

Submission in Response to the Housing Commission's Consultation on a Referendum on Housing in Ireland

September 2022



Founded in 1995, the Children's Rights Alliance unites over 140 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Aoibhneas
AsIAm
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Blossom Ireland
Bodywhys
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Childminding Ireland
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
Clarecare
COPE Galway
Cork Life Centre
Cork Migrant Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy,
UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Early Learning Initiative (National College of Ireland)
Educate Together
EPIC
Equality for Children
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaelscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement

Irish Youth Foundation
iScoil
Jack and Jill Children's Foundation
Jigsaw
Katharine Howard Foundation
Kids' Own Publishing Partnership
Kinship Care
Leap Ireland
Let's Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
My Mind
My Project Minding You
Museum of Childhood Ireland
Music Generation
New Directions
National Childhood Network
National Council for the Blind of Ireland
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
TASC
Teachers' Union of Ireland
Terenure College Rugby Football Club
Transgender Equality Network Ireland
The Anne Sullivan Foundation
The Ark, A Cultural Centre for Children
The Irish Red Cross
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Women's Aid
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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1. Introduction

The Children’s Rights Alliance unites over 140 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children by making sure their rights are respected and protected in our laws, policies and services. We also provide legal information and advice to children, young people and their families through our legal information line and nationwide legal advice outreach clinics.

The Alliance welcomes the opportunity to respond to the Housing Commission’s consultation on a Referendum on Housing in Ireland.

2. The Housing Crisis and Children

Ireland is currently experiencing a housing crisis. In July 2022, there were 10,568 people living in Emergency Accommodation in Ireland.¹ Of this number, 3,137 – over 30 per cent - were children.² This data gives only a partial insight into the numbers experiencing homelessness. It does not include families accommodated in own-door accommodation or transitional housing, women and children in domestic violence refuges, asylum seekers living in emergency accommodation, or people who have been granted asylum or some other form of protection but cannot find accommodation outside the Direct Provision system. Families who have had to leave their home and are ‘couch surfing’ or relying on friends or family for emergency assistance are also not captured in the official monthly statistics.

In the Alliance’s most recent Report Card, our annual evaluation of the government’s commitments to children and young people, family homelessness received an ‘E’ grade, down from a ‘C’ grade the year previously.³ This decrease arose as protection measures against evictions introduced during the Covid-19 pandemic were withdrawn,⁴ increasing once more the number of children and families experiencing homelessness. While there was a welcome target of ending homelessness by 2030 and key measures in the Government’s new Housing for All Strategy, published in 2021, there is a need to introduce additional measures to step-up efforts to tackle child and family homelessness.⁵

The effects of homelessness on children is profound. Children are the fastest-growing homeless population in Ireland, and global evidence reviews have found that homelessness in children is associated with multiple negative physical, mental, and behavioural health outcomes.⁶ Children who experience homelessness are also more likely to have developmental and learning delays and poorer academic attainment,⁷ with the duration of homelessness compounding and elevating the risk of adverse outcomes.⁸

1 Department of Housing, Local Government and Heritage, Monthly Homelessness Report (Department of Housing, Local Government and Heritage, July 2021)

<https://bit.ly/3qgMdYF> accessed 31 August 2022.

2 Ibid

3 Children’s Rights Alliance Report Card 2022 <https://bit.ly/3wKFvO9> accessed 31 August 2022.

4 Emergency Measures in the Public Interest (Covid-19) Act 2020

5 Department of Housing, Local Government and Heritage, ‘Housing for all – A New Housing Plan for Ireland’ <https://www.gov.ie/en/publication/ef5ec-housing-for-all-a-new-housing-plan-for-ireland/>

6 Laura E Gultekin et al, ‘Health risks and outcomes of homelessness in school-age children and youth: a scoping review of the literature’ (2020) *Journal of School Nursing* 36(1) 10– 18.

7 Children Rights Alliance, ‘Home Works – A Study on Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation’ (July 2018)

8 Saskia D’Sa et al, ‘The psychological impact of childhood homelessness—a literature review’ (2020) *Irish Journal of Medical Science*. See also Mercy Law Resource Centre, ‘Report on the Lived Experiences of Homeless Families’

<https://bit.ly/3CMFIKO>

The CSO Survey of Income and Living Conditions found that 13.6 per cent of children aged 0-17 are at at-risk of poverty.⁹ This increases to 23.4 per cent when rent and mortgage interest is included.¹⁰ Meanwhile the at-risk poverty rate for the general population is 11.6 per cent, and 19 per cent when including rent and mortgage interest.¹¹ In 2020, there were over 200,000 children living in homes that have issues with leaks, damp and rot.¹² Traveller and Roma groups disproportionately occupy such homes.¹³

Children in specific family structures and ethnic minorities have a higher incidence of homelessness and can be more vulnerable to housing exclusion.¹⁴ In June 2022, over half of all families in emergency accommodation were one parent families.¹⁵ These families are also likely to have more affordability issues and experience housing deprivation, such as an inability to heat their home.¹⁶ Traveller families face significant barriers to accessing their right to housing and are at greater risk of experiencing homelessness than settled families.¹⁷

3. Ireland's Commitments under International Human Rights Law

The UN Convention on the Rights of the Child (UNCRC) places a responsibility on the state to protect the child's private, family and home life. All three of these aspects of a child's life are detrimentally affected by homelessness.¹⁸ Article 27 of the UNCRC obliges states to:

recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; and to in particular *'take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.*

Under this Article, all children have the right to a decent standard of living, and the state is obliged to assist in ensuring this standard is met, with explicit reference to housing. In General Comment No. 21, the Committee on the Rights of the Child found that:

*The implementation of the above in accordance with national conditions and within the means of States parties should be interpreted in conjunction with article 4, that is, to the maximum extent of States parties' available resources and, where needed, within the framework of international cooperation, with particular regard to the obligations of States to fulfil the minimum core obligation for social, economic and cultural rights. [...] The interpretation of article 27 (3) is not limited to measures to assist parents and others responsible for the child. The obligation to provide material assistance and support programmes in case of need should be interpreted as also meaning assistance provided directly to children.*¹⁹

9 Central Statistics Office, 'Survey of Income and Living Conditions' 2021.

10 Ibid

11 Ibid.

12 Eurostat, 'Children (aged 0 to 17) living in a dwelling with a leaking roof, damp walls, floors or foundation, or rot in window frames or floor - EU-SILC survey' <<https://bit.ly/3y4WPgE>>

13 Ombudsman for Children, No End in Site (OCO 2021).

14 Mercy Law Resource Centre, 'Minority Groups and Housing Services: Barriers to Access' https://mercylaw.ie/wp-content/uploads/2021/03/ML_2020_Minority-Groups-and-Housing-Services_Report_D6.pdf

15 Department of Housing, Local Government and Heritage, Monthly Homelessness Report (Department of Housing, Local Government and Heritage, July 2021)

<https://bit.ly/3qgMdYF> accessed 31 August 2022.

16 Ibid.

17 Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review* (DHPLG 2019).

18 Article 16 UN Convention on the Rights of the Child.

19 General Comment No. 21 (2017) on children in street situations (21 June 2017) CRC/C/GC/21 (21 June 2017) para [49]

<https://bit.ly/3Kx5w9c> accessed 31 August 2022.

A similar commitment is also found in Article 11 the International Covenant on Economic Social and Cultural Rights, to which Ireland is also a signatory.²⁰ The Committee on Economic, Social and Cultural Rights has described the right to housing as ‘the right to live somewhere in security, peace, and dignity.’²¹ The Committee on the Rights of the Child has found, with reference to this description, that, ‘[this] clarifies that the concept of “adequacy” in relation to housing requires attention to: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.’²²

Ireland was last examined by the UN Committee on the Rights of the Child in 2016.²³ The Committee expressed several concerns relating to homelessness, including that families with children in Ireland were “*facing significant delays in accessing social housing and frequently living in inappropriate, temporary or emergency accommodation on a long-term basis*”. Consequently, the Committee called on Ireland to “*undertake measures to increase the availability of social housing and emergency housing support*.”²⁴

4. The Need for a Right to Housing in the Constitution

There are both principled and practical arguments in favour of having a right to housing within the Constitution.

The principled argument is clear. As the right to housing reinforces and guarantees the enjoyment of other rights, there is no reason in principle why rights such as privacy should be included within the Constitution, but a right to housing – a precondition to the enjoyment of a right to privacy - should be excluded. This is particularly the case given the Preamble to the Constitution expressly obliges the Irish State to guarantee ‘*that the dignity and freedom of the individual may be assured*’.

Alongside the principled argument however, there is also a very compelling practical case to be made for including a right to housing. Further 85 per cent of the members of the Convention on the Constitution, were in support of introducing a range of economic social and cultural rights, including a right to housing.²⁵

An interpretation of the property rights under the Constitution has developed, which posits that interferences with property rights in order to increase housing stock or protect precarious tenants are unconstitutional.²⁶ Compulsory purchases, vacant site levies, and upward-only rent review

20 Article 11(a) of the Covenant provides, ‘*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.*’

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

21 Committee on Economic, Social and Cultural Rights, ‘General Comment 4: The Right to Adequate Housing’ para. 7

<https://bit.ly/2M0kqKK> accessed 2023.

22 General Comment No. 21 (2017) on children in street situations (21 June 2017) CRC/C/GC/21 (21 June 2017) para [49]

<https://bit.ly/3R2E7P2> accessed 31 August 2023.

23 Committee on the Rights of the Child, ‘Concluding Observations on the combined third and fourth periodic reports of Ireland’ CRC/C/IRL/CO/3-4 Para [62] <https://bit.ly/3RIMIMn> accessed 31 August 2022.

24 Ibid Para [62] <https://bit.ly/3RIMIMn> accessed 31 August 2022.

25 Indeed, specific reference was made to the particular social rights of children, including their housing rights, were raised in the presentations before the Convention, subsequent to which the overwhelming vote in favour of enshrining economic, social, and cultural rights in the Constitution was made. Convention on the Constitution, ‘Eighth Report of the Convention on the Constitution: Economic, Social, and Cultural (ESC) Rights’

<https://bit.ly/2Xrnosp> accessed 31 August 2022

26 Hilary Hogan and Finn Keyes how Alan Kelly TD, while Minister for Environment, Community and Local Government, stated that he was advised that it would be unconstitutional to introduce vacant site levies, and other measures to tackle housing. Per Kelly:

I was not hampered by political or financial obstacles. I was blocked by the Constitution. From the time it is taking to introduce the vacant site levy to tackle land hoarding, to protecting tenants from eviction in circumstances where their landlord wishes to sell the property, and many other issues, I was repeatedly blocked from making provision for what I believed was the common good by the strength by which property rights are protected under Article 43 of the Constitution.

clauses have been rejected on this basis.²⁷ This interpretation has gained dominance in the Government and has been used repeatedly to explain why the Government is unable to adopt more effective policies to tackle the housing crisis.²⁸

The problem in Ireland is not that there are not enough houses. In fact, the 2022 census records that there are currently 166,752 vacant dwellings in Ireland.²⁹ Even including the hidden homeless – those families who are ‘couch surfing’ or relying on friends or family for emergency assistance, and who are not captured in the official current statistics of 10,568 people homeless – this stock would be sufficient to house the homeless population of Ireland several times over.³⁰ A policy of utilising existing housing stock could ameliorate the current housing crisis without the expense of constructing new social housing.³¹ However, such a policy – whether a vacant site levy or the government purchase of vacant properties – has been argued by the Government to be unconstitutional, due to the protection of property rights of current landowners.³² By including a right to housing in the text of the Constitution, it would become explicitly clear that the Government is empowered – indeed is *obliged* – to guarantee adequate housing provision. It will place a positive obligation on the State to act, rather than allowing an entirely passive, market-led approach to housing to dominate. Further, through passage by referendum, a clear mandate will be provided for policies tackling the housing crisis.

As well as providing a clear green light to the Government that measures to increase housing provision are constitutionally valid, a right to housing will also impose a legal obligation on the Government to keep to its commitments with regard to housing. A frequent misapprehension is that a right to housing would mean an immediate legal entitlement to a house for everyone. The right to housing is provided in 81 Constitutions around the world, and a statutory right to housing is provided in several other jurisdictions, including France and Scotland.³³ In none of these jurisdictions does the right to housing amount to a “free house for everyone.” Rather, the right places a duty on the State to progressively, over time, increase housing provision to the people. It puts in place a basic floor of protection, requiring the State, in its decisions and policies, to reasonably protect the constitutional right.³⁴ This would recognise the fact that a home is central to the dignity and life of every person. This would be a major step towards protecting people from homelessness.³⁵

Alongside placing a duty on the state to increase housing stock over time, a right to housing can also provide added protection for current homeowners. The South African jurisprudence is instructive in this regard. Not only has the right to housing in South Africa has been interpreted to require the government to progressively increase adequate housing stock, it has also acted as a right to *restrain* a public or private landlord or mortgagee from evicting a tenant or mortgagor unjustly.³⁶ By this, the housing rights of the tenant or mortgagor are protected, and they are ensured a shelter in the short

Hilary Hogan and Finn Keyes, ‘The Housing Crisis and the Constitution’ (2021) 65 *Irish Jurist* 87. See also Kitty Holland, ‘Kelly says Constitution blocked attempts to tackle housing crisis’

<https://www.irishtimes.com/news/social-affairs/kelly-says-constitution-blocked-attempts-to-tackle-housing-crisis-1.2593962>

27 Ibid

28 Ibid

29 Central Statistics Office, ‘Census 2022 – Preliminary Results’

<https://www.cso.ie/en/releasesandpublications/ep/p-cpr/censusofpopulation2022-preliminaryresults/housing>

30 Department of Housing, Local Government and Heritage, Monthly Homelessness Report (Department of Housing, Local Government and Heritage, July 2021)

<https://bit.ly/3qgMdYF> accessed 31 August 2022.

31 Simon Community, ‘The Role of Vacant Homes in a Housing Crisis’ <https://www.simon.ie/the-role-of-vacant-homes-in-a-housing-crisis/>

32 See Hogan and Keyes’ examination of the arguments raised by the Government against the Derelict and Vacant Sites Bill 2017 and the Urban Regeneration and Housing (Amendment) Bill 2018, and the Planning and Development (Amendment) Act 2018. Hilary Hogan and Finn Keyes, ‘The Housing Crisis and the Constitution’ (2021) 65 *Irish Jurist* 87.

33 Mercy Law Resource Centre, ‘Second Right to Housing Report: The Right to Housing in Comparative Perspective’ (2018)

<https://mercyllaw.ie/wp-content/uploads/2018/06/MLRC-Second-Right-to-Housing-Report.pdf>

34 Amnesty International, ‘Bringing ESC Rights Home: The Case for Legal Protection of Economic, Social and Cultural Rights in Ireland’ (2014)

https://www.amnesty.ie/wp-content/uploads/2016/02/Bringing_ESC_Rights_Home_Case-for-legal-protection-of-ESCR.pdf

35 Lorna Fox-O’Mahony, ‘The Meaning of Home: A Chimerical Concept or a Legal Challenge?’ (2002) *Journal of Law and Society* 29:4, pp. 580-610

36 *Jaftha v Schoeman* 2005 (2) SA 140 (CC); *Gundwana v Steko* [2011] ZACC 14; *Maphango v Aengus Lifestyle Properties* [2012] ZACC 2

term unless and until a lawful and equitable eviction is carried out. In this way, rather than being in conflict with property rights, a right to housing in fact could provide greater security for property owners, tenants, and leaseholders, against evictions that risk them entering homelessness.

Given the number of children living in poverty, a guarantee against unjust eviction would be especially important to protecting the rights of children, many of whom face unexpected evictions in the absence of such a right.

Recommendation:

Consideration should be given to the introduction of legislation allowing for a referendum on whether or not to include a right to housing in the Constitution.