

**The Right to Housing  
and the  
Homelessness Crisis**

**Submission by the  
Simon Communities of Ireland  
to  
The All Party Oireachtas Committee on the  
Constitution**

*Universal Declaration of Human Rights*

*Article 25.*

*(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*

## **Synopsis**

*Ireland's international legal obligation to the right to adequate housing has not been realized. This is most blatantly clear in the denial of housing and other human rights of people experiencing homelessness. As the homelessness crisis intensifies, the failure of current legislative and non-legislative measures becomes increasingly more blatant. A constitutional guarantee of the right to housing, with complimentary supporting legislation on making that right a reality should be enshrined.*

## **Contents**

Contents .....	2
1. Introduction.....	3
2. The experience of homelessness in Ireland.....	5
3. Current legislative and non-legislative measures to tackle homelessness .....	7
3.1 The Housing Act 1988.....	7
3.2 Homelessness An Integrated Strategy .....	8
4. The Continued Denial of Housing to those experiencing homelessness.....	8
4.1 Measuring Homelessness .....	8
4.2 Provision of housing directly by local authorities.....	9
4.3 Other mechanisms to fund housing for those experiencing homelessness.....	10
4.4 Strain on local authority waiting lists .....	10
5. Ireland's international obligations on the right to housing .....	11
5.1 The International Convention on Economic, Social and Cultural Rights .....	11
5.1.1 Concluding Observations on Ireland .....	12
5.1.2 Articles 16 and 17 of the ICESCR .....	13
5.1.3 General Comment Number 4 .....	14
5.1.4 States Obligations under Article 2 .....	15
5.2 Other International Conventions / Treaties signed by Ireland .....	16
5.3 Incorporation .....	16
6 The current context of the debate.....	18
6.1 National Anti Poverty Strategy .....	18
6.2 The Human Rights Commissions North and South .....	18
6.3 Political Opposition .....	19
6.4 Developments in Europe .....	20
6.5 Critique of the position of the Constitutional Review Group 1996 .....	20
7. Proposals from the Simon Communities of Ireland.....	22

## **1. Introduction**

The Simon Communities of Ireland welcome this opportunity to make a submission to the All Party Oireachtas Committee on the Constitution, we do so from the perspective of over thirty years experience in working and campaigning with people who are experiencing homelessness. We believe that as the social housing and homelessness crisis escalates an examination of the balancing of property rights with the principles of social justice is extremely timely. We particularly welcome the inclusion by the committee of the right to shelter within this debate. We would however like to raise a critical point of concern in the choice of language at this point. Irelands obligations under no fewer than five international covenants, which have the status of legally binding treaties, refer to the ***right to housing***. While the right to shelter has been defined as encompassing all those elements which a right to housing entails<sup>1</sup>, we would be concerned that its use in this context could be viewed as an invitation to in some way limit the application of the right to housing. Thus, throughout our submission we will refer to the right to housing.

There are currently at least<sup>2</sup> 4,176 adults and 1,405 children experiencing homelessness as per the statutory definition. While the Irish Constitution makes provision for the right to property, Article 43.1.1 and the right to the inviolability of the privacy of one's home, Article 40.5, a constitutional right to adequate housing does not currently exist. Thus while the rights of both property owners and home owners are explicitly named, those without access to housing have no complimentary statement of their rights.

The Simon Communities of Ireland believe that the current homelessness and social housing crisis represent a flagrant breach of Ireland's stated legal obligations under international covenants in particular the International Covenant on Economic, Social and Cultural Rights (Article 11.1) which was ratified by Ireland in 1989.

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<sup>1</sup> See General Comment Number 4, (Appendix 2 page 26)

<sup>2</sup> Data on homelessness in Ireland is extremely weak, with the official data providing a substantial underestimation of the extent of the problem; this is discussed in further detail below.

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Further we hold that the current crisis, which has among its contributory factors the unavailability of sufficient building land, is contrary to the provisions of Article 43.2.1 and 43.2.2 which balance the right to private property with the 'principles of social justice', and the 'exigencies of the common good'.

The arguments which have been propagated to justify Irelands failure to incorporate economic and social rights in the Constitution namely:

- that current legislation is sufficient to protect the housing rights of vulnerable groups
- that Economic and Social rights should emerge through the democratic process into the political policy process

simply do not hold up when examined against the context of the current social housing and homelessness crisis.

Legislation that provides for social housing is at the discretion both of financial prioritisation and political pressure. Specifically in relation to homelessness, the Housing Act, 1988 provides a definition of homelessness and requires local authorities to assess the number of people falling within this definition, but it does not put a legal duty on Local Authorities directly to house those identified. While the Act did allow the Local Authorities to fund other mechanisms of housing provision for people who are homeless, these provisions, like the overall allocation to social housing spend are not predicated on need but on political budgetary prioritisation. Less than half of all people who are homeless apply directly to the Local Authorities for housing, as the chances of being housed for those who are single and childless are minimal. The inadequacies of the current homelessness legislation and policy measures are discussed in more detail below.

All human rights, be they civil and political or economic and social, are indivisible. The Irish Government reiterated their commitment to this principle at the UN Conference on Human Rights in Vienna in 1993. This is further reiterated in official publications by the Department of Foreign Affairs, which states "Ireland is firmly committed to the principles that all human rights are universal, indivisible, interdependent and interrelated."<sup>3</sup>

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<sup>3</sup> Official Statement of the Permanent Mission of Ireland to the United Nations  
[http://www.un.int/ireland/ie\\_hr.htm](http://www.un.int/ireland/ie_hr.htm)

The right to adequate housing is one of the clearest examples of the indivisibility and interdependence of all rights. It has been identified by the UN as 'one of the fundamental elements for human dignity, physical and mental health and overall quality of life, which enable one's development...(and which has) received a wide recognition as a fundamental human right in a number of international instruments and declarations, regional instruments and national laws.' Several UN human rights bodies recognize that the right to: human dignity; freedom from discrimination; an adequate standard of living; freedom of association and expression; security of person; non interference with one's privacy, family, home or correspondence is dependent on to right to adequate housing<sup>4</sup>. The enjoyment of core civil and political rights such as the right to vote are fundamentally undermined if the right to housing is not respected.

Analysis of the physical and mental health needs of people who are experiencing homelessness in Ireland, their exceptionally low life expectancy, their susceptibility to physical and sexual assault, their risk of developing addiction problems all indicate that the very basics of human dignity and security are seriously undermined by the lack of adequate housing.

The argument that the weight of these peoples political preferences at election time is the most appropriate way to influence state policy, rings very hollow for those whose very situation - the lack of a home - undermines one of their most fundamental civil and political rights, the right to vote.

## **2. The experience of homelessness in Ireland**

Homelessness is usually caused by the experience of some form of personal crisis – such as a relationship breakdown or bereavement, physical or sexual violence in the home combined with the experience of poverty. Young people leaving care, people leaving prison and other institutional settings, in particular mental health institutions are also particularly vulnerable to becoming homeless. The age and gender profile of people who are becoming homeless has substantially altered in recent years, with more women and young people seeking services. The numbers of two parent

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<sup>4</sup> United Nations High Commissioner for Human Rights, Fact-sheet -Number 21 pg. 5 <http://www.unhchr.ch/housing/fs21>

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families experiencing homelessness has also grown indicating that the direct structural effect of the price of accommodation on homelessness is increasing.

People experiencing homelessness make up a growing vulnerable population that has an unacceptably high risk for preventable disease, progressive morbidity and premature death. Homeless people experience much higher levels of Hepatitis-C, HIV, TB, poor nutrition, drug and alcohol addiction and mental health difficulties than the general population.

The Eastern Health Board<sup>5</sup> has tabulated the incidence of general health problems among people experiencing homelessness. It found that they have a much higher prevalence of chronic physical disease, mental ill health and a lower life expectancy than those of comparable age in the general population.

According to research from Crisis in the UK<sup>6</sup>, the average age of death of a homeless person sleeping rough is 42 years. From our experience of working with street homeless in Cork, Dublin, Dundalk and Galway the mortality rates of rough sleepers in Ireland are along similar lines.

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<sup>5</sup> Health Status, Health Service Utilisation and Barriers to Health Service Utilisation among the Adult Homeless Population of Dublin, Holohan, 1997 (see Appendix 4 page 34)

<sup>6</sup> Crisis Annual Report 1999-2000

### **3. Current legislative and non-legislative measures to tackle homelessness**

#### **3.1 The Housing Act 1988**

This act provided a statutory definition of homelessness<sup>7</sup>, required local authorities to assess the numbers experiencing homelessness on a regular basis (every three years), specified the Local Authorities as the appropriate body responsible for the needs of people experiencing homelessness, specified that schemes of local authority allocation priorities be revised so as to ensure that people who are homeless were made a priority, conferred additional powers on Local Authorities to respond to homelessness by directly arranging and funding emergency accommodation, making arrangements with a health board or voluntary body for the provision of emergency accommodation and/or making contributions to voluntary bodies towards the running costs of accommodation provided by them (the Department of the Environment was empowered to reimburse local authorities in respect of their expenditure in this area.)

*Crucially the Act did not require Local Authorities to house people who are homeless.*

The Minister of the day argued that it would place an unfair legal burden on housing authorities and disrupt the orderly allocation of new houses to people in need.

While the Act outlined new responsibilities for local authorities that could be discharged through either housing allocation, or through part funding of voluntary or cooperative housing providers, *no sanctions were outlined for use against local authorities that did not take any appropriate action.*

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#### **<sup>7</sup> Statutory Definition of Homelessness**

Homelessness is defined in Section 2 of the Housing Act, 1988 as follows: -

"A person shall be regarded by a housing authority as being homeless for the purposes of this Act if

(a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a)".

This definition includes: -

- people living in temporary insecure accommodation,
- people living in emergency bed and breakfast accommodation and hostels/health board accommodation because they have nowhere else available to them,
- rough sleepers,
- victims of family violence.

### **3.2 Homelessness An Integrated Strategy**

This strategy was launched by Government in May 2000 as a response to the substantial increase in the official homelessness figures, which the Government acknowledged represented a crisis. The strategy was welcomed in the main.

Critically it clarified that the Local Authorities are responsible for people's housing needs whereas the Health Boards should be responsible for the care needs of people in homeless services. Additionally the onus was put on each local authority to develop a local homeless action plan, which would assess the needs of people homeless in their area and plan housing and other service provision to meet those needs within three years.

Among the key difficulties which have substantially stymied the capacity of this strategy to make a meaningful difference are: the lack of any monitoring or implementation mechanisms in the plan, the absence of any NGO involvement in the roll out of the plan at a national level, substantial funding problems including gross underestimation of necessary funding, the failure of Government to deliver on three year multi annual funding, the freezing of funding lines resulting in the under funding of local plans. Additionally, as the homeless action plans are not on a statutory basis, as outlined below, there are no guarantees that housing targets named will be delivered. (The strategy is due for review before the end of this year, and Simon have submitted detailed terms of reference to inform this process)

## **4. The Continued Denial of Housing to those experiencing homelessness**

### **4.1 Measuring Homelessness**

Since the first assessment in 1989, the official homelessness figures have increased by 274%.

<b>Year</b>	<b>Total Numbers Assessed</b>
1989	1,491
1991	2,371
1993	2,172
1996	2,501
1999	5,234
2002	5,581



Some of this increase can be attributed to better practice at a local authority level in terms of assessment mechanisms. However it is worth noting that a substantial data deficit still exists. This was thrown into sharp relief with the production of the 2002 figures (which were not published until 14 months after the official count).

In the period between the 1999 figures and the 2002 figures each local authority was mandated under the Governments Homelessness Strategy, "Homelessness An Integrated Strategy" to assess and meet the needs of those experiencing homelessness in their area and to do so in conjunction with the voluntary service providers. (This strategy, while extremely welcome, highlights the inadequacies of the 1988 legislation). While the methodologies employed in the creation of local homeless action plans is different to that in the official assessment, the anomalies between the two sets of data display an even more extreme homelessness crisis than the official figures document. Among these anomalies is the number of local authorities that recorded a complete elimination of homelessness in their official figures in 2002, yet their action plans identify the need for substantial services. In one case a local authority that reported nobody homeless in their official 2002 figures, welcomed the Minister for Environment and Local Government to open a substantial new hostel that same week.

The official data continues to provide merely a head count, giving no estimation of the type of housing needs required by those counted. (There is no formal analysis in terms of age, gender, dependant children, physical / psychological disability etc on which to assess the type of housing services required).

The official data on homelessness is not only qualitatively insufficient but is also more than likely fundamentally quantitatively flawed. The true extent of the homelessness crisis is undoubtedly much more extreme than the current limited data portrays.

#### **4.2 Provision of housing directly by local authorities**

Less than half of all those included as homeless in the official needs assessment apply to the local authority for housing. In the main local authorities do not prioritize those who do not have children whether male or female. This could be addressed by putting the local homeless action plans on a statutory basis, thus where local

assessments by the authorities in conjunction with the voluntary service providers have actually identified the housing needs of those experiencing homelessness, this could be mainstreamed into standard local authority housing provision. We have suggested this measure on a number of occasions and through various policy forums. It is worth noting that the unavailability of local authority housing to single homeless adults may warrant investigation of discrimination under the 'family status' aspect of the equality legislation.

#### **4.3 Other mechanisms to fund housing for those experiencing homelessness**

While Government spending on homeless service provisions had undeniably increased substantially under 'Homelessness – An Integrated Strategy', this funding is subject to political prioritization. The commitment to provide funding on a three-year multi annual basis in order to allow the proper development and planning of homeless services has never been met. Almost half the national spend by the Department of Environment and Local Government is on emergency B&B provision, while the funding available to projects agreed under the strategy has been subject to cutbacks and substantial under allocations. The current expenditure levels (approximately €43m spent on homeless services by the Department of Environment and Local Government in 2002) must also be assessed against a lack of statutory funding for homeless services for over thirty years.

#### **4.4 Strain on local authority waiting lists**

There are currently 48,000 households on the Local Authority Housing waiting lists, of whom 85% have an income of less than €15,000 per annum<sup>8</sup>, and thus clearly are never likely to be in a position to access housing on the open market. This substantial increase (23% over three years) has happened against a backdrop of Government failure to meet the targets set on social housing output in the National Development Plan and repeated in the National Anti Poverty Strategy. This immense pressure on the system makes it even less likely that those in dire housing need who do access the local authority waiting list will be housed.

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<sup>8</sup> Department of Environment and Local Government, Housing Bulletin, November 2002

**Thus it is blatantly clear that neither the legislative or non-legislative measures to meet the housing needs of people experiencing homelessness have been effective. They do not serve to meet Ireland's obligation to a right to adequate housing.**

## **5. Irelands international obligations on the right to housing**

### **5.1 The International Convention on Economic, Social and Cultural Rights**

The Universal Declaration of Human Rights, which was adopted by all UN members in 1948, outlines a series of civil, political, economic and social rights. This Declaration was formulated against the backdrop of the atrocities of World War II in an attempt to build a new world order with respect for individual human dignity at it's core.

Subsequently the ideals of the Declaration found legal effect in what are known as the twin covenants; The International Covenant on Civil and Political Rights, and The International Covenant on Economic, Social and Cultural Rights.

Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) contains 'perhaps the most significant foundation of the right to housing found in the entire body of legal principles which comprise international human rights law'<sup>9</sup>. It states:

*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.*

Ireland ratified the International Covenant on Economic, Social and Cultural Rights on the 8<sup>th</sup> of December 1989. States compliance with the Convention is monitored by the UN Committee on Economic, Social and Cultural Rights (hereafter referred to as 'the Committee').

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<sup>9</sup> United Nations High Commissioner for Human Rights, Fact-sheet -Number 21 pg. 5 <http://www.unhchr.ch/housing/fs21>

The practical application of the right to adequate housing has been clearly defined over the past decade through comprehensive revision by the Committee of the guidelines for States reports under Articles 16 and 17<sup>10</sup> of the Covenant and the adoption of General Comment Number 4<sup>11</sup> on the right to housing. The extent of the States parties responsibilities under the Covenant are outlined in Article 2 of the Covenant. Guidelines on each of these areas are appended and some of the key obligations are discussed below. Together with the Committee's concluding observations on Ireland's reports under the ICESCR a comprehensive picture of what a right to housing would mean, and how the current position in Ireland falls far short of those requirements, can be established.

### 5.1.1 Concluding Observations on Ireland

The Concluding Observations of the Committee on Ireland in 2002 and 1999 give an insight into the areas where the Committee observes that housing rights are particularly vulnerable. In its 2002 recommendations the Committee makes specific reference to those unable to secure adequate and affordable housing, Traveller accommodation and the transfer of persons with mental disabilities who are not suffering from serious psychiatric illness to more appropriate care settings<sup>12</sup>. The 1999 comments of the Committee were less specific but again referred to marginalized groups 'the traveller community and the disabled are still discriminated against in various respects, such as employment, education and housing.' The issue of forced evictions has received high-level condemnation and should this practice continue against members of the Travelling Community it is likely to continue to be a focus of attention for the Committee. The Committee 'considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances'<sup>13</sup> a position echoed

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<sup>10</sup> Appendix 1

<sup>11</sup> Appendix 2

<sup>12</sup> " 20. The Committee is concerned that; (a) many new households cannot secure adequate and affordable housing; and (b) some 1,200 families of the traveller community are living in roadside encampments without access to water and adequate sanitary facilities, and are liable to be forcibly evicted.

21. The Committee notes with regret that a large number of persons with mental disabilities, whose state of health would allow them to live in the community, is still accommodated in psychiatric hospitals together with persons suffering from psychiatric illnesses or problems, despite efforts by the State party to transfer them to more appropriate care settings."

<sup>13</sup> United Nations High Commissioner for Human Rights, Fact-sheet -Number 21 pg. 20 <http://www.unhchr.ch/housing/fs21>

by the Commission on Human Rights ' the practice of forced evictions constitutes a gross violation of human rights, in particular, the right to adequate housing' <sup>14</sup>.

Aside from the failure to actually incorporate the right to housing in domestic legislation and in the constitution (discussed below), the Irish Government has not adopted a 'rights based' approach to social policy development. The Committee notes this in particular in relation to the recent Health Strategy, the proposed Disabilities Bill, and the National Anti Poverty Strategy<sup>15</sup>.

### 5.1.2 Articles 16 and 17 of the ICESCR

These guidelines form the basis of the reporting structure by States Parties to the Committee, and offer an insight into the policy and legislative measures which have been identified as contributing to the realisation of the right to housing. The full list of guidelines are listed in Appendix 1, those of particular note include:

(Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:)

The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions, which affect health;

The number of persons currently classified as living in "illegal" settlements or housing;

The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;

The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;

The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists, as well as to assist those on such lists in finding temporary housing,;

The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and others.

Please provide information on the existence of any laws affecting the realization of the right to housing, including:

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<sup>14</sup> Ibid

<sup>15</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland. 17/05/2002 E/C. 12/1/Add.77

Legislation which gives substance to the right to housing in terms of defining the content of this right;

Legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;

Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;

Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc.;

Legislation prohibiting any and all forms of discrimination in the housing sector, including against groups not traditionally protected;

Legislation prohibiting any form of eviction;

Any legislative appeal or reform of existing laws, which detracts from the fulfilment of the right to housing;

Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;

Measures taken by the State to build housing units and to increase other construction of affordable rental housing;

Measures taken to release unutilized, underutilized or misutilized land;

Financial measures taken by the State, including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;

### **5.1.3 General Comment Number 4**

This comment produced by the Committee, and attached in Appendix 2, offers very clear guidelines on the definition of adequacy, (which extends to adequate shelter) and includes detailed guidelines on: Legal security of tenure; Availability of services, material, facilities and infrastructure; Affordability; Habitability; Accessibility; Location; Cultural adequacy.

It also provides specific commentary on: due priority given to those social groups living in unfavourable conditions; the adoption of a national housing strategy; the obligation to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources; the role of formal legislative and administrative measures.

Further, this document makes it clear that the right to housing is justiciable, and outlines six areas where such provisions would apply, three of which - (b) Legal procedures seeking compensation following an illegal eviction; ...(d) allegations of any form of discrimination in the allocation and availability of access to housing;(f)

Class action suits in situations involving significantly increased levels of homelessness.' - are arguably particularly applicable to the current Irish policy position.

#### 5.1.4 States Obligations under Article 2

Article 2 of the International Covenant on Economic, Social and Cultural rights is of central importance for determining Governments duties in order to ensure the full enjoyment of the rights outlined in the Covenant, it states:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

Three phrases in this article are particularly important for understanding the obligations of Governments to realize fully the rights recognized in the Covenant, including the right to adequate housing: (a) "undertakes to take steps . . . by all appropriate means"; (b) "to the maximum of its available resources"; and (c) "to achieve progressively".

The first of these implies immediacy – states must take action directly upon ratification not only to establish what the current situation is but how it should be addressed. The Committee has noted that ' all appropriate means' refers not only to legislative procedures but also to judicial, administrative, economic social and educational steps must also be taken. Particularly in relation to the right to housing this includes developing a national housing strategy, identifying and allocation resources and engaging in meaningful consultation on this process with all social sectors, including those experiencing homelessness and their representatives and organisations.

The second important phrase, ' to the maximum of its available resources' means that even in times of sever economic contraction the rights of vulnerable members of society must be protected. The States obligation is to demonstrate that in aggregate the measures being taken are sufficient to realize the right to adequate housing for every individual in the shortest possible time using the maximum available resources.

The obligation to 'achieve progressively' highlights States duties to move as quickly and effectively as possible towards the full realisation of the rights within the Treaty. Ensuring that these rights are made real cannot be indefinitely postponed, and any deliberately retrogressive measures could constitute a breach of the Covenant. The obligation of progressive realisation exists independently of any increase in resources.

## 5.2 Other International Conventions / Treaties signed by Ireland

A number of International Covenants that Ireland has ratified have explicitly named the right to housing within their articles. Our failure to make real the right to housing constitutes a breach of our obligations under the ICESCR and also the treaties listed below.

- Article 5 (e.iii) of the **International Convention on the Elimination of All Forms of Racial Discrimination**. Ireland ratified this Convention, which is monitored by the Committee on the Elimination of Racial Discrimination on the 29<sup>th</sup> of December 2000.
- Article 14.2 (h) of **CEDAW**. (This article refers to the rights of rural women, and their right to housing within that context). Ireland acceded to this Convention, which is monitored by the Committee on the Elimination of Discrimination against Women, on the 23<sup>rd</sup> of December 1985.
- Article 27.3 of the **Convention on the Rights of the Child**. Ireland ratified this Convention, which is monitored by the Committee on the Rights of the Child, on the 28<sup>th</sup> of September 1992.
- Article 21 of the **1951 Convention relating to the Status of Refugees**. Ireland accessed to this Convention on the 29<sup>th</sup> of November, 1956.

## 5.3 Incorporation

In the 2002 Concluding Observations on Ireland the Committee on Economic, Social and Cultural Rights strongly recommended, as they did in the 1999 report, 'that the State party incorporate economic, social and cultural rights in the proposed



amendment to the Constitution, as well as the other domestic legislation.’<sup>16</sup> Of particular note when contrasting this position to that articulated by the Irish Government is the Committee’s affirmation ‘that all economic, social and cultural rights are justiciable’, and further that ‘irrespective of the system through which international law is incorporated into the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under an obligation to comply with it and to give it full effect in the domestic legal order’<sup>17</sup>.

The position of the Irish Government as articulated in the first national report under the Convention, and repeated in the second national report is that as Ireland has a dualist<sup>18</sup> legal system, and thus ‘international agreements to which Ireland becomes a party are not automatically incorporated into domestic law’<sup>19</sup>. Further, it is argued that Article 29.6 of the Constitution<sup>20</sup>, ‘precludes the Irish Courts from giving effect to an international agreement, such as the European Convention on Human Rights, if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law.’<sup>21</sup> These arguments have been rehearsed among a policy elite, and have not been the subject of broad public debate, thus denying citizens the opportunity to articulate their views on our stated international obligations.

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<sup>16</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland. 17/05/2002 E/C. 12/1/Add.77

<sup>17</sup> Ibid

<sup>18</sup> See van Dijk and van Hoot “Theories and practice of the European Convention on Human Rights”, 3<sup>rd</sup> ed. Pg 16/17, Kluwer Law International, The Hague, 1998

“ In the so-called dualistic view the international and national legal system form two separate legal spheres, and internal law has effect within the national legal system only after it has been ‘transformed’ into national law via the required procedure. The legal subjects depend on this transformation for the protection of the rights laid down in international law; their rights and duties exist only under national law’.

“ In the so called monistic view... the various domestic legal systems are viewed as elements of the all - embracing international legal system, within which the national authorities are bound by international law in their relations with individuals as ell, regardless of whether or not their rules international law have been transformed into national law. In this view the individual derives the rights and duties directly from international law, which must be applied by the national courts and to which the latter must give priority over any national law conflicting with it.”

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, First National Report of Ireland, pg 19 Department of Foreign Affairs, The Stationary Office, Dublin 2.

<sup>20</sup> (No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas), as interpreted in the Norris case, (O Laigneas (1960) I.R. 93, Norris v Attorney General (1984) I.R.36)

<sup>21</sup> Ibid pg 20

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## **6 The current context of the debate**

### **6.1 National Anti Poverty Strategy**

In the revised National Anti Poverty Strategy (NAPS) the Government have stated that

*Citizenship rights encompass not only the core civil and political rights and obligations but also social, economic and cultural rights and obligations that underpin equality of opportunity and policies on access to education, employment, health, housing and social services.*

*A wide range of social rights is specifically provided for in the Irish Constitution and in international conventions ratified by Ireland<sup>22</sup>.*

The strategy goes on to note the creation of a number of new bodies including the Human Rights Commission, and commits to set 'detailed standards in relation to access to services' in accordance with the National Anti Poverty Strategy.

While this acknowledgement is welcome, the framing of economic and social rights in terms of access to services rings very hollow for those who are on the extreme margins of service provision. In order to meaningfully progress the National Anti Poverty Strategy, the critical *denial* of rights must be addressed as a priority.

### **6.2 The Human Rights Commissions North and South**

Simon very much welcome the statement by the Irish Human Rights Commission in the recently launched strategic plan that:

*Through international and constitutional obligations, Ireland is committed to ensuring a comprehensive range of substantial rights including... the right to adequate accommodation. The Human Rights Commission is concerned about the ways in which the State upholds its obligations with regard to these rights...the Commission seeks to advance an understanding of the nature of these rights and to focus on appropriate means of giving them practical effect. This will necessarily involve an examination of whether legal means of enforcement are required under international law and would make a meaningful difference in Ireland.<sup>23</sup>*

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<sup>22</sup> 'Building An Inclusive Society', March 2002

<sup>23</sup> The Human Rights Commission, Strategic Plan, 2003- 2006

The Northern Ireland Human Rights Commission has already proposed the inclusion of a right to adequate housing in the Northern Ireland Bill of Rights, stating that they rely heavily on the broad and detailed definition of adequacy issued by the Committee on Economic, Social and Cultural Rights. In fact, the definition they offer exactly mirrors that of Article 31 of the Revised European Social Charter above. This commitment will give further impetus to the full examination of the right to housing in the Republic of Ireland. Should this proposed Bill become law it must be replicated by parallel legislation in the Republic of Ireland.

### **6.3 Political Opposition**

We welcome the official position of the Department of Foreign Affairs, which states “Ireland is firmly committed to the principles that all human rights are universal, indivisible, interdependent and interrelated.”<sup>24</sup> However, there has been much resistance at a senior political level to the incorporation of economic and social rights into the Irish Constitution. Some valid questions about the justiciability of these rights have been raised, however this has as yet to be meaningfully addressed at a political level in a progressive fashion. The UN Committee on Economic, Social and Cultural Rights has repeatedly strongly disagreed with both Ireland’s position (albeit informally stated) on justiciability and on the perceived legal difficulties with the incorporation of the Covenant. The opinion has also been expressed by some senior political leaders that economic and social rights are the preserve of political policy and not appropriate for statements of national ideals that would be conferred on them by a constitutional expression. This raises the serious question of the democratic deficit that exists whereby ordinary citizens are not enabled to participate in the decisions on whether or not Ireland abides by its international obligations. Further, as noted previously, for as long as the right to housing remains an issue of political party policy, rather than a fundamental guarantee for human dignity, the democratic deficit whereby those who cannot vote to influence political policies because they do not have a roof over their head continues in a vicious circle

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<sup>24</sup> Official Statement of the Permanent Mission of Ireland to the United Nations  
[http://www.un.int/ireland/ie\\_hr.htm](http://www.un.int/ireland/ie_hr.htm)

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#### 6.4 Developments in Europe

The current administrations opposition to the incorporation of social and economic rights can be seen from Ireland's reservation to the Revised European Social Charter, 1996, which came into force in 1999. It contains a specific Article on the right to housing.

*Article 31- The Right to Housing*

*With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed :*

*to promote access to housing of an adequate standard:*

*to prevent and reduce homelessness with a view to its gradual elimination:*

*to make the price of housing accessible to those without adequate resources.<sup>25</sup>*

To date seventeen countries have made declarations in respect of their ratification of the Revised Charter. Ireland, along with Moldova and Romania has failed to accept the provisions of Article 31. The statement from the Permanent Representative of Ireland in relation to Article 31 reads " In view of the general wording of Article 31 of the Charter, Ireland is not in a position to accept the provisions of this article at this time. However, Ireland will follow closely the interpretation to be given to the provisions of Article 31 by the Council of Europe with a view to their acceptance by

Ireland at a later date."<sup>26</sup> Additional information released by the Department of Environment and Local Government on the decision to enter a reservation against Article 31 again points to the reticence towards economic and social rights becoming statements of shared ideals, as opposed to their 'proper' preserve within the political priorities process.

#### 6.5 Critique of the position of the Constitutional Review Group 1996

In the report of this Group arguments were put forward under the section "Arguments against the including in the Constitution a personal right to freedom from poverty or specific economic rights"<sup>27</sup>. These have been extensively critiqued, and

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<sup>25</sup> Council of Europe website

<http://conventions.coe.int/Treaty/en/Treaties/Htlm/163.htm>

<sup>26</sup> Council of Europe website <http://conventions.coe.int/Treaty/EN/DeclareList.asp>

<sup>27</sup> Report of the Constitution Review Group 1996 Dublin, Stationery Office pp 235-236

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we would respectfully refer the members of the All Party Oireachtas Committee on the Constitution to the Irish Commission for Justice and Peaces' publication "Re – Righting the Constitution – The Case for New Social and Economic Rights: Housing, Health, Nutrition, Adequate Standard of Living."

As the Report of the Constitution Review Group is cited in the terms of reference for this investigation into property rights, it is worth reviewing here each of the arguments in brief.

Firstly the report states that economic and social rights are 'essentially political matters which, in a democracy, (it) should be the responsibility of the elected representatives of the people to address and determine'<sup>28</sup>. As discussed earlier, the democratic process has not served the needs of those forced to live on the streets; in fact the homelessness crisis continues to grow. As also noted the very denial of housing rights denies many people the opportunity to engage in the democratic process. The report argues that a constitutional standing for economic and social rights would create a 'distortion of democracy'. It is clear that the democratic process is already distorted at the cost of the health and lives of some of our citizens.

Secondly the report argues that constitutional enshrinement would result in 'Government and Oireachtas (having) no discretion as to what amount of revenue could, or should be raised from the public to fund the remedial requirement'<sup>29</sup>. This argument ignores that civil and political rights also come at a cost, and that the right to education, a key social right is already enshrined in the constitution and has not resulted in the usurpation of the role of the Government and Oireachtas on educational services spending. Additionally, as Fabre, cited in Steiner and Alston, points out, the role of the judiciary in adjudicating on social and economic rights does not necessarily have to be a directive one, it can and has been characterised by reminding Government of it's duties, and ruling on clear breaches of the duties, but not advising Government on how to fulfil this duty<sup>30</sup>. Examples exist within other EU jurisdictions where the constitutional right to housing has been successfully

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<sup>28</sup> Ibid p235

<sup>29</sup> Ibid

<sup>30</sup> Steiner, HJ and Alston, P, 2000, International Human Rights in Context (2<sup>nd</sup> ed.), p277, OUP, Oxford.

supplemented by administrative and resource allocation legislation, and it is this model that we propose in Section 7.

The report addresses the issue of availability of resources, however, as identified above our commitments under the ICESCR include the progressive realisation of the right to housing, and call on Ireland to make the best use of existing resources to make economic and social rights a reality. Ireland has never adopted the position that core civil and political rights can be derogated in a time of economic decline, core economic and social rights must be subject to the same prioritisation.

The report also raises concerns about how the realisation of rights could be measured. However, as explored above and in the appendix– extensive guidelines on the practical application of a right to housing already exists, and further that the model of reporting on this right has already been adopted by the Irish Government.

The report then argues that certain balancing of rights already exists in the constitution and cites the example of the curtailment of property rights in accordance with the principles of social justice and the common good. As the current brief of the All Party Oireachtas Committee on the Constitution, and the extensive acknowledgement of the unavailability of building land as a prime contributor to the current housing crisis testifies, this has not proved to be effective.

Finally the report argues that the right to life and right to bodily integrity already enshrined in the Constitution provide sufficient protection against the denial of such rights as the right to housing. While this has not as yet been tested in the Irish courts, any one of the many thousands of vulnerable people whose health and indeed very lives have been put at risk by the absence of access to adequate housing could arguably take a case. This would indeed be a damning indictment of the level of protection offered by the Irish constitution to its citizens.

## **7. Proposals from the Simon Communities of Ireland**

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

- Acknowledge in a meaningful way Ireland’s commitment to the ICESR

- 
- Establish an explicit statement of our society's values and concerns
  - 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 must 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 most in dire need

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.

This legislation would have the dual effect of making the right to housing meaningful in the short term, and overcoming the difficulties of the judiciary guiding the legislature on the protection of rights in the absence of clear policy.

Current legislative measures, which have existed for over fifteen years, have failed to have a meaningful impact on the homelessness crisis. It is the firm conviction of the Simon Communities of Ireland that both a constitutional amendment and supporting legislation could be effectively used to reduce and ultimately eliminate homelessness.

**ENDS**

For further information contact:

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Simon Communities of Ireland  
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## Appendix 1

From UN Fact sheet 21 on the Right to Housing

Revised guidelines regarding the form and contents of States reports to be submitted by States parties under Articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights

### THE RIGHT TO ADEQUATE HOUSING

Please furnish detailed statistical information about the housing situation in your country.

Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:

The number of homeless individuals and families;

The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions, which affect health;

The number of persons currently classified as living in "illegal" settlements or housing;

The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;

The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;

The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists, as well as to assist those on such lists in finding temporary housing,;

The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and others.

Please provide information on the existence of any laws affecting the realization of the right to housing, including:

Legislation which gives substance to the right to housing in terms of defining the content of this right;

Legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;

Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;

Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc.;

Legislation concerning building codes, building regulations and standards and the provision of infrastructure;

Legislation prohibiting any and all forms of discrimination in the housing sector, including against groups not traditionally protected;

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Legislation prohibiting any form of eviction;

Any legislative appeal or reform of existing laws, which detracts from the fulfilment of the right to housing;

Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;

Legislative measures conferring legal title to those living in the "illegal" sector;

Legislation concerning environmental planning and health in housing and human settlements.

Please provide information on all other measures taken to fulfil the right to housing, including:

Measures taken to encourage "enabling strategies" whereby local community-based organizations and the "informal sector" can build housing and related services. Are such organizations free to operate? Do they receive government funding?;

Measures taken by the State to build housing units and to increase other construction of affordable rental housing;

Measures taken to release unutilized, underutilized or misutilized land;

Financial measures taken by the State, including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;

Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;

Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;

Measures taken during, *inter-alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics, World Fairs, conferences, etc.), "beautiful city" campaigns, etc., which guarantee protection from eviction or guarantee rehousing based on mutual agreement, by any persons living on or near to affected sites.

During the reporting period, have there been any changes in the national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.

## Appendix 2

*The right to adequate housing (Art. 11 (1)) : . 13/12/91.  
CESCR General comment 4. (General Comments)*

Convention Abbreviation: CESCR

GENERAL COMMENT 4

The right to adequate housing

(Art. 11 (1) of the Covenant)

(Sixth session, 1991)\*

1. Pursuant to article 11 (1) of the Covenant, States parties "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 human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987 [1/](#) . The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities [2/](#) .

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing [3/](#) article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed [4/](#) . There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view, 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 or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "**Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost**".

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the [Health Principles of Housing](#) [5/](#) prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location, which allows access to employment options,

health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without

ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

#### Notes

\* Contained in document E/1992/23.

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).

2/ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

3/ See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

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4/ See footnote 1/.

5/ Geneva, World Health Organization, 1990.

## **Appendix 3**

From UN Fact sheet number 21 on the Right to Housing

Clarifying governmental obligations

The widespread legal recognition of the right to adequate housing is of the utmost importance. In practical terms, however, it is necessary to spell out the specific steps, which Governments should take to turn these legal rights into concrete realities for the people who are entitled to them. It is sometimes mistakenly thought that rights such as the right to housing simply require Governments to provide sufficient public funds towards this end and that the subsequent allocation of monetary resources is all that is needed for obligations surrounding this right to be satisfied. However, the right to housing and, indeed, all economic, social and cultural rights confer a much more lengthy and complex series of obligations on States.

The Committee on Economic, Social and Cultural Rights has helped to clarify the various governmental obligations arising from recognition of the right to adequate housing. It has done this through a number of initiatives. These include: (a) holding a "general discussion" on this right; (b) comprehensively revising the guidelines for States' reports under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights (Annex II); (c) adopting its General Comment No. 4 on the Right to Adequate Housing (Annex III); and (d) including in its concluding observations on some States parties' reports remarks to the effect that the State in question was infringing the right to adequate housing owing to the practice of forced eviction.

These steps, and of course the norms of the Covenant and other legal sources of the right to housing outlined above, give rise to various levels of governmental obligations towards the realization of this right.

The legal obligations of Governments concerning the right to housing consist of (i) the duties found in article 2.1 of the Covenant; and (ii) the more specific obligations to recognize, respect, protect and fulfil this and other rights.

Article 2.1 of the Covenant is of central importance for determining what Governments must do and what they should refrain from doing in the process leading to the society-wide enjoyment of the rights found in the Covenant. This article reads as follows:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Three phrases in this article are particularly important for understanding the obligations of Governments to realize fully the rights recognized in the Covenant, including the right to adequate housing: (a) "undertakes to take steps . . . by all appropriate means"; (b) "to the maximum of its available resources"; and (c) "to achieve progressively".

*"undertakes to take steps . . . by all appropriate means"*

This obligation is immediate. Steps must be undertaken by States directly upon ratification of the Covenant. One of the first of these appropriate steps should be for the State party to undertake a comprehensive review of all relevant legislation with a view to making national laws fully compatible with international legal obligations.

The Committee on Economic, Social and Cultural Rights has recognized that in many instances legislation is highly desirable, and in some cases, indispensable, for the fulfilment of each of the rights found in the Covenant. At the same time, however, the Committee has emphasized that the adoption of legislative measures alone, or the existence of legislative compatibility is not enough for a State party to fulfil its obligations under the Covenant.



The term "by all appropriate means" has been broadly interpreted. In addition to legislative measures, administrative, judicial, economic, social and educational steps must also be taken.

In general terms, Governments must also take steps which are deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. Consequently, rapid steps are required to diagnose the existing situation of the rights found in the Covenant.

States parties are also obliged to develop policies and set priorities consistent with the Covenant, based upon the prevailing status of the rights in question. They are also required to evaluate the progress of such measures and to provide effective legal or other remedies for violations.

With specific reference to the right to adequate housing, States parties are required to adopt a national housing strategy. This strategy should define the objectives for the development of shelter conditions, identify the resources available to meet these goals, as well as the most cost-effective way of using them, and set out the responsibilities and time-frame for the implementation of the necessary measures.

Such strategies should reflect extensive genuine consultation with, and participation by, all social sectors, including the homeless and the inadequately housed and their representatives and organizations.

Additional steps are required to ensure effective coordination between relevant national ministries and regional and local authorities in order to reconcile related policies (economic, agriculture, environment, energy and so forth) with the obligations arising from article II of the Covenant.

*(b) "to the maximum of its available resources"*

This means that both the resources within a State and those provided by other States or the international community must be utilized for the fulfilment of each of the rights found in the Covenant. Even when "available resources" are demonstrably inadequate, States parties must still strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.

Importantly, this principle requires an equitable and effective use of and access to the resources available. Although the alleged lack of resources is often used to justify non-fulfilment of certain rights, the Committee on Economic, Social and Cultural Rights has emphasized that even in times of severe economic contraction and the undertaking of measures of structural adjustment within a State, vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

If a State claims that it is unable to meet even its minimum obligations because of a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. However, lack of resources can never be used to justify failure of a State to fulfil its obligation to monitor non-enjoyment of the rights found in the Covenant.

In essence, the obligation of States is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to adequate housing for every individual in the shortest possible time using the maximum available resources.

*(c) "to achieve progressively"*

This imposes an obligation on States to move as quickly and effectively as possible towards the goal of realizing fully each of the rights found in the Covenant. Put simply, States cannot indefinitely postpone efforts to ensure their full realization. However, not all rights under this text are subject to progressive implementation. Both the adoption of legislation relating to the non-discrimination clauses of the Covenant and monitoring of the status of realization of the rights in question must occur *immediately* following ratification.

This obligation "to achieve progressively" must be read in the light of article 11.11 of the Covenant, in particular the reference to the right to the "continuous improvement of living conditions". Any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

The obligation of progressive realization, moreover, exists independently of any increase in resources. Above all, it requires effective use of resources available.

#### *"A minimum core obligation"*

Under the Covenant on Economic, Social and Cultural Rights, each State party, notwithstanding its level of economic development, is under a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in this instrument. Under the same Covenants, a State party in which any significant number of individuals is deprived of basic shelter and housing is, prima facie, failing to perform its obligations under the Covenant. Beyond this core requirement are four levels of additional governmental obligations relating to the right to adequate housing.

#### *"To Recognize"*

The obligation of States to recognize the right to housing manifests itself in several key areas. First, all countries must recognize the human rights dimensions of housing, and ensure that no measures of any kind are taken with the intention of eroding the legal status of this right.

Second, legislative measures, coupled with appropriate policies geared towards the progressive realization of housing rights, form part of the obligation "to recognize". Any existing legislation or policy which clearly detracts from the legal entitlement to adequate housing would require repeal or amendment. Policies and legislation should not be designed to benefit already advantaged social groups at the expense of those in greater need.

Another dimension of the duty to recognize this right can be expressed in terms of policy. Specifically, housing rights issues should be incorporated into the overall development objectives of States. In addition, a national strategy aimed at progressively realizing the right to housing for all through the establishment of specific targets should be adopted.

Third, the recognition of the right to housing means that measures must be undertaken by States to assess the degree to which this right is already enjoyed by the population at the time of ratification. Even more importantly, a genuine attempt must be made by States to determine the degree to which this right is not in place, and to target housing policies and laws towards attaining this right for everyone in the shortest possible time. In this respect, States must give due priority to those social groups living in unfavourable conditions by according them particular consideration.

#### *"To Respect"*

The duty to respect the right to adequate housing means that Governments should refrain from any action which prevents people from satisfying this right themselves when they are able to do so. Respecting this right will often only require abstention by the Government from certain practices and a commitment to facilitate the "self-help" initiatives of affected groups. In this context, States should desist from restricting the full enjoyment of the right to popular participation by the beneficiaries of housing, rights, and respect the fundamental right to organize and assemble.

In particular, the responsibility of respecting the right to adequate housing means that States must abstain from carrying out or otherwise advocating the forced or arbitrary eviction of persons and groups. States must respect people's rights to build their own dwellings and order their environments in a manner which most effectively suits their culture, skills, needs and wishes. Honouring the right to equality of treatment, the right to privacy of the home and other relevant rights also form part of the State's duty to respect housing rights.

#### *"To Protect"*

To protect effectively the housing rights of a population, Governments must ensure that any possible violations of these rights by "third parties" such as landlords or property developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused.

In order to protect the rights of citizens from acts such as forced evictions, Governments should take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. In addition, residents should be protected, by legislation and other effective measures, from discrimination, harassment, withdrawal of services or other threats.

Steps should be taken by States to ensure that housing-related costs for individuals, families and households are commensurate with income levels. A system of housing subsidies should be established for sectors of society unable to afford adequate housing, as well as for the protection of tenants against unreasonable or sporadic rent increases.

States should ensure the creation of judicial, quasi-judicial, administrative or political enforcement mechanisms capable of providing redress to alleged victims of any infringement of the right to adequate housing.

*"To Fulfil"*

In comparison with the duties to recognize, to respect and to protect, the obligation of a State to *fulfil* the right to adequate housing is both positive and interventionary. It is in this category, in particular, that issues of public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations emerge.

The Committee on Economic, Social and Cultural Rights has asserted that identifiable governmental strategies aimed at securing the right of all persons to live in peace and dignity should be developed. Access to land as an entitlement should be included in such strategies. The Committee has stated further that many of the measures required to satisfy the right to housing will involve resource allocations and that, in some cases, public funds allocated to housing might most usefully be spent on direct construction of new housing.

Generally, on the issue of housing finance, States must establish forms and levels of expenditure which adequately reflect society's housing needs, and which are consistent with the obligations arising from the Covenant and other legal sources.

As proclaimed in the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, and reiterated subsequently by the Committee, due priority shall be given, in the use of all available resources, to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements, as well as the provision of essential services.

## Appendix 4

Health Status, Health Service Utilisation and Barriers to Health Service Utilisation among the Adult Homeless Population of Dublin, Holohan, 1997

<b>Chronic Physical Illness</b>	
Diabetes	2.5%
Hypertension	12.7%
Arthritis	13.7%
Heart Disease	5.1%
Epilepsy	5.3%
Tuberculosis	2.7%
Respiratory Disease	15.8%
Peptic Ulcer	13.7%
<b>Chronic Psychiatric Problems</b>	
Depression	32.5%
Anxiety Disorder	27.6%
<b>Other Problems</b>	
Dental Problems	37.1%
Skin Problems	16.0%
Foot Problems	21.3%

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