



**The Housing Commission:  
Public Consultation on a Referendum on Housing in Ireland**

**Submission by the Ombudsman for Children's Office  
August 2022**

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## 1. Introduction

The Ombudsman for Children's Office (OCO) has previously expressed serious concerns about the negative impacts of existing legislative barriers to children's effective access to adequate housing.<sup>1</sup> Amongst the OCO's concerns are substantive and persistent challenges faced by children, including homeless children, in accessing accommodation and supports appropriate to their needs.<sup>2</sup> The OCO has also previously expressed concerns that longstanding political ambivalence about providing legal underpinning for the right to adequate housing has mitigated against full consideration being given to enumerating the right to adequate housing in Ireland's Constitution.<sup>3</sup>

Accordingly, the OCO welcomes the establishment of the Housing Commission (the Commission) in December 2021, following commitments under the Programme for Government and Housing for All, A new Housing Plan for Ireland.<sup>4</sup> The OCO notes that the Commission has been established to examine issues such as tenure, standards, sustainability and quality-of-life issues in the provision of housing. The Commission has been additionally tasked with working towards bringing forward proposals on a referendum on housing.<sup>5</sup> In this regard, the OCO welcomes that the Commission launched a public consultation on 30 June 2022 on a referendum on housing.<sup>6</sup>

The OCO is an independent statutory body established in 2004 under the [Ombudsman for Children Act 2002](#), as amended (2002 Act). Under the 2002 Act, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO has prepared this submission pursuant to Section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise on any matter concerning the rights and welfare of children.

We have prepared this submission having regard to:

- the OCO's statutory function to promote the rights and welfare of children;
- a number of issues affecting children in respect of housing that have been brought to the OCO's attention through our work, including through our direct engagement with groups of

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<sup>1</sup> Ombudsman for Children's Office (2021), [A Better Normal: Eradicate Child Poverty, Eliminate Child Homelessness](#), pp. 3- 4; Ombudsman for Children's Office (2020), [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#), p.23; Ombudsman for Children's Office (2019), [No Place Like Home: Children's views and experiences of living in Family Hubs](#), p.19 and 27; Ombudsman for Children's Office (2017), [Housing policy does not recognise the needs and rights of children](#), 25 May 2017.

<sup>2</sup> Ombudsman for Children's Office (2021), [A Better Normal: Eradicate Child Poverty, Eliminate Child Homelessness](#); Ombudsman for Children's Office (2021), [No End in Site: An investigation into the living conditions of children on a local authority halting site](#); Ombudsman for Children's Office (2019), [No Place Like Home: Children's views and experiences of living in Family Hubs](#).

<sup>3</sup> Ombudsman for Children's Office (2020), [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#), p.23.

<sup>4</sup> The Housing Commission (2022), [Housing Commission holds first meeting](#), 14 January 2022; Department of Housing, Local Government and Heritage (2021), [Housing for All: A new housing plan for Ireland](#), p.147; Government of Ireland (2020), Programme for Government: Our Shared Future, p. 58.

<sup>5</sup> The Housing Commission (2022), [Terms of reference for the Housing Commission](#), 12 January 2022.

<sup>6</sup> The Housing Commission (2022), [Public Consultation on a referendum on Housing](#), 30 June 2022.

children living in inadequate, unsafe and insecure accommodation, such as children experiencing homelessness, Traveller children, and children living in Direct Provision;<sup>7</sup>

- relevant international standards to which Ireland is a ratifying State Party, in particular the [UN Convention on the Rights of the Child \(UNCRC\)](#), and the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#).

In preparing this submission, the OCO is mindful that the Commission is a non-statutory Commission, independent in its functions, and that it will report to the Minister for Housing, Local Government and Heritage no later than July 2023. The OCO notes that submissions out of this public consultation will assist the Commission in its task of providing independent advice to the Government as to the appropriate wording to be put to the people in a referendum on housing.

Accordingly, the purpose of this submission is to set out issues we believe require consideration in the interests of ensuring that proposals brought forward by the Commission in relation to a referendum on the introduction of a constitutional amendment regarding housing will strengthen respect for, and the protection and fulfilment of, the rights of children in Ireland.

From the OCO's perspective, the work of the Commission, and the proposals the Commission ultimately decides to put forward to the Government present a significant opportunity to shift the State's current approach to housing to a rights-based approach, where housing is seen, and approached, as a fundamental human right.

## **2. International children's rights standards**

Through ratifying the UNCRC, Ireland has an obligation under international law to respect, protect and fulfil the rights of all children living in Ireland. These rights include four general principles, which are integral to the realisation of all children's rights under the UNCRC:

- Article 2 provides that all children must be able to enjoy their rights without discrimination of any kind, irrespective of their circumstances or those of their parents/guardians.
- Article 3 requires children's best interests be treated as a primary consideration in all actions concerning them.
- Article 6 recognises children's right to life, survival and development. In this regard, States are expected to interpret 'development' as a holistic concept encompassing all aspects of children's development and are obliged to provide optimal conditions for childhood.
- Article 12 provides for children's right to express their views freely in all matters affecting them and for due weight to be given to children's views, in accordance with their age and maturity.

Article 27 of the UNCRC requires State Parties to 'recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'. It recognises that the child's development cannot be divorced from his or her conditions of living, and that, at a minimum, every child is entitled to enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care when required.

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<sup>7</sup> Ombudsman for Children's Office (2021), [No End in Site: An investigation into the living conditions of children on a local authority halting site](#); Ombudsman for Children's Office (2020), [Direct Division: Children's views and experiences of living in Direct Provision](#); Ombudsman for Children's Office (2019), [No Place Like Home: Children's views and experiences of living in Family Hubs](#).

While parents or others responsible for a child have primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development (Article 27(2)), States are required to take appropriate measures to assist parents and others responsible for the child to implement this right and, in cases of need, to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Article 27(3)).

Article 27 recalls Article 25(1) of the [Universal Declaration of Human Rights \(UDHR\)](#) and Article 11(1) of the ICESCR, which recognises the right of everyone to an adequate standard of living, including housing, and obliges State Parties to take appropriate steps to ensure the realisation of this right.

The Committee on the Rights of the Child (CRC Committee) has stated that the right to adequate housing is an important component of Article 27,<sup>8</sup> also noting the importance of adequate housing for children's health and wellbeing.<sup>9</sup> In this regard, a lack of access to adequate housing needs to be recognised as an infringement of children's right to an adequate standard of living. Furthermore, having regard to the universal, indivisible and interrelated nature of children's rights<sup>10</sup> under the UNCRC, such an infringement needs to be recognised as adversely affecting children's enjoyment of their other rights under the UNCRC. In addition to the four general principles above, these rights include children's rights to:

- privacy (Article 16)
- protection from all forms of harm and abuse (Article 19)
- the highest attainable standard of health, including mental health (Article 24)
- education (Article 28)
- rest, play and leisure (Article 31).

Following the last examination of Ireland's implementation of its obligations to children under the UNCRC, the CRC Committee expressed concern at 'reports of families affected by homelessness facing significant delays in accessing social housing and frequently living in inappropriate, temporary or emergency accommodation on a long-term basis'. It urged Ireland 'to undertake measures to increase the availability of social housing and emergency housing support' and to ensure 'housing and support provided through these measures are appropriate to the needs of the children affected and subject to adequate safeguards, reviews and evaluations'.<sup>11</sup> The CRC Committee's expectation that Ireland will fulfil its obligations in this regard is evident in the List of Issues Prior to Reporting (LOIPR), published by the Committee in respect of Ireland in November 2020.<sup>12</sup>

### **3. Progressing a referendum on the right to adequate housing**

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<sup>8</sup> UN Committee on the Rights of the Child, [General Comment no.21 \(2017\) on children in street situations](#) CRC/C/CG/21, June 17, 2017, paras 50-51.

<sup>9</sup> UN Committee on the Rights of the Child, [General comment No. 15 \(2013\) on the right of the child to the enjoyment of the highest attainable standard of health \(art. 24\),](#) CRC/C/GC/15, April 17, 2013, para. 49.

<sup>10</sup> Committee on the Rights of Child, [General Comment No.14 \(2013\) on The right of the child to have his or her best interests taken as a primary consideration \(art. para. 1\),](#) CRC/C/GC/14, 29 May 2013, para 16.

<sup>11</sup> UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, paras 60-61.

<sup>12</sup> UN Committee on the Rights of the Child (2020), [List of issues prior to the submission of the combined fifth and sixth reports of Ireland](#), CRC/C/IRL/QPR/5-6.

The absence of an express right to adequate housing in Ireland's Constitution and in primary legislation is well documented.<sup>13</sup> While providing for a constitutional right to adequate housing has been considered to varying degrees by the Oireachtas on different occasions during the past twenty years, the OCO is concerned that no substantial progress has been made regarding working towards enumerating the right to adequate housing in the Constitution.<sup>14</sup>

We are also concerned that Ireland's housing and homelessness crisis has worsened in recent years. This crisis has been characterised by a shortage of affordable and adequate housing, insecurity of tenure, escalating rents, and increasing numbers of children and families experiencing homelessness.<sup>15</sup> As of June 2022, 3,071 children were in State funded emergency accommodation.<sup>16</sup> Through our work, children and families living in family hubs reported many challenges to the OCO, including the negative effects of experiencing homelessness on their family life and mental health.<sup>17</sup> A recent OCO investigation also identified serious issues with the standard of accommodation and living conditions of children living in a Traveller halting site.<sup>18</sup> As such, the OCO remains concerned about the immediate and long-term impacts that inadequate housing can have on children's lives.

The OCO notes that views for and against making express provision for a right to adequate housing in the Constitution have intensified in the context of a persistent housing crisis, and in the lead up to the Commission's public consultation. Regarding views against an express provision, concerns have been raised, including during the Commission's conference on a referendum on housing, that constitutionalising social rights, such as the right to adequate housing, may generate empty commitments of little practicality,<sup>19</sup> and that such right may not be easily enforceable.<sup>20</sup>

Alternatively, several academics and practitioners have argued that constitutionalising the right to housing can be a useful step in 'rebalancing' a tendency to think that rights are all about limiting State power, affirming housing as a fundamental right, and providing for a 'floor' of legal protection for this basic human need.<sup>21</sup> In this regard, a right to housing would incrementally affirm the existence and importance of social rights, and play a role in 'orientating the exercise of State power, by the executive, legislative, and judicial branches of the State'.<sup>22</sup> As it stands, a right to housing is enshrined in more than 80 constitutions worldwide, with varying degrees of impact.<sup>23</sup>

The Home for Good coalition notes that, while not a panacea, the insertion of a right to adequate housing would place a constitutional obligation on Ireland to 'progressively realise a right to housing

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<sup>13</sup> The Housing Commission (2022), [Proceedings from conference on a referendum on Housing in Ireland](#), 10-11 May 2022; MLRC (2018), [Children & Homelessness: A gap in legal protection](#); MLRC (2016), [The Right to Housing in Ireland](#).

<sup>14</sup> Oireachtas (2020), [Joint Committee on Housing, Planning and Local government: Referendum on a right to Housing](#), 03 November 2020; Oireachtas Library and Research Service (2019), [Briefing Paper: Property Rights and Housing Legislation](#).

<sup>15</sup> H. Russell, I. Privalko, F. McGinnity and S. Enright (2021), [Monitoring Adequate Housing in Ireland](#); Rory Hearne (2020) [Housing Shock: The Irish housing crisis and how to solve it](#), Bristol Policy Press.

<sup>16</sup> Department of Housing, Local Government and Heritage (2022), [Homeless Report – June 2022](#).

<sup>17</sup> Ombudsman for Children's Office (2019), [No Place Like Home: Children's views and experiences of living in Family Hubs](#).

<sup>18</sup> OCO (2021), [No End in Site: An investigation into the living conditions of children on a local authority halting site](#)

<sup>19</sup> The Housing Commission (2022), [conference on a referendum on Housing in Ireland: Panel 3 – Irish Judicial approaches to Socio-Economic rights and positive obligations](#); Oireachtas (2022), [Joint Committee on Housing: Right to Housing: Briefing document and opening statement - Professor Colm Ó Cinnéide](#), 05 July 2022.

<sup>20</sup> Conor O'Mahony, [Interpretation and Enforcement of Economic and Social Constitutional Rights in Ireland: Lessons from Cases on Article 42](#), presented at Housing Commission conference on a referendum on Housing in Ireland, 10-11 May 2022.

<sup>21</sup> Oireachtas (2022), [Right to Housing: Briefing document and opening statement, Colm Ó Cinnéide](#), 05 July 2022; MLRC (2022), [Discrimination within Housing – The impact of a right to housing for ethnic and racial minorities in Ireland](#); Professor Gerry White (2022), [Providing for a right to Housing in the Irish Constitution](#), presented at Housing Commission conference on a referendum on Housing in Ireland, 10-11 May 2022.

<sup>22</sup> Colm Ó Cinnéide (2022), [Does Constitutionalising Social Rights Make a Difference?](#), presented at the Housing Commission conference on a referendum on Housing in Ireland, p.3.

<sup>23</sup> Mercy Law Resource Centre (2018), [The right to housing in comparative perspective](#).

providing a balanced, stand-alone, and enforceable right to housing that would support the development and advancement of progressive and effective housing policies'.<sup>24</sup> Moreover, while a right to adequate housing would not be a solution to the housing crisis in itself, it would function as an enabling provision, initiating a shift towards a rights-based approach to housing, including by having an impact on the State's approach to its development of policy in respect of housing.<sup>25</sup>

The former UN Special Rapporteur on the right to adequate housing, Leilani Farha, highlighted, during her mandate, that a constitutional right to housing is important to empower those affected by homelessness and housing exclusion to feel that they have a right to housing, and that the State and society have a responsibility to address their housing exclusion. In this regard, Farha advised Ireland to include the right to housing in the Constitution.<sup>26</sup> Similarly, in its last examination of Ireland, the UN Committee on Economic, Social and Cultural Rights (CESCR Committee), recommended the state to incorporate social rights, such as housing, into the Constitution.<sup>27</sup>

**Having regard to the above, the OCO encourages the Commission to recommend that there should be a constitutional amendment to provide for a right to adequate housing, and that the Government should progress a referendum in this regard during 2023.**

#### **4. An express right to adequate housing in the Irish Constitution**

As the issue of housing engages several children's rights, it is important that proposals aimed at inserting a right to adequate housing in Ireland's Constitution have due regard to relevant international and European standards, including the UNCRC and the ICESR, and international guidance on implementing these standards. This includes guidance of the UN Special Rapporteur on the right to adequate housing.<sup>28</sup>

As noted in section 2 of this submission, the right to adequate housing is well established under international human rights law. Article 11(1) of the ICESCR provides that 'the 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'.

According to the CESCR Committee, the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather, it should be interpreted broadly as 'the right to live somewhere in security, peace, and dignity'.<sup>29</sup> Additionally, the right to adequate housing cannot be viewed in isolation from other applicable human rights instruments,

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<sup>24</sup> Home for Good (2022), '[Submission to the public consultation on a referendum on housing in Ireland](#)', p.2.

<sup>25</sup> Home for Good (2022), '[Submission to the public consultation on a referendum on housing in Ireland](#)', p.7; MLRC (2022), [Discrimination within Housing – The impact of a right to housing for ethnic and racial minorities in Ireland](#), presented at Housing Commission conference on a referendum on Housing in Ireland.

<sup>26</sup> Oireachtas (2018), [Joint Committee on Housing, Local Government and Heritage debate](#), 12 June 2018.

<sup>27</sup> UN Committee on Economic, Social and Cultural rights (2015), [Concluding observations on the third period reporting of Ireland](#), E/C.12/IRL/CO/3, 8 July 2015.

<sup>28</sup> UN General Assembly (2020), [Human Rights Council: Guidelines for the implementation of the right to adequate housing, 26 December 2019](#), A/HRC43/43.

<sup>29</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#), 13 December 1991, E/1992/23, para 9.

including the UNCRC.<sup>30</sup> In this regard, the CRC Committee refers to the CESCR Committee to explain what a right to adequate housing means in its context.<sup>31</sup>

The CESCR Committee notes several factors as indicative of what ‘adequate housing’ represents. These are:

1. Security of tenure
2. Availability of services, materials, facilities and infrastructure
3. Affordability
4. Habitability
5. Accessibility
6. Location
7. Cultural adequacy.<sup>32</sup>

The [European Committee on Social Rights \(ECSR\)](#) interprets Article 31 (the right to housing) of the revised [European Social Charter \(Revised\)](#) similarly to the CESCR Committee. While Ireland has not ratified Article 31, it is nonetheless bound by Article 16 of the Charter, which protects the general right of families to social, economic and legal assistance. Under the Charter, State Parties should:

- Take the legal, financial and operational measures, to the maximum of their available resources, necessary to ensure progress towards realising the right to housing;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a meaningful timetable for progress; and
- pay close attention to the impact of the policies adopted on vulnerable individuals and groups, including children.<sup>33</sup>

In 2017, the ECSR found Ireland to be in breach of Article 16 of the Charter due to failing to take sufficient measures to ensure the right to housing of an adequate standard for families living in local authority housing. In 2020, the ECSR concluded that Ireland was still in breach of Article 16, noting lack of sufficient supply of adequate housing for vulnerable families.<sup>34</sup>

Guidance from the UN Special Rapporteur on the right to adequate housing is also relevant on informing proposals on enshrining a right to adequate housing in the Constitution. Such guidance focuses on the obligations of States as the primary duty bearers in fulfilling the right to adequate housing under international human rights law, noting that states should, to implement such right, guarantee the right to adequate housing as a fundamental human right linked to dignity and the right to life, implement comprehensive strategies, and eliminate homelessness in the shortest possible time.<sup>35</sup>

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<sup>30</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#), 13 December 1991, E/1992/23, para 9; UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 7: The right to adequate housing \(Art.11.1\): forced evictions](#), 20 May 1997, E/1998/22.

<sup>31</sup> UN Committee on the Rights of the Child, [General Comment no.21 \(2017\) on children in street situations](#) CRC/C/CG/21 paras 50-51.

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#), 13 December 1991, E/1992/23, para 8.

<sup>33</sup> *FEANTSA v. France*, Complaint no. 39/2006, Decision of 5 December 2007.

<sup>34</sup> *International Federation for Human Rights (FIDH) v Ireland*, Complaint No.110/2014 and European Committee of Social Rights, Findings 2020: Ireland (March 2021) at p.168.

<sup>35</sup> UN General Assembly (2020), [Human Rights Council: Guidelines for the implementation of the right to adequate housing, 26 December 2019](#), A/HRC/43/43.

**The OCO encourages the Commission to recommend that the wording of a constitutional amendment on the right to adequate housing should have regard to the State's obligations under international and European standards and corresponding guidance in this respect.**