
SUBMISSION OF MERCY LAW RESOURCE CENTRE

UPR PRE-SESSION, 31 MARCH 2016, GENEVA

1. **About Mercy Law Resource Centre**

I am speaking on behalf of Mercy Law Resource Centre (MLRC). MLRC is an independent law centre providing free legal help for people who are homeless or at risk of homelessness. I am speaking here today in relation to the right to adequate housing.

2. **Background/context to issues raised:**

A. Crisis in homelessness

We are in the midst of a crisis in homelessness that has been growing month on month since at least the early months of 2014. A crisis as has not been since the foundation of the State. Between December 2014 and December 2015 there was a net increase in the number of people recorded as homeless of 1,700 people, an increase of 43%. According to the most recent figures available, in Dec 2016 5,440 people were homeless: 3,625 were adults who were homeless; 775 families were homeless and 1,616 children were homeless.

President of Ireland Michael D. Higgins in a recent address described this as:

“The most pressing of all the manifestations of inequality in Ireland...nothing less than a fundamental challenge to the legitimacy of institutions and morality of the State.”

The Special Rapporteur on Poverty: Leilani Farha has said¹: “*One of the most tragic manifestations of inequality is persistent and growing homelessness*”.

There are fundamental ways in which Ireland is breaching its obligations in relation to the right to adequate housing in human rights law.

B. The international obligations on housing –Ireland has agreed to protect the right to housing in international human rights laws:

Universal Declaration of Human Rights (1948): 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.

International Covenant on Economic, Social and Cultural Rights (1966): Article 11:

1. The States Parties to the present Covenant recognise 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

¹ Leilani Farha, *We can't talk about inequality without talking about homelessness*, the Guardian, 3 March 2016.

appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.

Ireland is a dualist State and so it is only when an international Treaty is made part of our law – by being ratified – that it becomes enforceable. We signed the ICESCR in 1973 and we ratified it in 1989.

The Optional Protocol of 2008 provides a complaint mechanism to the Committee on Economic, Social and Cultural Rights for violations of these rights. Ireland signed this on 23 March 2012. It has not yet ratified this. Italy, Luxembourg, Portugal, France, Belgium, and Finland have ratified it. This means that there is a gap in the enforcement of the right to adequate housing and a gap in the protection of the right.

C. What does the right to housing actually mean? The aspects of it:

UN Committee on Economic Social and Cultural Rights in General Comment 4 on the right to adequate housing said that the right should not be interpreted in a narrow or restrictive sense “and should be seen as the right to live somewhere in security, peace and dignity”. They said there are seven key aspects of the right:

- including legal security of tenure;
- availability of services, materials, facilities and infrastructure;
- affordability;
- habitability;
- accessibility;
- location (i.e. which allows access to employment options, healthcare, schools etc.);
- and cultural adequacy.

3. The issues: the key ways in which this is not being protected – the right is not adequately protected.

I address here three issues:

- (i) the crisis in homelessness;
- (ii) the lack of legal aid for evictions from social housing; and
- (iii) the failure of State rent supplement to meet market rent.

4. The issues in detail

i. The crisis in homelessness: The failure to protect, and make enforceable, the right to housing:

- The right to housing itself is not protected in Irish law.
- Means:
 - We are seeing every day families: presenting as homeless and told there is no accommodation/given emergency accommodation gravely inappropriate to the

Mercy Law Resource Centre

25 Cork St, Dublin 8, Ireland

Phone: +353 1 4537459

www.mercylaw.ie

Email: info@mercylaw.ie



- family's needs for their health and dignity – for long periods, 18 months for example, with no cooking facilities, one room, long distances to schools
- families are in local authority accommodation with major issues of damp etc.: rights around the edges that are all there is to rely on. e.g privacy, dignity.
- It means that in these situations, there is no clear breach of right. To require action in law requires the most extreme cases, and creative use of the law: fair procedures, bodily integrity. Then maybe, just maybe –that particular person may win that particular case.
- What a right to housing in Irish law would do:
 - Not a right to a key to a home for all of course. Not at all.
 - But with a right to housing in law, courts could review the actual decisions of the State and local authorities, not just the process, not just on a very macro level as to whether “irrational”, or outside the powers of the State.
 - They could look at the decision as to whether “reasonable” or “proportionate” by reference to the right.
 - For example, in those examples, the courts could look more closely to see if the right is being respected. It is judicial oversight.
 - Another side to it, if the State decided to cut funding to homeless accommodation, the courts could review this in a case.
 - It means that the policies in relation to housing and homelessness could not be on a political whim but would have this grounding, this obligation to respect the right to housing.
 - It gives that basic floor of protection in relation to having a stable place to live. Gives that basic right.
- **At the first UPR of Ireland in 2011, this crisis in homelessness did not exist.** Recommendations in relation to housing were very limited. Portugal did recommend that Ireland consider incorporating the right to housing into Irish law.
- **The Government accepted this recommendation.** Since then, it set up a Constitutional Convention, drawn of citizens across the country to consider changes to our Constitution. In 2014, the Convention recommended that ESC rights, including in particular the right to housing, should be protected in the Constitution. The Government has not taken any further substantive action on this.

Recommendations – a summary:

- **Put recommendation of Convention re ESC rights and right to housing to referendum to put in Constitution**
- **Ensure that further consideration of the issue is underpinned by participation, transparency and accountability**

ii. Lack of legal aid for evictions from housing: Legal security of tenure:

- Eviction from social housing is very serious. It essentially cuts you off from social housing. Eviction from other private housing can be equally devastating.
- Under new housing legislation, a new procedure was introduced in 2014 for evictions from social housing.
- It is a welcome improvement on that which went before. Under the new procedure, the final decision maker on eviction is the courts. The court is a mechanism of independent full review of the fairness of the decision to evict. Before this, there was no such independent review. This change is very welcome.
- However, there is no State legal aid available for evictions. This is legally very technical area going right to the heart of security of home.
- UN Committee on Economic Social and Cultural Rights in General Comment 4 on the right to adequate housing said:

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.

Recommendation: expand the State legal aid scheme to include cases involving eviction from housing.

iii. The failure of rent supplement/HAP to meet market rent: Affordability and accessibility:

- We have a system of Rent Supplement/Housing Assistance Payment (HAP).
- It is not meeting market rent in urban areas particularly Dublin.
- This is widely recognised as a major cause of homelessness.

Recommendation: Introduce legislative and policy measures to ensure Rent Supplement/HAP can meet market rent.

Summary of recommendations:

- 1. Put recommendation of Convention re ESC rights and right to housing to referendum to put in Constitution;**
- 2. Ensure that further consideration of the issue is underpinned by participation, transparency and accountability**
- 3. Expand the State legal aid scheme to include cases involving eviction from housing.**
- 4. Introduce legislative and policy measures to ensure Rent Supplement/HAP can meet market rent.**