



**Submission to the Special Rapporteur on the Right to Adequate Housing
on
designing and implementing effective human rights based housing
strategies**

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Introduction

The Simon Communities in Ireland welcome the opportunity to contribute this *Submission to the Special Rapporteur on the Right to Adequate Housing on designing and implementing effective human rights based housing strategies*. From the outset, it is important to state that there is no express right to housing in Irish law, despite the incorporation of the European Convention on Human Rights into Irish law through the European Convention on Human Rights Act 2003. The Simon Communities believe that to tackle our unprecedented housing and homelessness crisis meaningfully and to prevent its recurrence we must do things differently. Providing constitutional protection of the right to housing would do just that.

A constitutional right to housing in Ireland would:

- Provide a clear floor of protection in respect of access to basic adequate housing for all and would provide a recognition that a home is central to the dignity of each person.
- Provide a legal mechanism for citizens to vindicate their right to housing before the courts.
- Oblige the state to reasonably protect and fulfil the right, in the spirit of its obligations, under the International Covenant on Economic, Social and Cultural Rights (ICESCR); and provide a readymade legal framework from which to pursue the progressive realisation of the right to housing.
- Provide a guide and legal safeguard against which to measure and challenge all State housing policy and decision making.

In July 2016, the Irish Government launched its most recent national housing and homeless strategy - the *Rebuilding Ireland Action Plan on Housing and Homelessness (Rebuilding Ireland)*.¹ This broad national homelessness and housing strategy was developed in response to rapidly increasing levels of homelessness in the State and significant fault lines that were developing across the Irish housing system including high-level mortgage arrears, spiralling private sector rents and the complete collapse in social housing output. *Rebuilding Ireland* contains 84 individual action points across five high level 'Pillars' seeking to address these issues and their associated impacts. Since the launch of the Strategy, there have been concerns about the pace of implementation and the urgency behind it. Since the strategy was launched, the total number of people experiencing homelessness in the State has increased by 28% to 8,374 people.² Social Housing Output has not recovered to begin to meet the needs of the 91,600 households on the social housing waiting list, with only 665 new Local Authority social housing units delivered in 2016.³ Rents in the private rental sector have risen for 21 consecutive quarters with average national rents now standing at €1,198 per month.⁴ Although the number of mortgage accounts in arrears continues to decline, the accounts of 73,000 principle dwelling mortgages remain in arrears.⁵ This submission will examine the development and implementation of the Strategy in line with the requirements of human rights based housing strategies as outlined by the Committee on Economic, Social and Cultural Rights in its General Comment 4.

Legislative Implementation of *Rebuilding Ireland*

The lack of a constitutional and justiciable right to housing in Irish law is one of the recurring challenges faced when implementing State housing strategies in the Irish context. As such, there is no constitutional or legislative basis for the broad implementation of *Rebuilding Ireland*. A selection of the 84 action points contained in the strategy pertains to the enactment of legislation for the improvement of different elements of the housing system. As implementation of the Action Plan has progressed, additional legislative requirements have also been identified. The primary action points that require legislative implementation pertain to planning processes (actions 2.12, 3.6, 3.9, 5.9), and regulation of the private rented sector (actions 4.2, 4.9). There has been a broad welcome to amendments to the *Residential Tenancies Acts* including the extension of tenancy lengths from four to six years, the introduction of a rent predictability measure that

¹ Department of Housing, Planning, Community and Local Government, '*Rebuilding Ireland Action Plan on Housing and Homelessness*', July 2016, http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf.

² DHPLG, '*Homelessness Report September 2017*', October 2017, http://www.housing.gov.ie/sites/default/files/publications/files/homeless_report_-_september_2017.pdf.

³ Housing Agency, '*Summary of Social Housing Needs Assessment 2016*', December 2016, <https://www.housingagency.ie/Housing/media/Media/Publications/Summary-of-Social-Housing-Assessment-Needs-2016.pdf>.

⁴ Daft.ie, '*The Daft.ie Rental Price Report*', November 2017, <https://www.daft.ie/report/2017-Q3-rentalprice-daft-report.pdf>.

⁵ Central Bank of Ireland, '*Residential Mortgage Arrears and Repossession Statistics*', June 2017, <https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/mortgage-arrears/residential-mortgage-arrears-and-repossessions-statistics-june-2017.pdf?sfvrsn=7>.

restricts rent increases by 4% per annum in defined rent pressure zones and the extension of additional protections for tenants from illegal evictions.⁶ However, we are concerned that these measures do not go far enough given the significant crisis. Worryingly, none of the homeless-specific action points in *Rebuilding Ireland* requires legislative implementation. One glaring omission in this regard is the absence of an action point to amend the *1988 Housing Act* to place a clear legal obligation on Local Authorities to prevent homelessness from occurring and the imposition of a legal duty on local Authorities to secure housing for those that do become homeless.⁷

Meaningful engagement with and participation of those affected

Article 25 of the International Covenant on Civil and Political Rights grants every citizen the right and opportunity to take part in the conduct of public affairs.⁸ In advance of the development and publication of *Rebuilding Ireland*, the Government sought the views and opinions of all interested stakeholders across the housing and homelessness sectors. Numerous housing and homelessness organisations, including the Simon Communities in Ireland, contributed to the public consultation process. These organisations are at the front line, delivering services to people at risk of or experiencing homelessness and are well placed to communicate the complexity of homelessness and the appropriate solutions. However, public consultations to date have failed to specifically seek or facilitate the views of those experiencing homelessness preferring instead to seek the views of ‘members of the public’.⁹ The voices of people experiencing homelessness and organisations working closely with them must be at the core of any State housing and homelessness strategy and guide implementation.

Clear goals and reasonable timelines

In February 2013, the Government published its *Homelessness Policy Statement* that aimed to end homelessness in the State by 2016 using a housing led approach.¹⁰ The Government failed to meet this target. As a possible result, *Rebuilding Ireland* does not contain a clear timeline for the elimination of homelessness in the State. Similarly, a concrete timeline for the delivery of adequate housing for all is absent in favour of a general five-year plan from 2016 to 2021. *Rebuilding Ireland* does however contain specific timelines and goals across the 84 action points of the strategy. We are most concerned that some of the key goals and timelines pertaining to ending homelessness and the provision of adequate and affordable housing are largely either behind schedule or are unlikely to materialise at all. Recently revised social housing targets for the duration of *Rebuilding Ireland* aim to provide 50,000 new social housing homes by 2021. This 50,000 target is a combination of new build houses, refurbishment projects, and property acquisitions. Delivery of new-build social houses has been worryingly slow with only 665 units delivered in 2016 and a total build and refurbishment target in 2017 of only 1,350 units. Rapid Build Housing (RBH) targets are severely behind schedule. According to the most recent data, only 22 RBH units have been delivered. This is well-short of the targeted delivery of 200 units by Q4 2016 and the delivery of a further 800 units by Q4 2017. The latest *Rebuilding Ireland Quarterly Progress* report is a tacit admission that the Government will not meet these targets.¹¹ Tied to this target was the goal that by mid-2017 families would be moved out of emergency accommodation, ensuring hotels be only used in limited circumstances for emergency accommodation for this household type.¹² According to the most recent figures available, 1,455 families remain trapped in emergency accommodation.¹³

Identification and allocation of needed resources

The preliminary budgetary allocation for *Rebuilding Ireland* over the five-year duration of the plan was €5.35 billion. Following the recent State budget, this figure has increased due to additional commitments in terms of social housing delivery.¹⁴ Social housing capital expenditure has however reduced significantly from €1.54 billion in 2008 to €680 million in 2017. Individual action points across *Rebuilding Ireland* contain budgetary

⁶ PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES ACT 2016, <http://www.irishstatutebook.ie/eli/2016/act/17/enacted/en/html>.

⁷ Housing Act, 1988, <http://www.irishstatutebook.ie/eli/1988/act/28/enacted/en/html>.

⁸ Article 25, ICCPR, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁹ Public Consultation on the Review of *Rebuilding Ireland*, <http://www.housing.gov.ie/housing/public-consultation-review-rebuilding-ireland>.

¹⁰ DELCG, ‘*Homelessness Policy Statement*’, February 2018, <https://www.iasw.ie/attachments/211893b3-1bd6-4577-8685-1d296cd38e28.PDF>.

¹¹ *Rebuilding Ireland Third Quarterly Progress Report*, May 2017, <http://rebuildingireland.ie/news/rebuilding-irelands-third-quarterly-progress-report/>.

¹² *Ibid* 1, at p. 17.

¹³ *Ibid* 2.

¹⁴ Department of Finance and Public Expenditure and Reform, Budget 2018, http://www.budget.gov.ie/Budgets/2018/Documents/Budget_2018_Financial_Statement.pdf.

allocations and identify available resources for the implementation of the particular action point. Aside from capital and current expenditure, publicly owned land is the primary resource available to the State. *Rebuilding Ireland* seeks to manage State lands to ensure adequate and affordable supply of land for housing output including social housing and affordable housing.¹⁵ Given that 91,600 households are on the social housing waiting list, the Simon Communities in Ireland believe that the use of publicly owned land must primarily focus on delivering social housing and new models of affordable housing. Furthermore, the zoning of public land for private development must be balanced with conditionality from investors in terms of security of tenure, rent certainty, quality of housing and amenities in addition to social and affordable housing contributions.

Responsibilities of both public and private actors

Section 42(1) of the Irish Human Rights and Equality Act places a legal obligation on all public bodies in Ireland to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone effected by their policies and plans.¹⁶ The Simon Communities in Ireland argue that this legal obligation applies to the carrying out of specific functions identified within *Rebuilding Ireland*. Each action point in *Rebuilding Ireland* is assigned an owner. Owners in this regard are Government departments, State agencies and NGOs working in housing and homelessness. The Strategy charges NGOs, who form a large cohort of the ‘owner’ stakeholders, with the delivery of vital action points. This includes responding to the needs of homeless households, providing support for homeless people with mental health and addiction issues and assisting young people leaving State care. NGOs operating as Approved Housing Bodies (AHBs) must construct and deliver social housing to meet the needs of vulnerable households. Implementation of the action points ‘owned’ by NGOs must be continually supported to have impact. AHBs are a vital component of the social housing system and the Government must fully resource them to deliver social and affordable housing for those with the greatest need. Similarly, Homelessness NGOs must be fully resourced to carry out their mandate under *Rebuilding Ireland* and responding to growing numbers of households becoming homeless or at risk of homelessness. It is disappointing that Budget 2017 commitments to deliver additional funding for the provision of additional care and case management assessment and intensive addiction and mental health programmes for people using homeless services have fallen €2 million short of the 2017 budgetary target of €6 million.

Establish effective and independent accountability mechanisms

Section 42(2) of the Irish Human Rights and Equality Act places a legal duty on public bodies (Public Sector Duty)¹⁷ to report in a manner accessible to the public on their developments and achievements with regard to their obligations under section 42(1) of the Act. The Simon Communities in Ireland argue that this should include the varying responsibilities a public body has as an ‘owner’ of specific actions under *Rebuilding Ireland*. The primary accountability mechanism used to assess implementation of *Rebuilding Ireland* is the use of quarterly progress reports.¹⁸ Since the publication of *Rebuilding Ireland* in July 2016, there have been only three quarterly progress reports produced. These reports highlight where targets are reached or missed and provide updates on changes of approach with regard to particular action points. More recently, the Government has undertaken a complete review of *Rebuilding Ireland* seeking submissions from stakeholders and members of the public. Unfortunately, this process has not culminated in the publication of a report outlining adjustments to the original strategy, leaving key stakeholders and ‘owners’ of key action points reliant on ongoing and rolling ministerial announcements pertaining to different pillars of the strategy.¹⁹ In a similar vein, there is criticism of the Government in its production and dissemination of key housing statistics including social housing output and private housing completions.^{20,21}

¹⁵ Ibid 1, at p. 14.

¹⁶ Irish Human Rights and Equality Commission Act 2014, <http://www.irishstatutebook.ie/eli/2014/act/25/section/42/enacted/en/html#sec42>.

¹⁷ <https://www.ihrec.ie/our-work/public-sector-duty/>

¹⁸ *Rebuilding Ireland, Quarterly Progress Reports*, <http://rebuildingireland.ie/news/rebuilding-irelands-first-quarterly-progress-report/>.

¹⁹ Department of Housing, Press Office, <http://www.housing.gov.ie/news>.

²⁰ Irish Times, ‘State expects 19,000 houses to be built by year end’, September 2017, <https://www.irishtimes.com/business/construction/state-expects-19-000-houses-to-be-built-by-year-end-1.3235558>.

²¹ Irish Times, ‘Councils build 161 social houses in first nine months of 2016’, August 2017, <https://www.irishtimes.com/news/social-affairs/councils-build-161-social-houses-in-first-nine-months-of-2016-1.3201528?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fsocial-affairs%2Fcouncils-build-161-social-houses-in-first-nine-months-of-2016-1.3201528>.

Ensure access to justice for claimants of the right to housing

There is no express right to housing in Irish law. As mentioned above, the European Convention on Human Rights (ECHR) was incorporated into Irish law in 2003 through the European Convention on Human Rights Act 2003. The right to housing and channels to access justice for claimants of such a right are not contained in *Rebuilding Ireland*. *Rebuilding Ireland* considers housing to be ‘a basic human and social requirement’.²² This is largely a reflection of the legal status quo. Under the *Housing Act 1988*, the Local Authorities are not obliged to provide housing in individual cases nor emergency accommodation when a person is homeless. In practice emergency accommodation is provided but it remains a ‘grey area’. The rights and duties attached to social housing provision in Ireland are outlined across a range of primary and secondary legislative measures, none of which provide for a right to social housing. The *Residential Tenancies Act 2004* largely governs the right to housing in the context of the private rented sector. Under this Act, tenants receive limited protections in terms of security of tenure and rent predictability, and can access the independent Residential Tenancies Board appeals process in cases of illegal evictions and tenant-landlord disputes. These rights fall significantly short of what could be considered a right to housing in the private rented sector.

Ensure co-ordination of relevant ministries, authorities and different levels of government

The Strategy acknowledges the cross-departmental responsibility for the delivery of key actions in *Rebuilding Ireland*.²³ The foreword by former Taoiseach²⁴ Enda Kenny acknowledges that *Rebuilding Ireland* is a cross-Government plan subject to regular Government cabinet review through the cabinet committee on housing, chaired by the Taoiseach.²⁵ Through this mechanism each Government department and agency is subject to review by a cabinet committee to ensure individual targets are met. Relevant departments include; the Department of Housing, Planning and Local Government, the Department of Health/Health Service Executive (HSE), the Department of Justice and Equality, the Department of Employment Affairs and Social Protection and the Department of Children and Youth Affairs. As mentioned above, key Government departments and agencies are designated ‘owners’ of specific actions relevant to their departmental briefs.

Conclusion

A constitutional right to housing in Irish law would provide the necessary legal obligations and protections for the effective design and implementation of all future State housing strategies and associated policies. *Rebuilding Ireland* satisfies to a limited extent the requirements of human rights based housing strategies as identified by the Committee on Economic, Social and Cultural Rights. The lack of a legislative basis for its implementation has resulted in the State’s failure to meet significant targets with regard to moving away from emergency led responses to homelessness and the delivery of much needed social and affordable housing. Although subject to cabinet committee review, responsibility and accountability for the delivery of significant targets under *Rebuilding Ireland* cannot be challenged through the courts to determine whether Government agencies are taking reasonable steps to ensure the delivery of these targets. Failure by successive Governments to meet headline targets outlined in State housing strategies further illustrates the need to place State housing strategies on a legal rights-based footing.

²² Ibid 1, at p. 8.

²³ Ibid 1, at p. 5.

²⁴ Prime Minister

²⁵ Ibid 1. At p. 5.

About Simon Communities

The Simon Communities in Ireland are a network of eight regionally based independent Simon Communities based in Cork, Dublin, Dundalk, Galway, the Midlands, the Mid West, the North West and the South East that share common values and ethos in tackling all forms of homelessness throughout Ireland, supported by a National Office. The Simon Communities have been providing services in Ireland for over 45 years. The Simon Communities deliver support and service to over 8,300 individuals and families throughout Ireland who experience – or are at risk of – homelessness every year.

Whatever the issue, for as long as we are needed, Simon’s door is always open. For more information please visit

Services include:

- Housing provision, tenancy sustainment & settlement services, housing advice & information services helping people to make the move out of homelessness & working with households at risk;
- Specialist health & treatment services addressing some of the issues which may have contributed to homeless occurring or may be a consequence;
- Emergency accommodation & support providing people with a place of welcome, warmth & safety;
- Soup runs & rough sleeper teams who are often the first point of contact for people sleeping rough.

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Appendix 1: Housing and homelessness crisis in numbers

- During one week in September 2017 (latest available figures), there were 8,374 people living in emergency accommodation, including 3,233 adults without dependents in their care and 1,455 families composed of 2,017 adults and 3,124 children. (DHPLG, September 2017).
- On the night of 4th April 2017, there were 161 people without a place to sleep in Dublin City. Unfortunately, Dublin is the only area where an official rough sleeper count takes place, making it difficult to get a countrywide rough sleeping picture. (DRHE 2016).
- According to Census 2016, a total of 6,909 people were enumerated as homeless on Census night 2016. Unlike Census 2011 this figure does not include those people living in Long Term Accommodation (LTA) which amounted to 1,772 people on Census night 2016. Including those living in LTA a direct comparison with Census 2011 reveals a 127.9% increase in homelessness in the intervening period between Census 2011 and Census 2016, representing a total of 8.678 people.
- Homelessness and housing insecurity are more acute and visible in our cities but the Simon Communities are working at capacity countrywide – in urban and rural areas.
- There are 91,600 households on the social housing waiting list. Two-thirds of households on the list were living in the private rented sector and one fifth living with parents, relatives or friends. 5,159 households (5.6%) had at least one member considered to be homeless, a proportion which has doubled since 2013 (Housing Agency, 2016).
- Social housing commitments will take time to begin to deliver housing. This is far too long for the people we work with and those at risk of homelessness. In 2016, just 665 new social housing units were built.
- Average national rent now stands at €1,198. (Daft.ie Rental Report Q3 2017).
- *Locked Out of the Market VIII* (August 2017 Simon Communities) found that 91% of rental properties are beyond the reach for those in receipt of state housing support.
- Over 73,000 principle dwelling mortgage accounts are in arrears. 44% of all mortgage arrears are in arrears of over 720 days (Central Bank of Ireland, June 2017).
- At the end of June 2017, 19,627 or 15% of buy-to-let mortgages, were in arrears of more than 90 days. (Central Bank of Ireland, June 2017).
- 790,000 people are living in poverty in Ireland (*Budget Choices* (July 2017) Social Justice Ireland).
- In 2015, 25.5% of the population experienced two or more types of enforced deprivation. (CSO Survey on Income and Living Conditions 2015).
- According to Census 2016, there are 183,312 vacant houses nationwide.