

Home for Good Opening Statement to Joint Oireachtas Committee on Housing, 3rd November 2020

As Chairperson of the Home for Good coalition I wish to extend my thanks to the Oireachtas Committee for their kind invitation to present on the issue of bringing forward the referendum on a right to housing.

Home for Good is a coalition of Focus Ireland, Fórsa Trade Union, Mercy Law Resource Centre, Respond, Simon Communities, Threshold, academics, activists and lawyers.

As a group we believe that constitutional change is urgently required to rebalance our Constitution, and ensure that enabling the provision of secure and adequate housing be recognised as a central role of the State.

We are calling for a referendum to provide a constitutional amendment that would insert a stand-alone right to housing in our Constitution.

As advocates and experts, we understand how important a right to housing will be for those experiencing homelessness, and for those in inadequate, unaffordable, unsafe, insecure or overcrowded accommodation. A constitutional right to housing will recognise that a balance must be struck between the right to private property on the one hand and the right to housing on the other.

The covid-19 pandemic has starkly demonstrated the importance of an adequate home to keep a person safe. As a group we are more certain than ever of the need to amend our Constitution to ensure that the necessary policies can be implemented to work toward ending the housing exclusion and homelessness that has marred our society for too long and in the pandemic have left too many vulnerable.

Home for Good welcome the inclusion of a referendum on housing in the Programme for Government. We now wish to work closely with this Committee to get the process underway of determining the aims and wording of this amendment.

To that end we began working with a group of legal experts to develop an amendment that will meet the objectives I have briefly outlined.

Gerry Whyte, Professor of Law at Trinity College Dublin, is one of the experts who have given generously of their time and I will hand over to him now to outline to you why this referendum should propose a standalone right to housing, and the wording which Home for Good believes best achieves this right.

Why is a referendum needed?

Bunreacht na hÉireann currently provides protection of private property rights in both Article 43 and Article 40.3. There is no equivalent right to housing in the Constitution. This means that the starting point of every legal analysis in respect of the regulation of land begins from the perspective of a property owner's right. While this right may be restricted in the interests of the common good, the starting point for analysis remains the private interest, with the common good only relevant insofar as it justifies the State in limiting this right to private property.

As a result, the Constitution perceives property as a private interest held by a rights holder, though capable of being restricted by the State in appropriate circumstances in the interest of the common good. A difficulty here, however, is that it may not be easy in advance to predict when the common good would justify a restriction on the right to private property.

A more effective and proactive constitutional approach, in the context of the current crisis and in preventing future crises, would be to continue the existing protection for private property rights but weigh these against a right to housing. In this scenario, the legislature and the courts would be tasked with balancing two rights against each other, subject to the usual restrictions around proportionality and rationality.

This would remove the current overly-narrow interpretation of private property rights and enable the Government to respond to the current housing and homelessness crisis in a manner which properly and fairly balances competing interests. Not only does this create a fairer balance, it will better frame the State's role in housing — not only as a protector of private property rights but as a protector of our human right to safe and secure housing. Thus the State would have an obligation to provide for the realisation of this right within available resources, analogous to its existing constitutional obligation to provide for free primary education.

Recommendation:

The insertion of a new Article 43A on Housing in the Constitution as follows:

Housing

Article 43A

- 1 The State recognises, and shall vindicate, the right of all persons to have access to adequate housing.**
- 2 The State shall, through legislative and other measures, provide for the realisation of this right within its available resources.**