



UNIVERSAL PERIODIC REVIEW

25TH SESSION | IRELAND

*Submission to the Universal Periodic Review
Working Group*

17th AUGUST 2015

Introduction

1. Threshold is an Irish civil society organisation that seeks to secure the right to adequate housing, particularly for those experiencing poverty and exclusion, adopting a rights-based approach to housing issues. Threshold's work is concentrated in the private rented residential sector, providing an independent advice and advocacy service to tenants at risk of homelessness, and responding to some 20,000 requests for assistance annually. Threshold welcomes the opportunity to make submissions to the Universal Periodic Review Working Group in anticipation of its 25th session.
2. Ireland is experiencing a housing crisis characterised by a chronic shortage of social and affordable housing,¹ with marked increases in rent levels,² repossession proceedings,³ and family homelessness.⁴
3. In this submission the normative and institutional framework for the protection of the right to housing within Ireland will briefly be outlined, before summarising the impact of the housing crisis on security of tenure, freedom from forced eviction, affordability, and habitability.⁵

Legal framework for protection of right to housing

4. Ireland has signed and ratified the International Covenant on Economic, Social and Cultural Rights,⁶ but has failed to adopt domestic measures with a view to implementing the right to adequate housing guaranteed by Article 11 of the Covenant.⁷ The domestic framework for the protection and promotion of the right to adequate housing is weak. The Irish Constitution

¹ In its Concluding Observations in respect of Ireland's Third Periodic Report, the Committee on Economic, Social and Cultural Rights noted the 'continuing gaps between availability and demand for social housing', and recommended that Ireland take steps to increase the number of social housing units (Concluding Observations, E/C.12/IRL/CO/3, at paras 26 – 27). The Government introduced its Social Housing Strategy 2020 in November 2014, which commits to the provision of 35,000 new social housing units over a six year period by building, acquiring or leasing accommodation, while Pillar II envisages the delivery of social housing support to some 75,000 households through the housing assistance payment scheme, together with the rental accommodation scheme.

² Rents nationally were 8.2% higher on average in the first quarter of 2015 than a year previously (Daft.ie Rent Report, May 2015).

³ There was a 175% increase in the number of orders for possession made in the Circuit Court in 2014, with 1,063 such orders being made (Courts Service of Ireland, Annual Report 2014, p.5). Legal proceedings for the repossession of principal dwelling houses initiated in a total of 11,424 cases in 2014 (Central Bank of Ireland, Residential Mortgage Arrears and Repossessions Statistics Q 4 2014, Statistical Release 6 March 2015). Legal proceedings to enforce the debt/security in respect of principal dwelling houses were initiated in 2,788 cases in the first quarter of 2015 (Central Bank of Ireland, Residential Mortgage Arrears and Repossessions Statistics Q 1 2015, Statistical Release 4 June 2015).

⁴ Data released by the Department of Environment, Community and Local Government indicates that in the period 22 – 28 June 2015 there were 620 in emergency homeless accommodation, comprising a total of 1,318 children. This represents a 55% increase in child homeless for the first six months of 2015 (Irish Times, 'All regions in the State bar one see rise in child homelessness', 8 August 2015). Figures published by the Dublin Region Homeless Executive show that during the week commencing 20 July 2015, there were 556 families comprising 1,185 children in emergency accommodation in Dublin (Irish Times, 'Figure for homeless children in Dublin double in a year', 17 August 2015).

⁵ Identified as core elements of the right to adequate housing by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 General Comment No.4 (E/1992/23).

⁶ Signed 1 October 1973, ratified 8 December 1989.

⁷ In breach of the State's duty to give effect to the Covenant in the domestic legal order pursuant to Article 2, para.1, as elaborated by the Committee on Economic, Social and Cultural Rights in General Comment No.3 (E/1991/23) and General Comment No.9 (E/C.12/1998/24).

protects the inviolability of the dwelling,⁸ the personal right to property,⁹ and the right to the private ownership of external goods.¹⁰ The right to adequate housing, construed as ‘the right to live somewhere in security, peace and dignity’¹¹ does not receive express or implied recognition in the Constitution. The Irish courts have traditionally been reluctant to make mandatory orders requiring the government to expend resources with a view to remedying breaches of socio-economic rights, including housing rights,¹² or to interpret statutory powers for the provision of such rights as being mandatory in character.¹³ While the Convention on the Constitution¹⁴ has recommended that the protection afforded to economic, social and cultural rights (including the right to housing) be strengthened,¹⁵ the government has not yet responded to this recommendation.¹⁶

5. The State has opted out of Article 31 of the Revised European Social Charter, which guarantees the right to housing.¹⁷ While Ireland has adopted legislation with a view to giving domestic legal effect to the European Convention on Human Rights,¹⁸ mechanisms for the eviction of local authority tenants which have been declared by the Irish Supreme Court to be incompatible with the Convention¹⁹ remain in force. While the Charter of Fundamental Rights of the European Union recognises the right to social and housing assistance,²⁰ it is limited in its application to circumstances in which Member States are implementing EU law.²¹

Legal security of tenure and freedom from forced eviction

6. Legislation aimed at affording tenants a measure of security of tenure²² has been undermined by a range of factors including unregulated increases in rent, mortgage arrears, and the introduction of additional grounds for the termination of tenancies, putting individuals and families at an increased risk of eviction.

⁸ Bunreacht na hÉireann (Irish Constitution), Article 40.5.

⁹ *Ibid.*, Article 40.3.2°.

¹⁰ *Ibid.*, Article 43.

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No.4 (E/1992/23) at para.7.

¹² See *O'Reilly v Limerick Corporation* [1989] ILRM 181, *TD v Minister for Education* [2001] 4 I.R. 259, *Sinnott v Minister for Education* [2001] 2 I.R. 545, *O'Donnell v South Dublin County Council* [2007] 1 IEHC 2014.

¹³ Save in exceptional cases, see *O'Donnell v South Dublin County Council* [2015] IESC 28.

¹⁴ Established by resolution of the Houses of the Oireachtas (Parliament) in July 2012.

¹⁵ Convention on the Constitution, Eighth Report: Economic, Social and Cultural Rights (March 2014).

¹⁶ Statement given by Taoiseach (Prime Minister) in Dáil (lower house of Parliament), 9 June 2015.

¹⁷ Notwithstanding, the European Committee of Social Rights has declared admissible a collective complaint against Ireland relating to violations of the right to protection of health (Art.11), the right of the family to social, legal and economic protection (Art.16), the right to protection against poverty and social exclusion (Art.30), and the principle of non-discrimination, arising inter alia from the adequacy, habitability and suitability of some local authority housing: *International Federation for Human Rights v Ireland* (Complaint No.110/2014). The collective complaint was deemed admissible by the European Committee of Social Rights on 17 March 2015 (CC-110-2014-dadmiss).

¹⁸ European Convention on Human Rights Act 2003

¹⁹ In *Donegan v Dublin City Council* and *Dublin City Council v Gallagher* [2012] IESC 18, [2012] 3 I.R. 600 the Supreme Court made a declaration that s.62 of the Housing Act 1966 was incompatible with the right to private and family life as guaranteed by Article 8 of the European Convention on Human Rights. A declaration of incompatibility made under s.5 of the European Convention on Human Rights Act 2003 does not however affect the validity, continuing operation or enforcement of the statutory provision in respect of which it is made.

²⁰ Charter of Fundamental Rights of the European Union, Article 34.

²¹ *Ibid.*, Article 51.

²² The Residential Tenancies Act 2004 provides for 4 year tenure cycles, for the termination of tenancies by way of written notice on certain specified grounds, and for the resolution of disputes by the Private Residential Tenancies Board.

7. While the current legislative framework for regulating rent in respect of private residential tenancies prohibits the setting of rent at a level which is greater than the market rent for a comparable property, it does not regulate the rate of increase in rents.²³ Significant increases in rent levels, attributable to an insufficient supply of rented accommodation,²⁴ have resulted in a marked increase in the rate of 'economic evictions' and family homelessness. Threshold has called for the introduction of legislative measures which regulate the rate of increase in rents,²⁵ and this has been echoed by the Committee on Economic, Social and Cultural Rights.²⁶ While the Minister for Environment, Community and Local Government has indicated his intention to bring proposals to cabinet,²⁷ to date no concrete legislative measures have been introduced.
8. The unresolved legacy of the mortgage crisis continues to put thousands of households at risk of losing their homes.²⁸ The mortgage arrears crisis has impacted not just on mortgage holders, but on tenants in mortgaged properties.
9. Where a landlord falls into mortgage arrears, and a financial institution commences proceedings for repossession and sale, tenants are deprived of any effective protection from eviction, and their statutory rights to security of tenure and written notice of termination²⁹ are set at naught. Tenants in mortgaged properties may be summarily evicted from their home without any redress as against their landlord or the financial institution concerned.³⁰ The absence of effective legal protection from eviction is prima facie incompatible with Ireland's obligations under Article 11 of the Covenant on Economic, Social and Cultural Rights and Article 17 of the International Covenant on Civil and Political Rights.³¹

²³ While Part 3 of the Residential Tenancies Acts 2004 regulates the frequency with which reviews of rent may occur, there is no restriction on the rate of increase in rents, provided that the rent does not exceed market rent levels (s.19).

²⁴ The number of rental units available to let in Dublin as at 1 May 2015 was just over 1,600 (Daft.ie Rental Report, Q1 2015, May 2015).

²⁵ Threshold's legislative proposals are available at <http://www.threshold.ie/news/2015/06/15/thresholds-proposals-for-rent-certainty>.

²⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland (E/C.12/IRL/CO/3), para.27.

²⁷ Irish Times, 1 March 2015, 'Rents may be fixed for period of three years under plans by Alan Kelly'.

²⁸ In the first quarter of 2015, 104,693 mortgage accounts for principal private dwelling houses were in arrears, and 15,361 buy-to-let mortgage accounts were in arrears for a period exceeding 720 days (Central Bank of Ireland, Residential Mortgage Arrears and Repossessions Statistics: Q1 2015, Statistical Release 4 June 2015).

²⁹ Residential Tenancies Act 2004, Part 5.

³⁰ Tenants of mortgaged properties are caught in a legislative lacuna. While a borrower has a statutory power to lease a mortgaged property (Conveyancing Act 1881 s.18, Land and Conveyancing Law Reform Act 2009, s.112), generally the mortgage deed will require that the borrower obtains the prior written consent of the lender before entering into a tenancy or lease agreement in respect of the property. Where the lender has restricted the statutory power of leasing, a tenancy or lease agreement entered into without the consent of the lender will generally be void and of no legal effect as against the lender (*Fennell and ACC Bank plc v N17 Electrics Limited (in liquidation)* [2012] IEHC 288, [2012] 4 IR 634, Land and Conveyancing Law Reform Act 2009, s.112(2)). While tenants will usually be served with a civil bill for possession by a financial institution who has commenced proceedings against their landlord, they will not be a party to those proceedings and as such will not have a right to be heard by the court, or to make representations as to the impact which repossession will have on them as the occupiers of the property. Tenants who are served with an order for possession and sale by a financial institution cannot refer a dispute to the Private Residential Tenancies Board for resolution, as a financial institution will not generally be regarded as a party to the tenancy (Residential Tenancies Act 2004, s.76).

³¹ As outlined by the Committee on Economic, Social and Cultural Rights in its General Comment No.7: Forced evictions (E/1988/22).

10. Security of tenure will be further undermined by the introduction of an additional ground for the termination of tenancies, namely the failure by a tenant to pay water charges to the relevant State utility company, Irish Water.³² While Threshold recognises the legitimate aim of ensuring that tenants, as occupants, pay water charges due to Irish Water, Threshold believes that eviction cannot reasonably be regarded as a proportionate measure for achieving this aim.

Affordability and accessibility

11. The effectiveness of supports aimed at securing housing in the private rented sector for those whose means are insufficient to meet their accommodation needs is being undermined by a disparity between market rents and maximum rent limits under the rent supplement³³ and housing assistance payment³⁴ schemes. Regulations introduced by the Minister of State at the Department of Social Protection mean that maximum rent supplement limits are no longer subject to a fixed statutory limit as to the duration of their application,³⁵ while a review of rent supplement limits conducted by the Minister for Social Protection³⁶ shows that the principal concern in determining maximum rent supplement limits is to curb inflation in market rents more generally, rather than to ensure that rent supplement payments are sufficient to secure accommodation in the private rented sector.³⁷

³² Section 47 of the Environment (Miscellaneous Provisions) Act 2015 amends the Water Services (No. 2) Act 2013 to provide that a tenancy or lease agreement entered into after the commencement of the relevant provision (s.23A(5)(a)) will be subject to an implied term for the payment of water charges to Irish Water. It follows that, in the event that a tenant fails or refuses to pay water charges due and owing to Irish Water, they will be in breach of an implied term of their tenancy or lease agreement. A breach of a tenant's obligations is a ground for the termination of a tenancy (Residential Tenancies Act 2004, ss.34 and s.58(3)).

³³ Rent supplement payments are a form of supplementary welfare payment, provided for by s.198(3) of the Social Welfare Consolidation Act 2005. Temporary increases in rent supplement payments may be made on a case by case basis for individuals or families who are existing rent supplement recipients and who are placed at risk of homelessness due to an increase in rent above the prescribed rent supplement limits, under the terms of an Interim Tenancy Sustainment Protocol (operational in Dublin and in Cork since June 2014 and January 2015, respectively). A tenancy protection service operated by Threshold under the terms of the Protocol has prevented 1,320 households from becoming homeless, including 2,159 children.

³⁴ The housing assistance payment scheme has yet to be implemented in full, and currently operates on a phased pilot basis only in a limited number of local authority areas. The application of the scheme in Dublin City Council, Dún Laoghaire-Rathdown County Council, and Fingal County Council is currently restricted to qualified households that consist of a person or persons regarded by a housing authority as being homeless, within the meaning of s.2 of the Housing Act 1988, and who on 1 December 2014 or at any time during the 6 months preceding that date occupied accommodation or lodgings made available to them by virtue of s.10(1) of the 1988 Act (Reg. 2 of the Housing Assistance Payment (Section 50) (No. 3) Regulations 2014 (SI No. 575 of 2014)).

³⁵ The effect of reg.5 of the Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No.5) (Rent Supplement) Regulations 2014 (SI No. 604 of 2014) is to remove any temporal limitation on the application of current maximum rent supplement limits. Previously, regulations prescribing maximum rent supplement limits have been subject to review approximately every 18 months, on the following basis:

- Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (SI No 412 of 2007): maximum rent supplement limits prescribed at Schedule 1
- SI No 221 of 2007: increase effective 7 May 2007
- SI No 202 of 2009: limits applicable 1 June 2009 – 31 May 2010
- SI No 295 of 2010: limits applicable 16 June 2010 – 31 December 2011
- SI No 729 of 2011: limits applicable 1 January 2012 – 30 June 2013
- SI No 215 of 2013: limits applicable 17 June 2013 – 31 December 2014

³⁶ Department of Social Protection, *Review of Maximum Rent Supplement Limits* (27 March 2015).

³⁷ Temporary increases in rent supplement payments may be made on a case by case basis where certain categories of household are put at risk of homelessness due to an increase in rent above the prescribed rent supplement limits under the terms of an Interim Tenancy Sustainment Protocol (operational in Dublin and in

Habitability

12. While Ireland has introduced regulations prescribing minimum standards in rented accommodation,³⁸ there has been a failure on the part of many local authorities to enforce these standards adequately,³⁹ compounded by an effective immunity from liability on the part of local authorities for the failure to carry out inspections.⁴⁰ These regulatory failures have had an adverse impact on the adequacy, habitability and suitability of both private and public rented accommodation. A disparity between minimum standards in respect of private and public rented houses persists, with dwellings let by local authorities subject to lower standards in respect of food preparation and storage.⁴¹
13. A collective complaint against Ireland relating to the impact of inadequate standards in local authority accommodation on the rights to protection of health, the right of the family to social, legal and economic protection, and the right to protection against poverty and social exclusion, has been deemed admissible by the European Committee on Social Rights and is awaiting hearing. The collective complaint highlights substandard housing conditions in a significant proportion of local authority housing, together with an absence of an inspection regime for such accommodation, and a lack of effective remedies for local authority tenants to ensure compliance with minimum housing standards. It is alleged that these factors combine to have an adverse impact on the health and well-being of local authority tenants, while undermining their right to protection against poverty and social exclusion⁴²

C. Recommendations

14. In light of the foregoing submissions, Threshold recommends that Ireland adopt the following measures with a view to realising the right to adequate housing:
 - a) Take steps to put the recommendation made by the Convention on the Constitution for the strengthening of economic, social and cultural rights in the Constitution to the people by way of referendum;
 - b) Opt in to Article 31 of the European Social Charter;

Cork since June 2014 and January 2015, respectively). A tenancy protection service operated by Threshold under the terms of the Protocol has prevented 1,320 households from becoming homeless, including 2,159 children.

³⁸ Housing (Standards for Rented Houses) Regulations 2008 (SI No 534 of 2008) as amended by the Housing (Standards for Rented Houses) (Amendment) Regulations 2009 (SI No 462 of 2009).

³⁹ While primary responsibility for ensuring compliance with the Regulations falls to the landlord of a dwelling, enforcement of the Regulations in circumstances where there is non-compliance by the landlord falls to the relevant local authority acting in its capacity as a housing authority for the purposes of the Housing Acts 1966 to 2014 (Housing (Miscellaneous Provisions) Act 1992 ('the 1992 Act'), ss.18(1), 18A). Data released by the Department of Environment, Community and Local Government indicated that while some 7,387 dwellings inspected did not meet minimum standards, legal action was only initiated in 40 cases.

⁴⁰ See *Siney v Dublin Corporation* [1980] IR 400 and *Ward v McMaster* [1988] 1 IR 337.

⁴¹ Article 8 of the Housing (Standards for Rented Houses) Regulations 2008 (SI No 534 of 2008) expressly excludes housing authorities from the minimum standards in respect of food preparation, storage and laundry. Article 7 of the Housing (Standards for Rented Houses) Regulations 1993 (SI No. 147 of 1993), relating to heating, cooking and food storage, remain in force in respect of dwellings let by housing authorities or approved housing bodies, and provides for lower minimum standards than the equivalent sections of the 2008 regulations.

⁴² *International Federation for Human Rights v Ireland* (Complaint No.110/2014). The collective complaint was deemed admissible by the European Committee of Social Rights on 17 March 2015 (CC-110-2014-dadmiss).

- c) Amend the Housing Acts 1966 to 2014 by repealing those provisions which have been found to be incompatible with the European Convention on Human Rights;
- d) Expedite the implementation of the Social Housing Strategy 2020 with a view to increasing the supply of social and affordable housing;
- e) Introduce legislative measures regulating the rate of increases in rent;
- f) Introduce legislative measures to increase security of tenure for tenants;
- g) Ensure that tenants in mortgaged properties are afforded effective protection from eviction;
- h) Increase maximum rent supplement and housing assistance payment limits with a view to ensuring that those whose means are insufficient to meet their housing needs are able to access accommodation in the private rented sector;
- i) Ensure that local authorities fulfil their statutory function of inspecting and enforcing minimum standards in rented dwellings;
- j) Take steps to ensure that the non-payment of water charges will not result in the termination tenancies.