

Submission

**To: The All-Party Oireachtas Committee on the
Constitution**

From: CORI Justice Commission

On: Property Rights

Date: June 2003

This submission has been prepared by the CORI Justice Commission in response to the invitation issued by the All-Party Oireachtas Committee on the Constitution. We were glad to receive the invitation and welcome the opportunity to provide the Committee on the Constitution with our views on some of the key issues that we believe need to be addressed on this issue.

In making this submission we approach the issue:

- A social justice perspective drawn from Catholic Social Thought which has a long tradition of addressing this and related issues.
- From a rights-based perspective believing that every person has a range of human rights that incorporates civil, political, economic, cultural and social rights.
- With a special concern for the issue of social housing, the lack of which is now reaching crisis proportions in Ireland and has the potential to undermine much of the progress that has been made on a wide range of fronts over the past decade.

1. Catholic Social Thought Tradition

The following are among the most important observations that Catholic Social Thought brings to bear on the issue of property rights.

- 1.1. The goods of creation are destined for the whole human race.** The appropriation of property is legitimate for guaranteeing the freedom and dignity of persons, and for helping each of them to meet his/her basic need and the needs of those in his/her charge. The right to private property, acquired by work or received from inheritance or gift, does not do away with the original gift of the earth to the whole of humankind. The universal destination of goods remains primordial, even if the promotion of the common good requires respect for the right to private property and its exercise.

This has been and remains a core understanding in Catholic Social Thought on this issue. It reflects the position, for example, of Cyprian in the third century when he challenged those who accumulated property for their exclusive use and reminded them that all of God's creation belongs to all people. Likewise in the fourth century Gregory of Nyssa taught that the right to private property was not absolute; rather it yields to the demands of one's fellow human beings. Many other examples could be cited on this issue.

More recently, Pope John Paul II in his encyclical *Sollicitudo Rei Socialis* in 1988 wrote that:

'It is necessary to state once more the characteristic principle of Christian social doctrine: the goods of this world are originally meant for all. The right to private property is valid and necessary, but it does not nullify the value of this principle. Private property, in fact, is under a "social mortgage", which means that it has an intrinsically social function, based upon and justified precisely by the principle of the universal destination of goods.' (no. 42)

This is a core value the CORI Justice Commission brings to this debate.

- 1.2. The right to private property is not absolute.** Political Authority has the right and duty to regulate the legitimate exercise of the right to ownership for the sake of the common good. This position was very strongly put forward by Pope Paul VI in 1967 in *Populorum Progressio* where he stated that:

Private property does not constitute for anyone an absolute and unconditional right. No one is justified in keeping for his exclusive use what he does not need, when others lack necessities. In a word, according to the traditional doctrine as found in the Fathers of the Church and the great theologians, the right to property must never be exercised to the detriment of the common good'. (no.23)

More recently, Pope John Paul II has re-iterated this point in his encyclical *Centisimus Annus* when he wrote that:

'The Church teaches that the possession of material goods is not an absolute right, and that its limits are inscribed in its very nature as a human right.... The Successors of Leo XIII have repeated this twofold affirmation: the necessity and therefore the legitimacy of private ownership, as well as the limits which are imposed on it'. ...God gave the earth to the whole human race for the sustenance of all its members, without excluding or favouring anyone'. (nos. 30/31)

- 1.3.** From this flows a realisation that **in the right to private property there is rooted a social responsibility.** This was spelt out by Pope John XXIII in 1961 in his encyclical *Mater et Magistra* when he wrote:

Private ownership should safeguard the rights of the human person, and at the same time make its necessary contribution to the establishment of right order in society....It is not enough to assert that man has from nature the right of privately possessing goods as his own, including those of productive character, unless, at the same time, a continuing effort is made to spread the use of this right through all ranks of the citizenry.'
(nos. 112 & 113)

A few years later the second Vatican Council emphasised this when, in its constitution *Gaudium et Spes*, it wrote that:

God intended the earth and all it contains for the use of every human being and people....Whatever the forms of ownership may be , as adapted to the legitimate institutions of people according to diverse and changeable circumstances, attention must always be paid to the universal purpose for which created goods are meant. In using them, therefore, a man should regard his lawful possessions not merely as his own but also as common property in the sense that they should accrue to the benefit of not only himself but of others.

(no. 69)

It went on in the same document to state that:

By its very nature, private property has a social function deriving from the law of the communal purpose of earthly goods.

(no. 71)

- 1.4. The Irish Catholic Bishops Conference, in its Pastoral Letter *The Work of Justice* in 1977, linked this understanding of property to the whole area of housing and did so in the strongest terms. It stated:

*Bad housing is an important factor in the generation of poverty and its perpetuation. The most determined efforts of some families to better their conditions and raise themselves above the poverty line are defeated by the miserable conditions in which they are obliged to live. The marriages of considerable numbers of young couples are put under unreasonable strain because of their inability to find suitable accommodation at prices they can afford. ...The Catholic principle of "private ownership with social function" applies with particular cogency in this area. **The making of exorbitant profits through speculation in land in connection with housing development is particularly morally blameworthy** (emphasis ours).*

(nos. 105/106)

1.5. Consequently, in reviewing the issue of private property the CORI Justice Commission proposes that the following be recognised and acknowledged by the All Party Oireachtas Committee on the Constitution:

- The goods of creation are destined for the whole human race.
- The right to private property is not absolute.
- In the right to private property there is rooted a social responsibility.
- The making of exorbitant profits through speculation in land in connection with housing development is particularly morally blameworthy.
- The State has a responsibility to organise itself in such a way as to ensure that the preceding four points are acknowledged, recognised and acted upon.

2. A rights-based perspective

A right to appropriate accommodation is an issue that arises in the context of discussing the right to private property.

2.1. Social, economic and cultural rights should be recognised in the Constitution

The CORI Justice Commission believes that Ireland and the EU need to acknowledge that human rights go beyond civil and political rights and also incorporate social, economic and cultural rights. Social, economic and cultural rights should be acknowledged and recognised just as the civil and political rights have been. Among others, seven basic rights that are of fundamental concern to people who are socially excluded and/or living in poverty should be acknowledged and recognised. These are the rights to:

- Sufficient income to live life with dignity.
- Meaningful work.
- Appropriate accommodation.
- Relevant education.
- Essential healthcare.
- Cultural respect
- Real participation.

Until these rights are incorporated into the Constitution then Ireland will continue to have a major credibility problem, as it will be failing to match its commitment to civil and political rights with an equal commitment to social, economic and cultural rights.

2.2. Social, economic and cultural rights should be justiciable

The CORI Justice Commission believes that social, economic and cultural rights should be justiciable. This issue of justiciability has been a major sticking point in progressing their recognition. The reasons for this resistance can be put under three main headings i.e.

- these rights are not, and should not be seen, in the same context as civil and political rights which are justiciable.
- there should not be a situation where a person can appeal to the Supreme Court, for example, if they do not have appropriate accommodation; and
- these issues should be addressed in the political and not the judicial arena.

The CORI Justice Commission believes each of these objections can be addressed.

- The issue of whether or not social, economic and cultural rights are on an equal footing with civil and political rights is an issue on which much has been written. **Most progressive societies now acknowledge that social, economic and cultural rights are human rights just as civil and political rights are, and they accept they should be capable of being vindicated when they are not honoured by the Government of the day.**
- There are a wide range of declarations and protocols on human rights that recognise the importance of social, economic and cultural rights. A wide range of bodies including the United Nations, the Council of Europe and the European Union has developed these. We do not repeat these here but they form part of the context within which we make this submission.
- To ensure that the recognition of social, economic and cultural rights goes beyond words, however, it is essential to address the question: how can such rights be made justiciable (capable of being vindicated in law) in a way that respects the political process and does not destroy the balance of power between the judicial and the governmental dimensions of society?

The CORI Justice Commission suggests the following as a viable way forward that would respect concerns expressed particularly

by politicians while also respecting the need for people's rights to be justiciable. Our proposal has a number of components.

- These social, economic and cultural rights would be recognised in the Irish Constitution.
- Following on this recognition there would be a requirement to have legislation ensuring these rights could be vindicated. We suggest the following might achieve this without producing a non-viable situation that would see every individual pursuing, for example, access to appropriate accommodation, right up to the Supreme Court.
- There would be a legal requirement on each incoming Government to set out concrete targets on each of the range of social, economic and cultural rights recognised in the Constitution. The specific list of rights would already be set out in legislation and should cover the listing outlined above or some similar range of rights.
- The targets set out in such legislation would have to be for specific periods of time e.g. two and four years (these particular time-frames would also be set out in the legislation).
- Failure to achieve these targets would be justiciable on a class-action or similar basis but not on the basis of every individual bringing their particular case to court.

Could this be done in practice? Let us take as *an example* the first right listed above i.e. the right to sufficient income to live life with dignity.

The present Government has already set a target (in the *National Anti-Poverty Strategy*) for the lowest social welfare payment for a single person to reach 30 per cent of gross average industrial earnings by 2007. To achieve this it has also agreed in the new national agreement, *Sustaining Progress*, to take the necessary steps during the coming three years to ensure this target is met by 2007.

Consequently, if there was a requirement on the Government to set a two and a four-year target on income adequacy it could base its targets on the commitments it has already made. It could set a two and four-year target

for income adequacy that would satisfy the requirement to set targets to meet the right.

Subsequently, if the targets were honoured the right would be respected. If the targets were not honoured the Government would be answerable in a court for their failure to meet the target they themselves had set.

The only acceptable defence in this situation would be for Government to prove that the economic situation had genuinely changed so much compared to what had been expected when the targets were set that the Government genuinely was not in a position to meet its targets. If that could not be demonstrated, then the Government would be legally obliged to implement its own target on the issue.

This proposal respects the political process and ensures it maintains its primary role. However, it also ensures that a person's rights are respected if, for example, a Government decides deliberately to ignore them.

The proposal would have the additional benefit that General Elections would be fought in part at least on the basis of real proposals and commitments in areas that were of real concern to people. It would also ensure that politicians were more easily held accountable for the commitments they made.

2.3. Consequently, in reviewing the issue of private property the CORI Justice Commission proposes that the All Party Oireachtas Committee on the Constitution:

- Acknowledge that human rights go beyond civil and political rights and also incorporate social, economic and cultural rights.
- Propose that, among others, the following social, economic and cultural rights be incorporated into the Constitution:
 - | Sufficient income to live life with dignity.
 - | Meaningful work.
 - | Appropriate accommodation.
 - | Relevant education.
 - | Essential healthcare.
 - | Cultural respect
 - | Real participation.
- Accept that social, economic and cultural rights should be justiciable.
- Outline the necessary legal instruments required to ensure these rights would be justiciable.

3. Housing

In approaching the issue of private property in the context of Ireland today, we believe that issues surrounding housing and accommodation deserve particular examination. We therefore welcome the committee's decision to review these issues and in particular we welcome its focus on Article 43.2.1° of the Irish Constitution. CORI Justice Commission believes that, in spite of the central position given to social justice in this article, it has been continuously overlooked in practice.

3.1. Housing and Accommodation in Ireland today

During the last decade improved levels of economic growth combined with low interest rates resulted in high levels of housing inflation. This in turn

resulted in a crisis in housing provision in both the public and the private sectors. In the private sector this crisis is evident from the rapid increase in house prices and from the severe difficulties experienced by first-time buyers seeking affordable houses. In the public sector the demand (waiting lists) for public housing has increased substantially in the past five years at a time when house building in the public sector has been at a very low level. The substantial numbers of people experiencing homelessness are another major factor in this context.

3.1.1. Current social housing needs

According to the *Housing Statistics Bulletin* (September 2002) from the Department of Environment and Local Government, on 28 March 2002 there was a total of 48,413 households on local-authority housing waiting lists (see table 1 below). This figure represents a growth rate of 76.5 per cent since 1996, and indicates that about 130,000 people are in need of accommodation.

Concurrent with this growth in waiting lists has been minimal growth in the provision of local-authority social housing. Since 1996 the overall stock has increased by only 4,395 units or 4.47 per cent. It is little surprise, therefore, that local-authority waiting lists are increasing substantially.

| Table 1: The Need for and Supply of Local Authority (LA) Social Housing, 1996- 2002 | | | |
|--|---------------------------------------|----------------------------------|--|
| | Households on LA Waiting Lists | Stock of LA Housing Units | Waiting List as % of Rental Stock |
| 1996 | 27,427 | 98,394 | 28 |
| 1999 | 39,176 | 99,163 | 40 |
| 2002 | 48,413 | 102,789 | 47 |

Source: Department of the Environment and Local Government, *Housing Statistics Bulletin*, various issues

A closer examination of the 48,413 households on the waiting lists is presented in table 2 below. It shows that the largest category of households on the lists are those labelled as being not able to meet costs of existing accommodation. This group accounts for 44 per cent of the waiting list or 21,452 households. The recent *Housing Statistics Bulletin* (September, 2002:

59) further indicates that since 1999 this group has grown from a situation where it accounted for 34 per cent of the list. This growth can be directly related to excessive house prices and rent increases over recent years. A comparison with 1999 also reveals that all bar two of the categories experienced a growth in the number of households on the waiting lists. Only the categories of *existing accommodation unfit* and *elderly persons* saw their waiting lists decrease.

| Table 2: Breakdown of the Local Authority Housing Waiting List by Major Categories of Need, 2002 | | |
|---|-----------------------------|--------------------------|
| Category of Need | Number of Households | % of Waiting List |
| Homeless | 2468 | 5.10 |
| Travellers | 1583 | 3.27 |
| Existing accommodation unfit | 4065 | 8.40 |
| Existing accommodation overcrowded | 8513 | 17.58 |
| Involuntarily sharing of accommodation | 4421 | 9.13 |
| Young persons leaving institutional care | 82 | 0.17 |
| Medical or compassionate grounds | 3400 | 7.02 |
| Elderly persons | 2006 | 4.14 |
| Disabled or handicapped | 423 | 0.87 |
| Not able to meet costs of existing accommodation | 21452 | 44.31 |
| Total | 48413 | 100.00 |

Source: Department of the Environment and Local Government, *Housing Statistics Bulletin*, September 2002:59 and CORI Justice Commission (2003: 79)

The Department of the Environment and Local Government analysis of the 2002 figures also reveals that 32 per cent (15,522) of all those households on the waiting lists consist of single-person households. Single-parent households, consisting of one adult and one child, make up a further 29 per cent (14,039) of the waiting list. When assessed by income level the report shows that 85 per cent (41,447) of households have an annual income of less than €15,000 and that within these 32,528 households (67 per cent of the total waiting list) are households with an annual income of less than €10,000. Finally, some 5 per cent (2,700) of household on the waiting list are households who have obtained refugee status, have obtained work permits or have permission to remain in the state.

When the 48,413 households are classified by the length of time they have spent on the waiting list the figures reveal that 25 per cent of all households have been waiting for more than three years. A further 14 per cent are on the list for between 2-3 years while 22 per cent are waiting for between 1-2 years. The remaining 38 per cent have been waiting for less than a year (including those classified as first time) (September, 2002: 84-85).

In a recent survey Focus Ireland (2002) identified that a number of local authorities, including those in Waterford, Westmeath, Monaghan and South Cork, all experienced a doubling in size of their housing lists between November 2000 and November 2001. From the perspective of vulnerable households it is becoming more difficult to get a local-authority house. Single people are also disadvantaged on housing lists because most current housing developments are for families. Time spent on the waiting list is getting longer as is the waiting list itself. Rents continue to rise in the private rented sector, even though house prices have stabilised. Little progress has been made in advancing the Traveller Accommodation programme. Homelessness is obviously a growing problem.

3.1.2. *Future social housing needs*

A recent report entitled *Housing Access for All?* (2002) was published by four voluntary organisations, namely Focus Ireland, Simon Communities of Ireland, Society of St Vincent de Paul and Threshold. This report examined thirty-three housing strategies and twenty homeless actions plans with the intention of assessing the current and future housing and accommodation problems faced by disadvantaged social groups.

The report projected that as a result of uneven development, socially and spatially, there will be a significant increase in the levels of unaffordability recorded among Irish households. It predicts that 33 per cent of new households will not be able to afford to become home-owners and that this figure rises to 42 per cent in urban areas, compared to 32 per cent in rural areas.

| Table 3: Projected Social Housing Provision and Need, 2003-2005 | | | |
|--|--------------|--------------|--------------|
| | 2003 | 2004 | 2005 |
| Average annual additional social need | 9238 | 9238 | 9238 |
| Average annual social supply | 10605 | 10605 | 10605 |
| Cut in aggregate waiting lists | 1367 | 1367 | 1367 |
| Adjusted waiting lists by year end | 54688 | 53321 | 51954 |

Source: Adapted from Focus Ireland et al (2002: 11)

Based on these projections the report proceeds to set out the future picture of social housing demand over the next three years. Table 3 presents these figures. It shows that in 2003, 54,688 households will be in need of social housing and that this figure will reduce slightly before 2005. The report further concludes that **at the current rate of progress it will take thirty years to eliminate the housing waiting list. Clearly the scale of the need for social housing remains very large and the speed at which it is being addressed remains inadequate.**

Further housing and accommodation issues need to be addressed among:

- people no longer able to buy affordable housing
- new job-seekers from abroad
- homeless persons
- refugees and asylum-seekers
- Travellers

3.2. Specific Issues for the Committee to Consider

In the context of these ongoing problems CORI Justice Commission wishes to raise issues under four of the headings suggested by the committee.

3.2.1. The right to private property / Private property and the common good

- CORI Justice Commission recognises that the right to property is an important right. However we believe that the right as set out in the Constitution at present was framed in a context that was far different from the reality of Ireland in 2003. Consequently, we urge the Committee to consider and accept the proposals summarised in 1.5 above. We believe these proposals situate the right to property within an appropriate context that is valid at all times.
- We also believe the proposals contained in 1.5 above would go some way towards restoring the balance between property rights and the common good, a balance that has been lost in recent years and that needs to be secured for the future.

3.2.2. A rights-based approach

- The CORI Justice Commission believes that social, economic and cultural rights should be recognised and made justiciable. Consequently, we urge the Committee to consider and accept the proposals set out in 2.3 above.
- We also urge the Committee to accept a methodology for ensuring such rights would be justiciable. A possible approach that could be used has been outlined under 2.2 above.

3.2.3. Compulsory purchase / The zoning of land

- We believe that compulsory purchase is an underused tool of spatial development.
- We also recognise that the zoning of land for particular purposes is a necessity. However, the zoning and re-zoning processes have been open to substantial abuse over recent decades.
- CORI Justice Commission believes that a number of changes should be made to the way in which zoning decisions occur. The principal change we propose is the introduction of a law confining the rezoning of land to those lands in the ownership of local authorities.
- Operationally, this legislative change would require local authorities to first purchase land (either voluntarily or compulsorily) before then proceeding to rezone it. Taking the example of land being rezoned from agricultural use to development/housing use the process would involve a local authority purchasing the land at agricultural prices plus a small margin for the owner. The rezoning would then occur while the land was in local authority ownership and so the windfall gain on the land's value would be internalised to the local authority. The land would then be sold on to the developing agent.
- Simply, this change would eliminate speculation and ensure that all windfall gains resulting from rezoning would be retained by the local authority. CORI Justice Commission believes that the profit from this process should then be targeted on addressing the ongoing social housing problems being experienced in Ireland.

3.2.4. The right to appropriate accommodation

- The right to appropriate accommodation is one of the seven social, economic and cultural rights proposed for recognition in the Irish Constitution by the CORI Justice Commission and listed above. This is a basic right that should be available to all in a developed society such as Ireland. However, as our commentary above indicates, there are many in Irish society today who do not experience this right.

- We urge the Committee to accept our various proposals on this issue and so, vindicate this basic right that should be available to every person in Ireland as well as throughout the world.

3.2.5. The price of development land

- CORI Justice Commission believes that rezoning land for development should occur in the interest of society. Currently, the price of development land incorporates large windfall profits made by speculators who gain as a result of decisions made in the political process. We believe that it is possible to internalise these gains and ensure that such profits primarily flow to local authorities.
- Implementing this procedure would also allow local authorities to control the price of development land. Therefore its price, and that of the housing etc built upon it, should decrease.

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