



## **Mercy Law Resource Centre**

### **Submission to the Department of Justice and Equality in respect of the UN Universal Periodic Review - Ireland (2016)**

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**Mercy Law Resource Centre Limited is a company limited by guarantee and not having a share capital, registered in Dublin, Ireland. Co.Reg No:471072. It is also a registered charity, Chy No:18698. Directors: Anne Doyle, Jo Kennedy, Ciara McGrath, Liam Twohig, Helena O'Donoghue, Patrick Stagg, Gerry Whyte, Deirdre Quigley, Niall Farrell, Margaret Roche.**



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### 1. Introduction

Mercy Law Resource Centre (MLRC) is an independent law centre which provides free legal advice and representation, in an accessible way, to people who are homeless or at risk of homelessness in the areas of housing and related social welfare law. MLRC provides five key services: free legal advice clinics in homeless hostels and other centres throughout Dublin; legal representation in public interest strategic cases; policy work; legal support and training to organisations working in the field of homelessness; and a befriending service.

### 2. The Right to Housing

Ireland is a party to a number of international legal instruments which protect the right to housing.<sup>1</sup> Article 25 (1) of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide for the right to housing. Article 11 of the ICESCR recognises “*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.*”<sup>2</sup> As highlighted by the Committee on Economic, Social and Cultural Rights (CESCR), the right to adequate housing 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.<sup>3</sup> Seven key aspects of the right to housing were identified in CESCR General Comment 4, paragraph 8, including legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>4</sup>

### 3. Irish Law and Progress since the last UPR Process

There is no right to housing in Irish law. Ireland has also opted out of Article 31 of the European Social Charter. In its UPR report of 2011, it was recommended that Ireland, “*consider incorporating...the right to housing (Portugal) and sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) (Ecuador).*”<sup>5</sup> A report carried out by the Special Rapporteur on Human Rights and Extreme Poverty also made a number of recommendations to Ireland. One of the recommendations was to “*strengthen the legal and institutional framework by giving domestic legal effect to Ireland’s international human rights obligations, and ratifying and incorporating into domestic law international treaties to which it is not*

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<sup>1</sup>Ireland is also party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Article 43); Convention on the Rights of Persons with Disabilities and its Optional Protocol (Article 29); the Convention on the Rights of the Child (Article 27); International Covenant on Civil and Political Rights (Article 17); International Convention on the Elimination of All Forms of Racial Discrimination (Article 5); UN Convention on the Elimination of All Forms of Discrimination against Women (Article 14).

<sup>2</sup>International Covenant on Economic, Social and Cultural Rights  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>3</sup> See CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) para 7 Document E/1992/23 <http://www.refworld.org/docid/47a7079a1.html>

<sup>4</sup> CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) para 8 Document E/1992/23  
<http://www.refworld.org/docid/47a7079a1.html>

<sup>5</sup> See recommendation 107.4 in Report of the Working Group on the Universal Periodic Review, Ireland (21 December 2011)  
[http://www.rightsnow.ie/assets/60/E91603AB-AE06-94B9-F9BFA56D21A3ABED\\_document/UPR\\_HRC\\_Working\\_Group\\_Report\\_on\\_Ireland\\_Dec\\_2011.pdf](http://www.rightsnow.ie/assets/60/E91603AB-AE06-94B9-F9BFA56D21A3ABED_document/UPR_HRC_Working_Group_Report_on_Ireland_Dec_2011.pdf)



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yet party.”<sup>6</sup> It is encouraging that since then Ireland has signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.<sup>7</sup> Crucially, however, Ireland is yet to ratify it.<sup>8</sup>

### 4. Effect of Lack of Protection to the Right of Housing- the Crisis in Homelessness

4.1 We welcome the commitment of the government in their Homeless Policy Statement in 2013 to end long-term homelessness by the end of 2016, and to eliminate the need to sleep rough by implementing a “housing-led approach.”<sup>9</sup> This approach recognises that “long-term secure housing is the best outcome for people affected by homelessness. By moving away from expensive emergency or shelter type accommodation better use can be made of scarce resources”<sup>10</sup>. However, there has been a lack of concrete steps to achieve this. This has been especially exposed during the current homelessness crisis.<sup>11</sup>

4.2 There is no right to housing in Irish law. The gap in protection that this creates has been put in stark light with the homelessness crisis that Ireland is currently experiencing. There are serious problems of homelessness, lack of social housing and inadequate housing. In 2014 and 2015, as the effects of the recession and recovery lead to rising rents and the repossession by banks of private accommodation in mortgage arrears<sup>12</sup>, there has been a major and unprecedented increase in the number of families being made homeless.<sup>13</sup> Under Irish law, the State does not have an obligation to

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<sup>6</sup> Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Addendum, Mission to Ireland, 17 May 2011, see “Conclusions and recommendations” on page 22.

<sup>7</sup> Universal Periodic Review IRELAND National Interim Report, (March 2014) [http://www.rightsnow.ie/assets/55/65D55291-1129-4527-B72ADF0F438B2BEA\\_document/UPR-National\\_Interim\\_Report-Ireland.pdf](http://www.rightsnow.ie/assets/55/65D55291-1129-4527-B72ADF0F438B2BEA_document/UPR-National_Interim_Report-Ireland.pdf)

<sup>8</sup> Even if ratified, further steps have to be taken to allow individuals to enforce their economic, social and cultural rights in the national courts. As Ireland is a dualist state, the Optional Protocol must be incorporated into Ireland’s domestic law.

<sup>9</sup> Homeless Policy Statement (February 2013), Department of the Environment, Community and Local Government <http://www.environ.ie/en/PublicationsDocuments/FileDownload,32434,en.pdf>

<sup>10</sup> Homeless Policy Statement (February 2013), Department of the Environment, Community and Local Government <http://www.environ.ie/en/PublicationsDocuments/FileDownload,32434,en.pdf>

<sup>11</sup> See the Irish Times, 14 July 2015: <http://www.irishtimes.com/news/social-affairs/over-42-000-on-dublin-city-council-housing-waiting-list-1.2283900>. Source: Dublin City Council Housing Allocations Report, July 2015.

<sup>12</sup> In 2014, 1,063 orders for possession were made by the Circuit Court, a 193% increase on 2013. Source: Court Service Annual Report 2014, at page 36. Available at [www.courts.ie](http://www.courts.ie), publications. By the end of 2014, a total of 110,366 mortgages on private homes were in arrears with almost 52% of those- more than 57,000 – in arrears for more than 360 days. “Residential Mortgage Arrears and Repossessions Statistics: Q1 - 4, 2014”, Central Bank of Ireland statistical release issued 6 March 2015, available at <http://www.centralbank.ie/press-area/press-releases/Pages/ResidentialMortgageArrearsandRepossessionsStatisticsQ12014.aspx>.

<sup>13</sup> In Q1 2015 2,987 adults accessed homeless accommodation. 19% of those had never used homeless accommodation before. On 31 March 2015, 1,868 adults were in emergency accommodation. Source: Dublin Region Homeless Executive: [www.homelessdublin.ie](http://www.homelessdublin.ie). The figures available for those experiencing homelessness in Ireland are less detailed. In April 2015, 295 families experiencing homelessness were living in commercial hotels in Dublin and 63 new families presented as homeless in Dublin. Between 20 and 26 April 2015: 504 families, including 1118 children, were recorded as homeless in Ireland. Source: Department of the Environment report: Homeless Persons April 2015. <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/>



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provide such emergency accommodation<sup>14</sup>. There is not enough State emergency accommodation. Families, often with very young children, are regularly being accommodated by the State on a night-to-night or very temporary basis in different bed and breakfasts and hotels, most frequently in one room for a whole family, almost always with no cooking facilities, often long distances from the children's schools and the family supports<sup>15</sup>.

4.3 The Committee on Economic, Social and Cultural Rights in its third periodic report in 2015 made a number of recommendations to Ireland as it was concerned at the overall difficult housing situation<sup>16</sup>. It recommended that the Ireland *“review its policies with a view to making them more effective in responding to the real needs of the population, especially disadvantaged and marginalised groups”*<sup>17</sup>, *“to increase the number of social housing units so as to satisfy the high demand and to reduce the long waiting list”*<sup>18</sup> and to *“meet the critical needs of those who are, or at the risk of being homeless”*<sup>19</sup>.

4.4 In the Constitutional Convention<sup>20</sup> in March 2014 an overwhelming 85 percent supported an amendment to the Constitution in order to strengthen the protection of economic, social and cultural rights. 84 percent specifically voted for the right to housing to be enshrined in the Constitution.<sup>21</sup> The Government has not yet indicated whether it will put the proposal forward for constitutional referendum.

### Recommendations:

- **The recommendation of the Constitutional Convention to incorporate the protection of ESC rights, including specifically the right to housing, into the Constitution should be put to the people in a constitutional referendum.**

<sup>14</sup> The Housing Act 1988 places particular responsibility on local authorities to provide for the accommodation needs of homeless persons. Local authorities are obliged to carry out regular assessments of accommodation needs in their area. The local authority is not obliged to provide housing in individual cases. The Act requires the local authority to take the needs of homeless people into account in an overall sense in its provision of housing under the Housing Acts. There is, however, no express obligation in the Act, nor in law, to provide emergency accommodation.

<sup>15</sup> The figures available for those experiencing homelessness in Ireland are less detailed. In April 2015, 295 families experiencing homelessness were living in commercial hotels in Dublin and 63 new families presented as homeless in Dublin. Between 20 and 26 April 2015: 504 families, including 1118 children, were recorded as homeless in Ireland. In April 2015, 295 families experiencing homelessness were living in commercial hotels in Dublin and 63 new families presented as homeless in Dublin. Between 20 and 26 April 2015: 504 families, including 1118 children, were recorded as homeless in Ireland. Source: Department of the Environment report: Homeless Persons April 2015.

<sup>16</sup> See Adequate Housing, C.26 of the United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third period report of Ireland (E/C.12/IRL/CO/3), June 2015, p.8

<sup>17</sup> See C.26a) *“Review policies with a view to making them more effective in responding to the real needs of the population, especially disadvantaged and marginalised individuals and groups”*

<sup>18</sup> See C.26b) *“Step up its efforts to increase the number of social housing units so as to satisfy the high demand and to reduce the long waiting list.”*

<sup>19</sup> See C.26c) *“Take all necessary measures to meet the critical needs of those who are, or at the risk of being, homeless”*

<sup>20</sup> Convention on the Constitution, *Ninth Report of the Convention on the Constitution: Conclusions and Final Recommendations* (2014) Appendix D.

<sup>21</sup> *“Constitutional Convention Votes in Favour of Reforming Economic, Social & Cultural Rights in the Constitution”*, see *“Final Ballots and Results”* <https://www.constitution.ie/AttachmentDownload.ashx?mid=adc4c56a-a09c-e311-a7ce-005056a32ee4>



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- **The right to housing should be recognised in Irish law and assimilated into national and local government housing policy.**
- **The homelessness crisis should be prioritised with a view to introducing immediate relief and long-term solutions.**
- **The provision of social housing should be increased and fast-tracked.**

### 5. Legal Security of Tenure

5.1 We welcome the Government's recent repeal of Section 62 of the Housing Act 1966 and its replacement with Part 2 of the Housing (Miscellaneous Provisions) Act 2014 (the 2014 Act). Section 62 of the Housing Act 1966<sup>22</sup> was a summary procedure for the recovery of possession of local authority housing. Under this procedure, a local authority was not obliged to give reasons as to why it was seeking to recover possession and there was no independent or impartial hearing of the merits of the case.

5.2 The new provisions in the 2014 Act appear to envisage that, in most cases, an application to the District Court for eviction and possession will be as a last resort, when less drastic measures have failed. The Act introduces a preliminary "Tenancy Warning" measure which, in summary, provides for the warning of the tenant, having regard to fair procedures, to desist from the act which is in breach of the tenancy. The Act introduces a welcome independent review mechanism for a tenancy warning. If a tenant breaches a tenancy warning the local authority may apply to the District Court for possession. The District Court can only grant an order for possession if it appears to the Court that the housing authority has grounds for the recovery of possession, that the recovery of possession by the housing authority is a proportionate response to the occupation of the dwelling by the person concerned, and that it is reasonable having regard to all the circumstances of the case to make the order<sup>23</sup>.

5.3 The Act however has a number of potentially problematic provisions. When issuing a possession application, a housing authority is obliged, not less than ten working days before the hearing in the District Court, to give the tenant notice in writing of all relevant details related to proceedings<sup>24</sup>. This window of notification is very narrow. However, in some cases the Act allows the housing authorities to narrow it even further. The Act provides in s 12(3)(b) that where the authority is "satisfied that the breach of tenancy agreement to which the possession relates has had or is having a significant or persistent detrimental effect on the quality of life of those in the locality", the authority need only give a copy the possession application to the tenant "no later than at the time it makes the possession application"<sup>25</sup>. This provision gives the tenant practically no time to adequately respond to the proceedings for eviction.

<sup>22</sup> See s.62 of the Housing Act (1966) <http://www.irishstatutebook.ie/1966/en/act/pub/0021/sec0062.html#sec62>

<sup>23</sup> Housing Act (1966) s.12 <http://www.irishstatutebook.ie/2014/en/act/pub/0021/sec0012.html#sec12>

<sup>24</sup> s.12(3)(a) of Housing (Miscellaneous Provisions) Act 2014, <http://www.irishstatutebook.ie/2014/en/act/pub/0021/print.html#sec12>

<sup>25</sup> S.12 (2) (b) of the Housing (Miscellaneous Provisions) Act (2014), <http://www.irishstatutebook.ie/2014/en/act/pub/0021/sec0012.html#sec12>



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5.4 Another major issue with the new eviction procedure is s.12 (7) of the new Housing (Miscellaneous Provisions) Act 2014.<sup>26</sup> While under the new Act a Court is generally obliged to only grant an order for possession where it is “reasonable”<sup>27</sup> and proportionate to do so, s.12 (7) states that where a person in occupation of the dwelling does not, “without due cause”, appear at the hearing for possession, the Court may, where it is satisfied that there is a “prima facie” case for doing so, grant an order.<sup>28</sup> This appears to allow the Court, in certain instances, to omit an assessment of the proportionality of a possession application. It is inadequate that this significant power is highly discretionary and fraught with ambiguity. There is also importantly no definition of what constitutes “due cause” for failing to appear a hearing. The consequences of an eviction can be drastic, including being excluded from the housing list.

5.5 There is also a great difficulty with the process in that there is no legal aid available for the proceedings. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right to fair procedures and declares that “all persons should be equal before the courts and tribunals”.<sup>29</sup> The civil legal aid scheme run by the State is not free and is subject to a number of exemptions. Possession proceedings have been interpreted as falling within one of the restrictions to the entitlement to Civil Legal Aid<sup>30</sup>. In this area of law involving a person’s home, privacy and dignity, the threat and process of seeking possession for a local authority tenant is most often a hugely stressful and chaotic time.

5.6 Without access to free legal aid, local authority tenants are, in the vast majority of cases, unable to access any legal representation due to the high costs involved. If housing issues are not included in the legal aid scheme, the State may be denying access to people on lower incomes to the legal system. The Special Rapporteur on Poverty in 2011, aware of the economic downturn in Ireland and budgetary cuts underway, recommended that Ireland provide this vital legal service to those living in poverty facing eviction proceedings and local authority issues.<sup>31</sup> Similarly, the United Nations Committee on Economic, Social and Cultural Rights, recommended that “the state party

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<sup>26</sup> S.17 of Housing (Miscellaneous Provisions) Act (2014)  
<http://www.irishstatutebook.ie/2014/en/act/pub/0021/print.html#sec17>

<sup>27</sup> Section 12 (9) (a) states that: Without prejudice to subsection (7), the District Court shall make a possession order in respect of the dwelling the subject of a possession application under this section if it appears to the Court that the housing authority has grounds for the recovery of possession and that it is reasonable having regard to all the circumstances of the case to make the order. <http://www.irishstatutebook.ie/2014/en/act/pub/0021/print.html#sec12>

<sup>28</sup> Section 12 (7) of the Housing (Miscellaneous Provisions) Act 2014 states: Where the tenant does not, without due cause, appear at the hearing of the possession application under this section ... the District Court may, where it is satisfied that there is a prima facie case for doing so, grant an order in the terms sought by the authority.  
<http://www.irishstatutebook.ie/2014/en/act/pub/0021/print.html#sec12>

<sup>29</sup> Article 14 of the International Covenant on Civil and Political Rights,  
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>30</sup> Section 28(9)(a)(ii) “disputes concerning rights and interests in or over land” of the Civil Legal Aid Act (1995)  
<http://www.irishstatutebook.ie/1995/en/act/pub/0032/print.html#sec28>

<sup>31</sup> Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Addendum, Mission to Ireland, 17 May 2011, see para 10, page 2.



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*ensure the provision of free legal aid in a wider range of areas, including through expanding the remit of the Civil Legal Aid Scheme.”<sup>32</sup>*

### **Recommendations:**

- **The Housing (Miscellaneous Provisions) Act 2014 should be amended to ensure reasonable notice must be given of possession proceedings to ensure proper time for a respondent tenant to defend the proceedings, in accordance with constitutional fair procedures;**
- **The State legal aid scheme should be expanded to include State legal aid in cases involving eviction from social housing.**

### **6. Habitability**

6.1 CESCR General Comment 4 provides that *“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.”<sup>33</sup>*

6.2 Many local authority homes are not maintained to an adequate standard and many regeneration projects have been delayed or put on hold. A collective complaint has been deemed admissible for further investigation by the European Committee of Social Rights against Ireland, outlining appalling and widespread sub-standard housing issues across 20 Local Authority housing estates. The complaint states that these poor conditions in social housing violate key articles of the Revised European Social Charter, to which Ireland signed up in 2000, including the right to health, the right of families and children to have social, legal and economic protection and the right to protection against poverty and social exclusion.<sup>34</sup>

6.3 The Residential Tenancies Act 2004<sup>35</sup> established minimum obligations applying to private law landlords and tenants; provisions relating to rent settings and review<sup>36</sup>; security of tenure for tenants<sup>37</sup>; and procedures for the termination of tenancies<sup>38</sup>, including required notice periods linked to the duration of the tenancy. It also established the Private Residential Tenancies Board (PRTB) which provides independent and impartial mediation and adjudication and is a financially efficient venue for landlords and tenants to make complaints to if there have been any failures to comply with, or disputes regarding the terms of, tenancy agreements e.g. maintenance, rent reviews, evictions etc.<sup>39</sup> This Act does not apply to social housing tenancies. As local authority

<sup>32</sup> See Legal Aid, s.C.8 of the United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third period report of Ireland (E/C.12/IRL/CO/3), June 2015, p.2. The CESCR noted there also its concern *“at the lack of free legal aid services, which prevents especially for disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies.”*

<sup>33</sup> See CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) para 8 (d) Document E/1992/23 <http://www.refworld.org/docid/47a7079a1.html>

<sup>34</sup> *FIDH (International Federation for Human Rights) v Ireland* (18 July 2014) Collective Complaint lodged under the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and in compliance with Rules 23 and 24 of the Rules of the Committee [http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC110CaseDoc1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC110CaseDoc1_en.pdf)

<sup>35</sup> Residential Tenancies Act 2004 <http://www.irishstatutebook.ie/2004/en/act/pub/0027/>

<sup>36</sup> See Part 3 of Act <http://www.irishstatutebook.ie/2004/en/act/pub/0027/sec0019.html#part3>

<sup>37</sup> See Part 4 of Act <http://www.irishstatutebook.ie/2004/en/act/pub/0027/sec0025.html#part4>

<sup>38</sup> See Part 5 of Act <http://www.irishstatutebook.ie/2004/en/act/pub/0027/sec0057.html#part5>

<sup>39</sup> See Part 8 of Act <http://www.irishstatutebook.ie/2004/en/act/pub/0027/sec0149.html#part8>



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tenants are generally households on lower income this discrepancy in treatment is more likely to affect lower income households.

6.4 Access to justice is therefore a serious problem for local authority tenants. While the 2014 Act has introduced fair procedures and independent review in respect of the newly introduced “tenancy warnings”<sup>40</sup>, if such a tenant has a dispute relating to aspects of their tenancy, such as maintenance and repair issues, or concern over rent, they have no system of review, appeal or independent court to force their landlord, the local authority, to take action or desist from the particular action. A tenant could potentially sue for damages for breach of contract in the District Court but in order to apply for injunctive relief they must go to the Circuit Court or High Court which are costly, extremely adversarial, and very intimidating particularly if a tenant has to represent themselves. The CESCR in its concluding observations noted this concern regarding “the lack of effective complaint mechanisms for local authority tenants on tenancy related issues.” Therefore it was recommended that the State establish an effective complaint mechanism for such issues.<sup>41</sup>

**Recommendation: The remit of the PRTB should be extended to include local authority tenancies in relation to eligibility for social housing, repairs/ maintenance, rent and rent arrears.**

### 7. Affordability and Accessibility

7.1 CESCR General Comment 4 provides that “adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources...”<sup>42</sup> The CESCR commented on affordability, stating that “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...”<sup>43</sup>

<sup>40</sup> See s.7 of the Housing (Miscellaneous Provisions Act) 2014 <http://www.irishstatutebook.ie/2014/en/act/pub/0021/sec0007.html#sec7>

<sup>41</sup> See Adequate Housing, C.26 (f) of the United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third period report of Ireland (E/C.12/IRL/CO/3), June 2015, p.8

<sup>42</sup>(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; “See para. 8.e) (accessibility) CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Document E/1992/23 <http://www.refworld.org/docid/47a7079a1.html>

<sup>43</sup> (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; See CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) para 8.c) (affordability) Document E/1992/23 <http://www.refworld.org/docid/47a7079a1.html>



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Ireland is in the middle of a homelessness crisis. There is a major lack of social housing<sup>44</sup>, large cuts have been made to the social housing budget over the years<sup>45</sup> and there is a very long social housing waiting list of up to several years, even for those with priority due to being homeless, or due to having a disability.<sup>46</sup> Most often the only option for people in need of social housing is to find private rented accommodation and social welfare supplement. There are a number of problems with this.

7.2 The vast majority of rental accommodation charge rents substantially above the rent supplement limits<sup>47</sup>. Across the country, the housing crisis and the shrinking number of houses available has contributed to increased rental costs<sup>48</sup>. Rent payment levels for the rent supplement scheme are only reviewed every 18 months, yet rent rates change much faster than that. The Government's recent decision<sup>49</sup>, in spite of strong upward pressure on private rents<sup>50</sup>, to maintain Rent Supplement at 2013 levels is leading to insecurity of tenure and the risk of homelessness. There are also lengthy delays in processing the applications for Rent Supplement, and rents are paid in arrears, not in advance like the market norm. The system of rent supplement is therefore not fit for purpose.<sup>51</sup> Moreover, the vast majority of landlords do not accept rent supplement<sup>52</sup> and there is evidence that landlords are discriminating against Rent Supplement tenants because of their welfare status.<sup>53</sup> Equality legislation does not prohibit discrimination on the grounds of socio-economic status.

7.3 A new Housing Assistance Payment (HAP) is being rolled out in Ireland to replace rent supplement<sup>54</sup>. HAP represents a very important change to the social housing assistance landscape.

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<sup>44</sup> Budget 2015 announced that €2.2 billion had been allocated to a social housing investment programme over the next three years, with 7,500 houses to be provided in 2015. See housing section in Minister for Public Expenditure, "Address to Dáil on Expenditure Estimates 2015", dated 14 October 2014, available at <http://www.budget.gov.ie/Budgets/2015/EstimateStatement.aspx>. However, around 25,000 new homes are required per year to create adequate supply. EU Commission (2015) *Country Report Ireland 2015*, available at [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_ireland\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_ireland_en.pdf). See also, the Irish Times, 14 July 2015: <http://www.irishtimes.com/news/social-affairs/over-42-000-on-dublin-city-council-housing-waiting-list-1.2283900>. See also, Dublin City Council Housing Allocations Report, July 2015.

<sup>45</sup> Social Housing Strategy 2020, Support, Supply and Reform, Department of the Environment, Community and Local Government, <http://www.environ.ie/en/PublicationsDocuments/FileDownload,39622,en.pdf>, at page 6

<sup>46</sup> Refer, for example, to Dublin City Council Housing Allocations Report, July 2015.

<sup>47</sup> Refer to Threshold, Pre-Budget Advisory on Rent Supplement, October 2014 [http://www.threshold.ie/download/pdf/threshold\\_advisory\\_report\\_on\\_rent\\_supplement.pdf](http://www.threshold.ie/download/pdf/threshold_advisory_report_on_rent_supplement.pdf)

<sup>48</sup> See for example PRTB report < [http://www.prtb.ie/docs/default-source/rent-index/prtb-quarter-2-2014-final-report-\(1\)-pdf.pdf?sfvrsn=2](http://www.prtb.ie/docs/default-source/rent-index/prtb-quarter-2-2014-final-report-(1)-pdf.pdf?sfvrsn=2) > (Last accessed: 13 August 2015).

<sup>49</sup> Department of Social Protection (2015) *Rent Limit Analysis and Findings Report* February 2015

<sup>50</sup> 'Chronic supply shortages persist in the rental market', Daft.ie report by Ronan Lyons, issued 11 May 2015, available at <https://www.daft.ie/report/ronan-lyons-2015q1-rental>

<sup>51</sup> to Threshold, Pre-Budget Advisory on Rent Supplement, October 2014

[http://www.threshold.ie/download/pdf/threshold\\_advisory\\_report\\_on\\_rent\\_supplement.pdf](http://www.threshold.ie/download/pdf/threshold_advisory_report_on_rent_supplement.pdf)

<sup>52</sup> Refer to Threshold, Pre-Budget Advisory on Rent Supplement, October 2014 [http://www.threshold.ie/download/pdf/threshold\\_advisory\\_report\\_on\\_rent\\_supplement.pdf](http://www.threshold.ie/download/pdf/threshold_advisory_report_on_rent_supplement.pdf)

<sup>53</sup> Rent Supplement: A social policy report, Comhairle / Threshold, 2002); Refer to Threshold, Pre-Budget Advisory on Rent Supplement, October 2014 [http://www.threshold.ie/download/pdf/threshold\\_advisory\\_report\\_on\\_rent\\_supplement.pdf](http://www.threshold.ie/download/pdf/threshold_advisory_report_on_rent_supplement.pdf)

<sup>54</sup> The Housing (Miscellaneous Provisions) Act 2014 (the 2014 Act) was signed into law in July 2014. Sections 35 to 51, provide for the establishment of HAP. Regulations implementing these sections, apart from two of the sections, were published on 15 September and 1 October. Statutory Instruments (SIs) 404 and 405 of 2014 implement these sections. Sis



## Mercy Law Resource Centre Submission to the Department of Justice and Equality in respect of UN Universal Periodic Review – Ireland (2016)

21 October 2015

Once a household is in receipt of HAP, they are deemed to have their housing need met and will be taken off or not put on the housing list<sup>55</sup>. It is of real concern that the State, with this scheme, is moving from the social housing list system, which aims to provide secure long-term housing for those who are homeless, to a system that relies on the private rental sector to provide sufficient housing. There is no evidence that landlords are more willing to accept HAP than rent supplement. The CESCR stated that the rent supplement scheme and the Housing Assistance Payments were “*ineffective*” and do not reflect rent increases. Therefore they recommended that Ireland should “*consider introducing legislation on private rent and increasing the Rent Supplement levels.*”<sup>56</sup>

### **Recommendations:**

1. **Equality legislation should be amended to include socio-economic status as a prohibited ground for discrimination.**
2. **Legislative and policy measures should be introduced to ensure rent supplement/HAP can meet market rent.**

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407 and 428 of 2014 flesh out the detail of the HAP scheme, including the information to be provided by the tenant to support the request for the payment, the time period for the landlord to comply with the requirement to provide a tax clearance certificate and the rent limits.

<sup>55</sup> s37, Housing (Miscellaneous Provisions) Act 2014. To remain on a list for social housing, the household must apply to go on the housing “transfer” list. When approved for HAP, the household receives a letter and a form from the local authority to apply to go on the transfer list. The household has just two weeks from the date of the letter to so apply to have any time spent on the housing list before entering HAP to be taken into account on the list. If a household does not so apply within that two week window, and applies later on, none of the time spent on the housing list is carried over to the transfer list. <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,40373,en.pdf>

<sup>56</sup> See Adequate Housing, C.26(c) of the United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the third period report of Ireland (E/C.12/IRL/CO/3), June 2015, p.8