

# Statutory Housing Rights and Discrimination within Housing- *The impact of a right to housing for ethnic and racial minorities in Ireland*<sup>i</sup>

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## ***Introduction***

This paper considers the potential impact of a constitutionally recognised right to housing for ethnic and racial minority groups in Ireland. It first examines the overall impact of recognition of this right for Irish society, in particular through a shift toward a rights-based approach to housing policy and a rebalancing of the Constitution. It then considers the specific position of ethnic and racial minorities.

## ***A rights-based approach to housing***

In the hierarchy of human needs, shelter is as fundamental to survival as food and water. In the modern world, more than just mere shelter is required to meaningfully participate in society. A safe, secure home is central to the dignity of each person and provides a foundation for life. Recognition of a right to housing in the Constitution of Ireland (the **Constitution**) would be an important acknowledgement that, as a society, we believe everyone has a right to be able to meet this fundamental human need.

Given the essential role of the home in our lives, matters concerning housing often impact on the human rights of individuals. However, current housing policy takes a mostly economic perspective, viewing housing primarily as a commodity.<sup>ii</sup> Recognising a right to housing in the Constitution would initiate a shift toward a rights-based approach in Irish housing policy.

A rights-based approach is appropriate in this context because matters concerning housing directly affect individual human rights. Every person in society requires accommodation, making the right to housing truly universal in application. A rights-based approach to housing would therefore benefit everyone. However, it would be particularly impactful for those most at risk of having their rights infringed, such as ethnic and racial minorities who are more likely to experience housing crisis in Ireland.<sup>iii</sup> Further, this shift would be in line with international discourse. In recent years, concerns have grown worldwide regarding the risks inherent in viewing housing solely through an economic

lens. In 2019, the UN Human Rights Office launched a worldwide movement to shift considerations of housing to a rights-based lens, rather than a purely financial one.<sup>iv</sup>

Rights concerning housing are already part of the broader human rights framework in Ireland. Many international instruments that Ireland is party to or has ratified recognise a right to housing or related/ancillary rights, both generally and with respect to particular groups.<sup>v</sup> Infringements of the European Convention on Human Rights<sup>vi</sup> have been successfully raised before the Irish superior courts in housing matters.<sup>vii</sup> Existing constitutional rights are often at issue in housing matters, particularly in situations of housing crisis. For example, prolonged homelessness and chronic housing instability for families with children may infringe on the natural and imprescriptible rights of the child under Article 42A of the Constitution. In extreme cases, unsuitable housing conditions may infringe on personal rights under Article 40.3.1, such as the right to bodily integrity.<sup>viii</sup>

However, the Constitution does not presently recognise a right to housing. As discussed further below, the result of this gap is that property rights and housing rights are imbalanced in the Constitution. Recognising an express right to housing is essential to rebalance the Constitution and place rights at the centre of housing policy.

### ***The balance of rights***

The Constitution is fundamentally unbalanced in its approach to housing and property. While there is express protection for private property rights under both Article 43 and Article 40.3, no equivalent right to housing is expressed anywhere in the Constitution. Further, the Irish courts have been unwilling to recognise a right to housing as an unenumerated right under Article 40.3.1.<sup>ix</sup> This means that the starting point for legal analysis in respect of the regulation of land is from the perspective of property ownership.

The Constitution recognises that property rights may be restricted in the interests of the ‘common good’, but the baseline remains the private interest with the common good only relevant insofar as it justifies the State in limiting these rights, which is a very complex analysis.<sup>x</sup> The balancing of competing rights is a crucial element of many constitutional questions, and the issue of ‘discrimination’ between property owners and property users has been raised in important legal cases regarding the regulation of land.<sup>xi</sup> An expressly recognised right to housing would rebalance the Constitution to place these interrelated rights on an equal footing.

### ***The Constitution as a reflection of society's values***

The Constitution is the fundamental law of Ireland and has a crucial role in reflecting society's values. A 2020 survey carried out by the Irish Human Rights and Equality Commission found that 82% of people in Ireland consider housing to be a basic human right.<sup>xii</sup> Reflecting this in the Constitution would send an important message about our priorities as a society.

Moreover, it would have a real impact on the State's approach to tackling the housing crisis and to housing overall. Constitutional amendments cannot dictate granular policy, and the right to housing is no different. Recognition of the right would not direct any specific housing policy. Rather, it would provide a 'floor' of legal protection for this basic human need when the State is carrying out its duties.<sup>xiii</sup> This 'floor' is most crucial for those in vulnerable groups at the margins of society who are at greater risk of homelessness and chronic housing instability. This is particularly important for ethnic and minority groups who may face housing discrimination<sup>xiv</sup> and intersectional challenges.

### ***The disproportionate impact of the housing crisis on minorities***

Mercy Law Resource Centre has frequently highlighted the barriers faced by ethnic and racial minorities seeking to access housing and homeless services.<sup>xv</sup> Minority groups are overrepresented in homeless populations and are more likely than the majority white-Irish population to be in precarious or unsuitable accommodation. This is reflected in a 2018 study by the Irish Human Rights and Equality Commission and the Economic and Social Research Institute (the **2018 Report**).<sup>xvi</sup> Among other things, the 2018 Report found that non-white Irish nationals are 1.7 times more likely to experience housing deprivation than Irish nationals and 2.5 times more likely to live in overcrowded housing, and that black people in Ireland are five times more likely to report housing discrimination than white people.

Comparative census data indicates that a higher proportion of the homeless population are non-Irish nationals compared with the general population – while making up 11.6% of the general population,<sup>xvii</sup> they comprise 14% of the homeless population.<sup>xviii</sup> Bi-annual counts carried out in the Dublin area between November 2020 and April 2022 found an average of 15% of rough sleepers at a given time were not Irish citizens (albeit this has been a decreasing trend over time).<sup>xix</sup> A separate report by the Dublin Region Homeless Executive found that 33% of families entering homelessness during 2017 were headed by a non-Irish national.<sup>xx</sup>

In relation to specific minority groups in Ireland, members of the Traveller Community are significantly overrepresented in the homeless population and face discrimination in respect of accessing adequate

housing. The 2018 Report stated “*while they represent less than 1 per cent of the Irish population they make up 9 per cent of the homeless population. Travellers also experience the highest levels of discrimination: they are almost ten times as likely to report discrimination in access to housing as the White Irish population, even after education and labour market status are held constant.*”<sup>xxi</sup> A separate 2018 study found that 6% of the Roma population in Ireland is homeless and almost 45% have had a previous experience of homelessness.<sup>xxii</sup> Meanwhile estimates by the Council of Europe indicate that Roma people make up less than 1% of the population of Ireland.<sup>xxiii</sup>

The empirical evidence is abundantly clear that ethnic and racial minorities in Ireland are disproportionately impacted by the housing crisis. Any situation where the weight of societal and policy failures fall more heavily on minority groups raises concerns regarding the potential violation of human rights. Reframing the narrative of the housing crisis through a rights-based lens would be a powerful tool to correct such injustices.

As the housing crisis in Ireland has dragged on, there is a risk that it becomes ‘normalised’ and that there is societal acceptance of a certain level of homelessness and housing instability. This is an even greater risk for ethnic and racial minorities who may already experience discrimination and prejudicial attitudes. Recognition of a constitutional right to housing would be a powerful statement that endemic housing crisis will not be accepted by Irish society.

## **Conclusion**

Recognising a constitutional right to housing in Ireland would be a strong positive step to reflect society’s values and to both address the current housing crisis and to safeguard against future crises. It would support a long-term vision of a more inclusive, caring society and provide an enduring protection for this basic human right into the future. This would benefit our entire society, and particularly those in vulnerable groups such as ethnic and racial minorities that face greater barriers to access safe and secure housing.

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<sup>i</sup> Paper prepared for presentation at the Conference on a Referendum on Housing in Ireland, UCD Centre for Constitutional Studies, 10 & 11 May 2022

<sup>ii</sup> See James Wickham, *Cherishing all Equally 2017: Economic Inequality in Ireland; Chapter 3 - A home or a wealth generator? Inequality, financialisation and the Irish Housing Crisis*, Dr Rory Hearne (2017) <[https://www.tasc.ie/assets/files/pdf/cherishing\\_all\\_equally\\_2017.pdf](https://www.tasc.ie/assets/files/pdf/cherishing_all_equally_2017.pdf)>

<sup>iii</sup> Rafelle Grotti, Helen Russel, Éamonn Fahey and Bertrand Maître, *Discrimination and Inequality in Housing in Ireland* (June 2018) <<https://www.ihrec.ie/app/uploads/2018/06/Discrimination-and-Inequality-in-Housing-in-Ireland..pdf>>

- <sup>iv</sup> The Office of the High Commissioner for Human Rights, “*Housing is a human right, not just a commodity*” (22 March 2019), <<https://www.ohchr.org/en/stories/2019/03/housing-human-right-not-just-commodity>>
- <sup>v</sup> The Charter of Fundamental Rights of the European Union; The European Social Charter (noting Ireland has opted out of Article 31 on housing); The International Covenant on Economic, Social and Cultural Rights; The Convention on the Rights of the Child; The International Convention on the Elimination of All Forms of Racial Discrimination; the UN Convention on the Elimination of all Forms of Discrimination Against Women; The European Convention on Human Rights.
- <sup>vi</sup> As incorporated into Irish law under the European Convention on Human Rights Act 2003
- <sup>vii</sup> For example, *Donegan v Dublin City Council and Ors* [2012] IESC 18; *Pullen & Ors v Dublin City Council* [2008] IEHC 379
- <sup>viii</sup> Mercy Law Resource Centre, *The Right to Housing in Ireland* (May 2016) <<https://mercyllaw.ie/wp-content/uploads/2019/06/MLRC-Report-on-Right-to-Housing-in-Ireland-May-2016.pdf>>
- <sup>ix</sup> For further discussion of case law in this area see *Establishing a Right to Housing in Irish Law: A research report conducted by Trinity FLAC in association with the Mercy Law Resource Centre*, <[https://trinityflac.files.wordpress.com/2014/09/right-to-housing-research-project-final\\_1\\_.pdf](https://trinityflac.files.wordpress.com/2014/09/right-to-housing-research-project-final_1_.pdf)>
- <sup>x</sup> See further Home for Good, *A Constitutional Referendum on a Stand-alone Right to Housing – Proposal on wording for a Constitutional Amendment* (October 2020) <[https://www.homeforgood.ie/assets/files/pdf/note\\_from\\_the\\_legal\\_sub-group\\_expanding\\_on\\_standalone\\_right\\_-\\_october\\_2020.pdf](https://www.homeforgood.ie/assets/files/pdf/note_from_the_legal_sub-group_expanding_on_standalone_right_-_october_2020.pdf)>
- <sup>xi</sup> For example, *Re Article 26 and Part V of the Planning and Development Bill, 1999* [2000] 2 IR 321
- <sup>xii</sup> *Overwhelming Public Support for Human Rights Protections as Ireland Marks Human Rights Day* <<https://www.ihrec.ie/overwhelming-public-support-for-human-rights-protections-as-ireland-marks-human-rights-day/>>
- <sup>xiii</sup> Ibid at note viii
- <sup>xiv</sup> For a recent study on discrimination in the private rental market, see Egle Gusciute, Peter Mühlau & Richard Layte (2022) *Discrimination in the rental housing market: a field experiment in Ireland*, *Journal of Ethnic and Migration Studies*, 48:3, 613-634
- <sup>xv</sup> Mercy Law Resource Centre, *Minority Groups and Housing Services: Barriers to Access* (March 2021) <[https://mercyllaw.ie/wp-content/uploads/2021/03/ML\\_2020\\_Minority-Groups-and-Housing-Services\\_Report\\_D6.pdf](https://mercyllaw.ie/wp-content/uploads/2021/03/ML_2020_Minority-Groups-and-Housing-Services_Report_D6.pdf)>
- <sup>xvi</sup> Ibid at note iii
- <sup>xvii</sup> *Census of Population 2016 – Profile 7 Migration and Diversity* <<https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/p7anii/>>
- <sup>xviii</sup> *Census of Population 2016 – Profile 5 Homeless Persons in Ireland* <<https://www.cso.ie/en/releasesandpublications/ep/p-cp5hpi/cp5hpi/>>
- <sup>xix</sup> *Final Spring 2022 Report on people sleeping rough in the Dublin region* (April 2022) <<https://www.homelessdublin.ie/content/files/Final-Spring-2022-Report-on-people-sleeping-rough-in-the-Dublin-Region.pdf>>
- <sup>xx</sup> Holly Morrin and Dr. Bernie O’Donoghue Hynes, *A report on the 2016 and 2017 families who experienced homelessness in the Dublin Region* (April 2018) <<https://www.homelessdublin.ie/content/files/A-report-on-the-2016-and-2017-families-who-experienced-homelessness-in-the-Dublin-Region.pdf>>
- <sup>xxi</sup> Ibid at note iii
- <sup>xxii</sup> Pavee Point Traveller and Roma Centre and the Department of Justice and Equality (2018) *Roma in Ireland: A National Needs Assessment* <<https://www.paveepoint.ie/wp-content/uploads/2015/04/RNA-PDF.pdf>>
- <sup>xxiii</sup> *Roma in the EU – Ireland* <[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-ireland\\_en#:~:text=The%20Council%20of%20Europe%20estimates,0.9%25%20of%20the%20population\).>](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-ireland_en#:~:text=The%20Council%20of%20Europe%20estimates,0.9%25%20of%20the%20population).>)