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## Public Consultation on a Referendum on Housing in Ireland

### A Submission by Dublin City Community Co-operative

#### ***Who we are***

The Dublin Inner City Community Co-operative Society Limited ('the Co-op') was established in November 2014. We are a membership organisation of 13 grassroots Dublin inner city community development organisations which have come together to ensure the continued development and delivery of social, economic, environmental and cultural services within our communities. The Co-op's member organisations are operational in all or parts of Dublin 1,3,7 & 8 as well as disadvantaged city areas in Dublin 2 and 4. The Co-op operates to community development principles and a social inclusion ethos forms the basis for all communication with stakeholders. Advocacy on issues of social, economic & climate justice, poverty and inequality forms a key component of our collective work.

Research reports, papers, statements and submissions prepared by the Co-op are underpinned by our direct experience of working and interacting with disadvantaged and marginalised communities in Dublin's inner city.

Further information available at [www.dublincitycommunitycoop.ie](http://www.dublincitycommunitycoop.ie)

#### ***International and national obligations to the right to housing***

Ireland has obligations under international agreements to provide for the right to housing.

Article 25 of the United Declaration on Human Rights (UDHR) provides that "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food clothing, housing and medical care and necessary social services".

Similarly, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that 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". States which have signed this Covenant are obligated to 'take appropriate steps to ensure the realization of this right'.

Article 27 (1) of the UN Convention on the Rights of the Child provides that "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." Article 27(3) states that "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

The Sustainable Development Goals commit states to providing access for all to adequate, safe and affordable housing and basic services by 2030.

Housing rights are recognised in the European Social Charter, the EU Charter of Fundamental Rights and the European Pillar of Social Rights. Although, it is notable that the Irish government refused to ratify Article 31 of the European Social Charter which relates to the right to housing its obligations under numerous other international agreements remains.

In June of 2019 an agreement was signed committing all EU member states to the eradication of homelessness by 2030.

One of the core recommendations of the EU Child Guarantee, established to prevent and combat social exclusion amongst children, is that States ensure that children have access to adequate housing.

The objective of the European Child Guarantee, which was adopted by the EU Council in June 2021, is to prevent and combat social exclusion by guaranteeing the access of children in need to a set of key services:

- Early childhood education and care
- Education (including school-based activities)
- Healthcare
- Nutrition
- Housing

As part of the obligations for Ireland under the Child Guarantee, the Department of Children, Equality, Disability, Integration and Youth has developed a National Action Plan in collaboration with a range of Government Departments.

The Government agreed on 31<sup>st</sup> May 2022 to the publication of the National Action Plan and for its submission to the EU Commission. The publication of the Plan is an important first step in the implementation of the European Child Guarantee including access to adequate housing.<sup>1</sup>

### ***The primacy of housing as a right and its indivisibility from other human rights***

Human rights were established in the United Declaration of Human Rights in 1948. Subsequently, two separate Covenants were adopted in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The former outlines negative rights which provide for protection precluding others from taking actions which infringe upon your rights while the latter outlines positive rights which require action to fulfil. Despite there being two distinct Covenants, the indivisibility of the two categories of rights explicitly stated in the Vienna Declaration and Programme of Action (1993) is also alluded to in the ICCPR. In the preamble of the ICCPR it states that:

“the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”.

The UN reaffirms the indivisibility of the two categories of rights using an example: people who have not had their right to education fulfilled will be impeded from the realization of civil and political rights such as the right to vote<sup>2</sup>. Despite the UN’s affirmation of their indivisibility, the hegemony of civil and political rights in the West

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<sup>1</sup> [gov.ie – Ireland’s EU Child Guarantee National Action Plan \(www.gov.ie\)](https://www.gov.ie/en/publications-and-statements/publication/ireland%E2%80%99s-eu-child-guarantee-national-action-plan/)

<sup>2</sup> United Nations Human Rights Office of the High Commissioner. n.d. *Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights?*. [online] Available at: <<https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/escr-vs-civil-political-rights>> [Accessed 31 August 2022].

is undeniable<sup>3</sup>. While acknowledging their salience, this paper asserts that there is a need to re-evaluate the prioritisation of civil and political over economic, social and cultural rights. The fulfilment of the latter is needed to provide a basic floor of protection against the most egregious features of poverty. While we have a social security system in place in Ireland, it has not been successful in providing this basic floor of protection, as can be seen by the increase in the enforced deprivation rate from 15.1% in 2018 to 17.8% in 2019 (latest available data)<sup>4</sup> and the rising number of people in homelessness<sup>5,6</sup>. It is for this reason that we propose the reconceptualization of human rights as they were envisioned in the UDHR, with equal importance afforded to the realization of civil and political rights and economic, social and cultural rights.

The introduction of a right to adequate housing would be a logical place for Ireland to begin honouring its obligations under the ICESCR due to the centrality of a safe, secure home to one's ability to have other human rights realized. Moreover, the perennial nature and worsening of our housing crisis demands a new approach. Policies across successive governments have clearly failed and while the introduction of a right to housing is by no means a panacea, it could provide a new guiding vision for housing policy. A vision which obligates government to implement policies which prioritize the provision of adequate housing as opposed to facilitating the financialization of housing is urgently required.

### ***What should the right to housing entail?***

As such, we propose that the Constitution be amended through referendum, inserting a new Article 43A on Housing as follows:

#### *Housing Article 43A*

1. *The State recognises, and shall vindicate, the right of all persons to have access to **adequate housing**.*
2. *The State shall, through legislative and other measures, provide for the **realisation** of this right within its **available resources**.*

### ***Adequate housing and the impacts of its absence***

Adequate housing is defined under General Comment 4 of the Committee on Economic, Social and Cultural Rights (CESCR) and constitutes 7 conditions: legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, location and culturally adequate housing.

Accessibility, affordability, habitability and legal security of tenure are all defined under General Comment 4 of the CESCR.

Accessibility is defined as housing being available to those that are entitled to it. Disadvantaged groups such as children and the elderly are amongst the vulnerable groups to whom accessibility should be ensured.

Affordable housing is defined by housing costs which do not threaten the satisfaction of other basic needs. Its definition also states that tenants should be protected from unreasonable rent levels or rent increases.

Habitability is defined as housing which provides adequate space and protection from cold, damp, heat and rain.

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<sup>3</sup> Evans, T. and Ayers, A., 2006. In the Service of Power: The Global Political Economy of Citizenship and Human Rights. *Citizenship Studies*, [online] 10(3), pp.289-308. Available at: <<https://www.tandfonline.com.ezproxy.lib.gla.ac.uk/doi/full/10.1080/13621020600772081>> [Accessed 29 of August 2022].

<sup>4</sup> Survey on Income and Living Conditions (SILC): Enforced Deprivation 2019.

<https://www.cso.ie/en/csolatestnews/pressreleases/2020pressreleases/pressstatementsurveyonincomeandlivingconditionssilc/enforceddeprivation2019/>

<sup>5</sup> Donate - Focus Ireland. 2022. *Latest Figures - Donate - Focus Ireland*. [online] Available at: <<https://www.focusireland.ie/knowledge-hub/latest-figures/>> [Accessed 31 August 2022].

<sup>6</sup> [Ireland's homeless figures reach new record high - Independent.ie](#)

Legal security of tenure is defined by a degree of security of tenure which guarantees legal protection from forced eviction, harassment, and other threats.

Inaccessibility, unaffordability, inhabitability and a lack of security of tenure are unfortunately defining features of the Irish housing system. These features impede the realization of other social and economic rights, compounding the effects of poverty.

The inadequacy of housing can be seen in the stories of fourteen families based in the inner city of Dublin, recorded in the report published by the Co-op in 2021 entitled **No Child Shall Suffer**.<sup>7</sup> Story 2 describes a family of four living in a one room privately run homeless accommodation. Due to a lack of cooking facilities and failure of the accommodation facility to provide meals, the family faced insecure and uncertain access to food. The two young children's mental health deteriorated as a result of their living conditions to the point that they both required therapy. Story 3 describes the lives of a family of six across four generations living in a two-bedroom cottage, subjecting them to gross overcrowding. All of working age in the home are working full time but the option to move into suitable housing is unviable due to a lack of affordability within the private rental sector despite qualifying for HAP and the inaccessibility of public housing. The report states that the conditions in the home are affecting the mental health of the whole family. The youngest child is showing signs of autism however, medical professionals are unable to ascertain whether his developmental delays are due to his living conditions. The presence of mould and damp in the home can be found across the stories in the report. This clearly portrays the way in which unaffordability, inhabitability and inaccessibility in the housing sector is impacting on people's right to adequate food and the right to the enjoyment of the highest attainable standard of physical and mental health.

Housing unaffordability can also be observed in the link between housing costs and poverty elucidated in the report *Housing and Poverty 2022* in which it was found that 19% of Irish households fall below the poverty line **after** housing costs are accounted for. This report<sup>8</sup> shows that for those availing of state subsidised housing in the private rental sector, the unaffordability is even more pronounced. Before housing costs, 22.7% of people living in subsidised private rental accommodation were below the poverty line. This number jumps to 55.9% after housing costs are factored in. The government has come to rely on providing subsidies like the Housing Assistance Payment (HAP) to provide for people's social housing needs and has classified it as a 'social housing solution'<sup>9</sup>. HAP rates have failed to keep up with the inflation of rents making housing increasingly unaffordable for those relying on the subsidy<sup>10</sup>. It is clear from the Housing and Poverty report that the reliance on rental subsidies has failed to provide a basic floor of protection against poverty.

Moreover, HAP unlike traditional social housing provides no additional security to tenants. Security of tenure is crucial in preventing homelessness. This reality was highlighted by Focus Ireland who reported that the majority of homeless families they worked with in 2019 had their last home in the private rented sector<sup>11</sup>.

We propose a referendum on the right to adequate housing so that the conditions of affordability, accessibility, habitability, and security of tenure are central to the planning and delivery of housing strategies going forward with a view to rectifying the systemic flaws outlined above.

Emergency measures introduced during the Covid 19 pandemic addressing security of tenure and affordability can provide a roadmap for future housing policy if these components of adequate housing are prioritised.

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<sup>7</sup> [The Co-op's No Child Shall Suffer report – Dublin City Community Co-Op \(dublincitycommunitycoop.ie\)](https://www.dublincitycommunitycoop.ie)

<sup>8</sup> Social Justice Ireland. 2022. *Housing and Poverty 2022* | Social Justice Ireland. [online] Available at: <<https://www.socialjustice.ie/publication/housing-and-poverty-2022#:~:text=Housing%20and%20Poverty%202022%20is%20a%20special%20edition,poverty%20rate%20across%20a%20range%20of%20key%20demographics.>> [Accessed 31 August 2022].

<sup>9</sup> Hearne, R. (2020). *Housing shock* (1st ed., pp. 174). Bristol: Policy Press.

<sup>10</sup> McNally, T. (2022). Concerns around HAP payment levels set to be raised at housing committee today. Retrieved 31 August 2022, from <https://www.thejournal.ie/housing-committee-hap-5676909-Feb2022/>

<sup>11</sup> FOCUS IRELAND REPORT FINDS THAT NEARLY 70% OF FAMILIES BECOMING HOMELESS IN DUBLIN HAD THEIR LAST HOME IN THE RENTAL SECTOR - Donate - Focus Ireland. (2022). Retrieved 31 August 2022, from <https://www.focusireland.ie/press-release/focus-ireland-report-finds-that-nearly-70-of-families-becoming-homeless-in-dublin-had-their-last-home-in-the-rental-sector/>

### ***Emergency measures and Article 43***

The Irish government, like many EU member states, introduced emergency measures in the wake of the Covid 19 pandemic to address the risk that it and its associated consequences posed to housing security. Moratoriums on evictions and rent freezes were introduced. As a result, the number of people in emergency accommodation fell by 21% between February 2020 and May 2021<sup>12</sup>. However, these measures were lifted with the Attorney General Paul Gallagher stating that the continuation of the rent freeze would raise serious constitutional concerns<sup>13</sup>. This is in regard to Article 43 of the Irish Constitution which protects the right to private property.

Predictably, the Summary of Notices of Termination shows that terminations have been increasing since these measures were lifted<sup>14</sup>. An increasing number of landlords are exiting the sector and selling their properties.<sup>15</sup> In the absence of policies to protect security of tenure, homelessness is rising again with 10,568 people homeless as of July 2022 of which 3,137 are children<sup>16</sup>.

This question of the constitutionality of measures to deal with homelessness and the housing crisis, a perennial facet of Irish society for the last decade provides a compelling rationale for the introduction of the right to housing in the Irish Constitution. Article 43 allows limitations to the right to private property to “reconcile their exercise with the exigencies of the common good”. However, failure to define the common good has rendered this clause futile. The use of the constitutional right to private property to stymie measures that work to fulfil the right to housing shows no regard for the common good and contradicts the indivisibility of rights. The introduction of a right to housing has the potential to bring balance to the Constitution where the concept of the common good has not.

### ***Progressive Realization***

The second part of our proposal for the amendment to Article 43A of the Constitution refers to the principle of progressive realization. This is derived from international human rights law. The ICESCR refers to the principle of progressive realization of economic, social and cultural rights, taking account of the resources needed for their fulfilment. Saliiently, the ICESCR also refers to the prohibition of retrogression. In this way the government would be given the space to plan and deliver policies that fulfil the right to housing according to available resources while also being held responsible if housing rights continued to deteriorate.

Currently, the right to adequate housing is being violated across these conditions as a result of sustained policy over successive governments and the absence thereof. The introduction of a right to adequate housing could beget policies and legislation which would uphold the conditions of adequate housing through reorientating priorities and rebalancing the Constitution.

### ***Positive and Negative Housing Rights***

As explained above, human rights are both negative and positive. With the introduction of the right to housing in the Irish Constitution the government could begin the process of its progressive realisation.

The government could begin with fulfilling negative housing rights such as those introduced during the Covid 19 pandemic while positive housing rights are fulfilled through the mass development of social housing.

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<sup>12</sup> Serme-Morin, C., & Coupechoux, S. (2022). *SEVENTH OVERVIEW OF HOUSING EXCLUSION IN EUROPE 2022* (p. 18). FEANTSA & ABBÉ PIERRE FOUNDATION. Retrieved from

[https://www.feantsa.org/public/user/Resources/reports/2022/Rapport\\_Europe\\_GB\\_2022\\_V3\\_Planches\\_Corrected.pdf](https://www.feantsa.org/public/user/Resources/reports/2022/Rapport_Europe_GB_2022_V3_Planches_Corrected.pdf)

<sup>13</sup> Ryan, P., & Gataveckaite, G. (2022). Rent freeze during Covid-19 pandemic to end on August 1. Retrieved 31 August 2022, from <https://www.independent.ie/irish-news/politics/rent-freeze-during-covid-19-pandemic-to-end-on-august-1-39382172.html>

<sup>14</sup> Latest Figures - Donate - Focus Ireland. (2022). Retrieved 31 August 2022, from <https://www.focusireland.ie/knowledge-hub/latest-figures/>

<sup>15</sup> Meskill, T. (2022). Rise in number of termination notices received by RTB. Retrieved 31 August 2022, from <https://www.rte.ie/news/ireland/2022/0807/1314445-tenancies-report/>

<sup>16</sup> Latest Figures - Donate - Focus Ireland. (2022). Retrieved 31 August 2022, from <https://www.focusireland.ie/knowledge-hub/latest-figures/>

The government has numerous policy and legislative instruments at its disposal to achieve this. In previous decades the state has receded from the building of social housing, relying instead on Part V of the Planning Act (2000), rental subsidies and long-term leasing. In order to satisfy the right to adequate housing the government must play a more active role in the building of social and affordable homes on public land and in addition it must achieve affordability and security of tenure through more intensive regulation of the private sector.

In Scotland, landlords are required to notify local authorities when they are issuing a notice of eviction to their tenants. The local authority is then legally required to house the tenants being evicted. Seven days is the legal limit on the amount of time a person is subjected to emergency accommodation. A similar policy could be introduced in Ireland, however, its success would be predicated on availability of supply<sup>17</sup>.

Several commentators have argued that local authorities should buy from landlords that are selling, keeping people in their rental property thus preventing eviction and potential homelessness.<sup>18</sup>

### ***Housing for All***

It is positive that Housing for All<sup>19</sup> states that the government is moving away from reliance on HAP and long leasing and towards increased involvement in new build of social housing. However, the new build figure of 9,500 social homes includes those houses delivered through public private partnerships and Part V contributions. The government has little control over either of these streams. Moreover, Social Justice Ireland postulates that in order for Irish social housing stock to grow from 9% of overall housing stock to 20% of overall housing stock (the EU average), the government will need to double its targets<sup>20</sup>. The plan also fails to address issues of affordability, with 'affordable' housing schemes such as the 'First Home' scheme working to inflate the price of housing more.

The plan further states that government will address the issue of tenant security by legislating for indefinite leases for tenants. While this commitment is most welcomed, its implementation must be prioritized.

The introduction of Land Value Sharing (LVS) based on the recommendations of the Kenny Report is another welcomed part of Housing for All. The plan states that a proportion of the value uplift that occurs through rezoning and state investment will be captured for communities. It states that LVS will address speculative land hoarding and land price inflation which currently prevents the viability of development.

There are many promising commitments established in Housing for All including the legislating of indefinite tenancies and the LVS initiative. Implementation and political will is now the crucial concern.

The right to housing would provide a tool for the public to hold the government accountable for commitments made, including those outlined in Housing for All which are congruent with the right to housing. This is because establishing a right to housing in the Constitution would recognise that the government is responsible for its realisation.

### ***Conclusion***

In the foreword of *Housing for All* the government states "that everybody should have access to sustainable, good quality housing to purchase or rent at an affordable price, built to a high standard, and located close to essential services, offering a high quality of life."

The right housing would provide a tool for the public to hold the government accountable for commitments made, including those outlined in *Housing for All* which are congruent with the right to housing. This is because

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<sup>17</sup>17 Hearne, R. (2020). *Housing shock* (1st ed., pp. 223). Bristol: Policy Press

<sup>18</sup>18 Meskill, T. (2022). Rise in number of termination notices received by RTB. Retrieved 31 August 2022, from <https://www.rte.ie/news/ireland/2022/0807/1314445-tenancies-report/>

<sup>19</sup>19 Department of Housing, Local Government and Heritage. (2022). *Housing for All*. Retrieved from [http://file:///C:/Users/user/Downloads/197237\\_29edec3e-6664-4e62-86b2-af2e77f2f609%20\(3\).pdf](http://file:///C:/Users/user/Downloads/197237_29edec3e-6664-4e62-86b2-af2e77f2f609%20(3).pdf)

<sup>20</sup>20 Budget Choices 2023 must begin to deliver Housing for All | Social Justice Ireland. (2022). Retrieved 31 August 2022, from <https://www.socialjustice.ie/article/budget-choices-2023-must-begin-deliver-housing-all>

establishing a right to housing in the Constitution would recognise that the government is responsible for its realisation.

To reiterate, we propose that the Constitution be amended through referendum, inserting a new Article 43A on Housing as follows:

*Housing Article 43A*

3. *The State recognises, and shall vindicate, the right of all persons to have access to **adequate housing**.*
  
4. *The State shall, through legislative and other measures, provide for the realisation of this right within its available resources.*

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