legislative reform

As stated above, we believe that the right to housing must be enshrined in the constitution, made specific in legislation and underpinned by changes in practice and policy. Here we outline the key components of legislation to underpin the right to housing for people who are homeless. The Department of the Environment Heritage and Local Government has indicated that they are preparing new housing legislation; this would provide an ideal opportunity at the very least to make real the commitments to ESC rights made in NAPS.

New housing legislation should include:

- A comprehensive and objective definition of homelessness

⁶ As described in DoEHLG guidelines on the count to local authorities

⁷ In terms of the exclusion of people from the housing waiting list during the assessment process the DoEHLG have highlighted in their circulars to local authorities on the matter:

"[Some local authorities have excluded single persons over 18 years of age in previous assessments.] An applicant should not be debarred from inclusion in an assessment by virtue solely of their marital status, age or failing to satisfy a requirement to have resided in a particular area for a specified period of time or on the grounds that the authority do not have suitable accommodation to cater for them. If such applicants qualify for inclusion in the assessment it does not automatically follow that they are eligible for long-term rented social housing; the most appropriate solution to their housing need may be one of the range of social housing options other than local authority housing."

and further

"People who are not accepted for inclusion in an assessment should be advised of the decision and the reasons for it and of the alternatives to local authority housing which may be appropriate in their circumstances".

This would seem somewhat at odds with the concerns raised above.

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- The right to a housing needs assessment⁸ from a qualified individual within the Local Authority
 - The right to an assessment of additional need by qualified service providers where necessary
 - The right to an advocacy and appeals process for that assessment
 - The delivery of care/ support plans post assessment
 - The right to housing for those who cannot meet their housing needs from their own resources
 - The standardisation of housing priority and allocation systems throughout the country to ensure allocations comply with the Equality Acts 2000 -2004 and the ECHR Act 2002.
 - A statutory duty to meet the housing needs of people who are homeless

5. Proposals for reform of practice and service delivery models

As noted throughout this submission, we believe that reform is necessary at a constitutional, legislative and service delivery level if ESC rights are to be made effective.

5.1 Statutory Agencies

The work undertaken by Mary Daly of Queens University Belfast on behalf of the Irish Government provides a useful framework for this. She notes the barriers to access to rights that must be overcome, in summary:

1. Specification of right, adequacy of legal & other provisions
2. Adequacy of monitoring and enforcement
3. Resources
4. Management and Procedural issues
5. Psychological and Socio cultural obstacles
6. Attention to vulnerable groups and regions

The model for needs assessment proposed in Appendix I addresses many of these issues. A clear, transparent, resourced system of housing needs assessment is a fundamental requirement in order to build a system of housing rights in Ireland.

5.2 Voluntary Agencies

There are approximately fifty-seven (57) voluntary agencies in Ireland delivering a total of approximately one hundred and forty seven (147) different projects to people who are homeless. There exist no national enforceable standards for service delivery, despite the fact that all services receive some level of statutory funding and that they are providing services to often extremely vulnerable people.

Simon are working towards delivering our services in a human rights context. In effect this means putting the people who use our services and their needs at the centre of how we operate, actively engaging people in the decision making process both about our services and our organisation, having an on going mechanism for measurement of the outcomes of our work and the auditing of all of our areas of activities.

We believe that a human rights based framework based on these principles can and should be explored by all voluntary service providers.

⁸ See Appendix I

APPENDIX I

Parameters of a Needs Assessment system for people who are homeless

a. Summary

The current system should be strengthened and standardised throughout the country to ensure a comprehensive assessment of housing needs for each applicant that identifies the appropriate types of accommodation and supporting services.

The practical application of a needs assessment system should include⁹

- An advocate system - where applicants can nominate a person of their choice to support them through the assessment process.
- A transparent and accessible appeals mechanism.
- A thorough evaluation of the size, type, location of dwelling unit that would be appropriate.
- An on going housing needs assessment system with the retention of the triennial count for macro planning purposes and the inclusion in the assessment of need all those in social housing need for the purpose of planning, regardless of the preferred housing tenure.
- Clear information on the outcome of each stage of the process including the expected wait time for provision of services.
- The creation of a mechanism whereby when an applicant presents who has needs additional to housing, the applicant or their chosen advocate may request a multidisciplinary needs assessment. The assessment should be carried out with the applicant, and with relevant statutory/voluntary service providers.
- A care plan, detailing the needs identified, the appropriate service provider and the funding of those services should be agreed with the applicant and the service providers and acted on.
- Where a statutory agency fails to provide appropriate housing or supports to an applicant, a redress mechanism should be available.

b. Advocates

When the housing needs assessment process is triggered, the applicant should be advised verbally and in writing that they can nominate an advocate, be it a family member, friend or care giver who is copied all written material in relation to the assessment and subsequent housing arrangements, and is entitled to attend any meetings between the Local Authority and the applicant, if the applicant so wishes.

c. Appeals mechanism

The appeals process should apply to situations where the applicant disagrees with the decision made by the Local Authority in relation to:

- The assessment of long term housing need
- The suitability of accommodation offered post assessment
- The outcome of an 'additional need' assessment

Key elements of an appeals mechanism should include:

- The right of the applicant to have a named advocate throughout the assessment process
- The right of independent redress

⁹ Over forty voluntary organisations have endorsed the tenets of this model; the assessment, advocate and appeal mechanism has been cited in "Review of Implementation of Homeless Strategies".

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- Speedy resolution of appeals (the appeals process should be resolved within six weeks of being launched)
 - The housing status of the applicant should not alter during the appeals process

d. Increased capacity for local authorities

It has been documented that Local Authorities are under-resourced¹⁰ in carrying out housing needs assessments. It has also been documented that in order to make access to goods and service meaningful, there needs to be sufficient training for those who act as gatekeepers.¹¹

- An audit of the financial and human resource needs of local authorities to effectively carry out housing needs assessment should be undertaken.
- A training module for local authority housing needs assessment staff should be designed in conjunction with applicants and their advocates and mainstreamed throughout the country.

e. The current needs assessment for people who are homeless

Simon have a number of specific concerns about the current system for the assessment of housing need for people who are homeless which we have outlined below¹² and which we believe warrant particular attention in any review of the current model

¹⁰ Focus Ireland, Simon Communities of Ireland, Society of St Vincent de Paul, Threshold *Housing Access for All: An Analysis of Housing Strategies and Homeless Action Plans* (2002)

¹¹ Mary Daly *Access to social rights in Europe* (2002) European Committee for Social Cohesion, Council for Europe Publishing

¹² See Appendix I

APPENDIX II

Extract from

Simon Communities of Ireland
Submission to
The Expert Group on Mental Health Policy
December 2003

Key Recommendations

- The development of a rights based approach to mental health provision for people who are homeless or at risk of homelessness, integral to this approach should be a holistic assessment mechanism, an appeals mechanism, timeframes for the delivery of services and choice and quality in service providers. This approach should be underpinned by legislation that gives full effect to Ireland's international human right obligations.
- The naming of people who are homeless and people at risk of homelessness as a specific target group within Government health services.
- Legislation to put the homeless action plans on a statutory basis.
- An investigation into the best models of supported housing available, and the development of model for state funding of the capital and current costs for these initiatives on an ongoing and equitable basis.
- A proactive policy of including those inappropriately housed in hospitals and other institutions in the housing needs assessment.
- A strategy for re-housing all those currently inappropriately in hospitals and mental health institutions.
- Catchment area services should be appropriately resourced and adapted, and relevant staff trained to meet the particular needs of their homeless populations in both in-patient and community-based settings, so they are enabled to access a comprehensive range of services.
- Accurate data on the number and mental health needs of homeless adults and children should be regularly compiled.
- The particular high level of mental health care needs of Ireland's urban homeless population should be addressed, by ensuring a comprehensive provision of specialised homeless mental health services, with an adequate number of specialist in-patient acute beds, full mental health multidisciplinary teams, and outreach services, with appropriate supports.

- Particular attention should be given to the services available to homeless children, and those living in, and leaving, state residential care.
- Integrated mental health programmes should be developed for people who are homeless with a dual diagnosis of mental illness, and alcohol or substance misuse and/or intellectual disability.
- The review of Homelessness An Integrated Strategy and the Homeless Preventative Strategy committed to in the NAPS/incl (due before the end of 2003) should be independently undertaken, take on board the terms of reference proposed by the Simon Communities of Ireland, Focus Ireland, St. Vincent de Paul and Threshold, engage with homeless service providers and be initiated immediately.
- A public education and awareness programme to counter the stigma of mental illness should be initiated, emphasising the rights of people with mental illness.
- Rights-based mental health legislation giving full effect to Ireland's international human rights obligations should be enacted.
- A comprehensive and adequately resourced system of personal advocacy, to assist people who are homeless with mental illness to assert their rights in a manner consistent with MI Principles 12(1) and (2) should be provided.
- Family support and information services should be made widely available.
- Garda training in mental health needs and practices with particular emphasis on the needs of people who are homeless, should be introduced.