



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

23 July 2014

Case Document No. 1

International Federation for Human Rights (FIDH) v. Ireland
Complaint No.110/2014

COMPLAINT

Registered at the Secretariat on 18 July 2014

To the
EUROPEAN COMMITTEE OF SOCIAL
RIGHTS
Council of Europe, Strasbourg
F r a n c e

COLLECTIVE COMPLAINT

lodged under the 1995 Additional Protocol to the European Social Charter Providing for
a System of Collective Complaints and in compliance with Rules 23 and 24 of the Rules
of the Committee

FIDH
(International Federation for
Human Rights)

v.

Ireland

18 July 2014

TABLE OF CONTENTS

I. PARTIES	3
II. STATEMENT OF ALLEGED VIOLATIONS	4
II. I. ECSR Jurisprudence	4
II.II. Obligations and violations under the European Social Charter and Revised European Social Charter	6
III. COMPLAINT IN DETAIL	9
A. Failure to adopt the Charter rights within the legal, policy and administrative framework of Local Authority housing in Ireland	9
B. The adequacy, habitability and suitability of some Local Authority housing violates the Charter and RESC	12
C. Regeneration – the failure to respect Charter rights	38
IV. SUMMARY	50
V. ANNEXES	51

I. PARTIES

State Party

Ireland signed and ratified the Revised European Social Charter (RESC) and accepted the collective complaint mechanism on 4 November 2000. This followed signature of the 1961 European Social Charter on 18 October 1961 and its ratification on 7 October 1964.¹

Complainant Organisation

This Complaint is brought by FIDH (International Federation for Human Rights), an organization entitled to submit collective complaints under Article 1(c) of the additional Protocol of 1995. FIDH is an international non-governmental organisation which holds consultative status with the Council of Europe. It is currently registered, following a decision taken at the 129th meeting of the Governmental Committee of the European Social Charter and the European Code of Social Security, for the period from 1 July 2014 to 30 June 2018 on the list of International Non Governmental Organisations (INGOs) authorised to lodge collective complaints alleging violations of the European Social Charter.

As there is no formal organisation of private or social sector tenants in Ireland, the complaint is based on research undertaken by a number of law centres, housing Non Governmental Organisations (NGOs), community development organisations and academics. Nothing in this complaint is intended to diminish the respect for the valuable and dedicated work of national and local authority officials, or the committed and extensive work of voluntary and community groups who work tirelessly to improve the situation of local authority tenants in Ireland.

¹Available at
http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/SignaturesRatifications_en.pdf

II. STATEMENT OF ALLEGED VIOLATIONS

This collective complaint alleges that the Government of Ireland has not ensured the satisfactory application of a number of Articles of the Revised European Social Charter (RESC or Charter), particularly with regard to Local Authority housing and the associated rights of several groups of people.

This Complaint relates to alleged violations of the following Articles:

Article 11: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

Article 16: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

Article 17: Children and young persons have the right to appropriate social, legal and economic protection.

Article 30: Everyone has the right to protection against poverty and social exclusion.

Article E: Non-discrimination.

II.I. ECSR jurisprudence

Ireland has ratified the Articles listed above, although it has not ratified Article 31 of the RESC. The jurisprudence of the European Committee of Social Rights (hereinafter “the Committee” or “ECSR”) under Article 16 relates to standards of adequacy regarding families, although the Committee has held that children (even those unlawfully present) must be provided with shelter.² The Committee has also stated “family” for the purposes of Article 16 includes single-parent families. The definition is enlarged by reference to the decisions of the European Court of Human Rights in relation to Article 8 –“Everyone has the right to respect for his private and family life, his home and his correspondence.”³ Since "family" can mean different

²However, it was established in *DCI v The Netherlands*, Complaint No. 47/2008 that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and must make alternative accommodation available. In this case the Committee held that, “*since in the case of unlawfully present persons no alternative accommodation may be required by States, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity*”. Therefore, “*On the basis of the above, the Committee concludes that States Parties are required, under Article 31para2 of the Revised Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children*” (para 64).

³The European Court of Human Rights has interpreted family as including those with close family ties, although there is no pre-determined model of a family or family life. It includes any stable relationship, be it married, unmarried, engaged, or de facto; between parents and children; same-sex couples, siblings; grandparents and grandchildren. See *Schalk and Kopf v Austria* (Application No. 30141/04) Judgment 24 June 2010 where the ECtHR held that a same-sex couple living in a stable *de facto* relationship falls within the notion of “family life”. See also *Kozak v Poland* (Application No. 13102/02) Judgment 2 March 2010; *Keegan v Ireland (1994) 18 EHRR 342*; *Marckx v Belgium* (1979) 2 EHRR 330. In *Kroon and others v The Netherlands* (Application No. 18535/91 Judgment 27 October 1994), the European Court of

things in different places and at different times, the scope of Article 16 is not restricted to family based on marriage. Consequently, every constellation defined as “family” by national law falls under the protection of Article 16.⁴

The Committee has stated that Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing.⁵ In this respect, the provisions for adequate housing and forced eviction are identical under Articles 16 and 31.⁶ As Ireland has not accepted Article 31, housing for families is examined under Article 16.⁷

In *ERRC v Bulgaria*⁸ the Committee reiterated the connection between Articles 16 and 31 of the RESC.⁹ It was clearly stated that Article 16 of the RESC, dealing with the rights of families to social, legal and economic protection, encompasses a right to adequate housing:

Article 16 in its very wording of the Charter (English version, which clarifies the French version), provides for the right to housing of families as an element of the right of the family to social, legal and economic protection. The Committee has already given an interpretation of the notion of the right to housing under Article 16. It summarised this interpretation in its decision on the Complaint *ERRC v. Greece* as follows: “The Committee recalls its previous case law to the effect that in order to satisfy Article 16 States must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore, the obligation to promote and provide housing extends to security from unlawful eviction.¹⁰

It is also important to note that the Committee considers the principle of equality and non-discrimination to form part of Article 16.¹¹

Human Rights held that the notion of “family life” in Article 8 was not solely confined to marriage-based relationships and might encompass other de facto “family ties” such as where parties are living together outside marriage.

⁴European Committee of Social Rights, Conclusions 2006, *Conclusions of the Committee of the European Committee of Social Rights*, Statement of Interpretation on Article 16, p. 13.

⁵European Committee of Social Rights –*Conclusions of the Committee of the European Committee of Social Rights* 2011, Ireland, p.14.

⁶*Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, para 115

⁷European Committee of Social Rights –*Conclusions of the Committee of the European Committee of Social Rights* 2011, Ireland, p. 14.

⁸Complaint No. 31/2005 para. 17.

⁹Article 31 of the RESC on the right to housing states: “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination; 3. to make the price of housing accessible to those without adequate resources.”

¹⁰*ERRC v Bulgaria* Complaint No. 31/2005, para 16.

¹¹*European Roma Rights Centre v Greece*, Complaint No. 15/2003, 2004, para. 24

II.II. Obligations and violations under the European Social Charter and Revised European Social Charter

In *Autism-Europe v France*¹² the Committee stated that:

[T]he implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.¹³

In *Autism-Europe v. France* the Committee also established that the measures taken to implement the Charter Articles must meet three criteria: (i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources.¹⁴

In *FEANTSA v France* the Committee stated that the implementation of rights to housing must be monitored, as well as their impact.¹⁵ Reasonable deadlines must be set and Article 31 must be considered in the light of other international human rights instruments protecting the right to housing such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). This introduces the authoritative interpretation of the UN Committee of Economic, Social and Cultural Rights (CESCR) General Comment 4 on the right to adequate housing into the jurisprudence of the European Social Charter and consequently, into the Charter of the EU.¹⁶

In *FEANTSA v France*,¹⁷ the Committee also pointed out that the obligation of States in realising rights under the RESC must be practical and effective. States are obliged to:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- a) maintain meaningful statistics on needs, resources and results;
- b) undertake regular reviews of the impact of the strategies adopted;
- c) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

¹²Complaint No. 13/2002.

¹³Complaint No. 13/2002, para 53.

¹⁴*Autism-Europe v. France*, decision on merits, Complaint No. 13/2002, para 53.

¹⁵Complaint No. 39/2006.

¹⁶UN Doc. E/C.12/1771/4, CESCR. *General Comment No. 4. The Human Right to Adequate Housing*, Geneva. The elements of adequate housing are set out within the classifications of legal security of tenure, availability of services, materials and infrastructure, affordability, habitability, accessibility, housing in a suitable location and culturally appropriate housing. See also UN-Habitat (2009) *The Right to Adequate Housing*, UN Factsheet 21/Rev 1, pp. 8-12.

¹⁷Complaint No. 39/2006, para 55.

- d) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.¹⁸

The violations of the Charter and RESC are set out below, and relate to the following situations:

A. Failure to adopt Charter rights within the legal, policy and administrative framework of housing in Ireland.

1. In general, housing law and policy in Ireland does not adopt any timeframe, or measurable progress towards realising the rights set out in the Charter and RESC. Thus, there is no means of ensuring the steady progress towards achieving the goals laid down by the Charter for particular and vulnerable groups of people.
 1. It does not maintain meaningful statistics on needs, resources and results.
 2. It does not undertake regular reviews of the impact of the strategies adopted.
 3. It does not pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

B. The adequacy, habitability and suitability of some Local Authority housing violates the Charter and RESC.

1. There is evidence of substandard housing conditions experienced by families and children, those living in, or at risk of, poverty and social exclusion living in a significant proportion of local authority housing in disadvantaged areas. These conditions indicate a failure on the part of the Irish State to take practical steps towards realising Articles 16 and 30 of the RESC. These conditions for tenants have been highlighted in many reports¹⁹.
 1. Much local authority housing does not meet the legal standards for rented housing. In any case, while local authorities carry out a range of limited inspections of private rented properties, there are no such inspections of local authority housing. This illustrates the clear conflict of interest in this situation and the failure to respect the rights of local authority tenants. The result is that these standards for rented housing are not applied to local authority tenancies (unlike private sector tenants).
 2. There is a lack of effective remedies open to Local Authority tenants to ensure compliance with the standards compared with private tenants.

¹⁸Complaint No. 39/2006, para 56.

¹⁹Community Action Network (2010) *Telling it as it is: A Human Rights Based Approach to Housing* (Dublin: CAN), Central Statistics Office (2012) *This is Ireland*, Table 40A (Cork, Ireland, CSO), Inner City Organisations Network (2012) *Improve our homes; A dossier of maintenance issues in Dublin City Council Estates*, Fitzgerald, J. (2007) *Report to the Cabinet Committee on Social Inclusion on Limerick Regeneration*. The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, Tenants First (2009) *Housing for Need Not Greed* (Dublin: Tenants First & Public Communications Centre). Tenants First and CAN undertook research into approximately twenty communities living in disadvantaged local authority estates in Dublin, Limerick, and Cork. The research involved focus groups, public meetings, one-to-one interviews, site visits, and audio-visual documentation of conditions and residents' testimonies. In total almost 300 tenants, residents and community workers were interviewed or partook in the research.

3. Besides limited census, there is a lack of meaningful statistics on housing conditions and social exclusion in Local Authority housing – the last State sponsored assessment study was in 2002.²⁰
4. The health and well-being of tenants in Local Authority housing is being affected by the poor housing conditions.
5. Local authority tenants are deprived of an effective right to protection against poverty and social exclusion.

C. The Regeneration Programmes of the State in key Local Authority housing estates do not respect the housing provisions and other rights set out in the Charter and RESC.

1. Poor housing conditions persist despite Regeneration Programmes being undertaken.
1. There is a poor level of participation by tenants in the regeneration process – indeed, the State is not supporting any formal national or local representative organisation of tenants and has no policy/framework in place to do so. The system and process of regeneration of Local Authority estates has failed to respect the rights set out in the Charter. It has failed to respond to the recommendation, in 2011, of the UN Expert on Poverty and Social Exclusion, Magdalena Sepulveda, following a country inspection that “The State should consider adopting a legislative framework for a National Public Housing Estates Regeneration Programme to ensure that international human rights standards and community participation are ensured in all regeneration projects in the country.”²¹
2. Cuts to community and social services have exacerbated the conditions of Local Authority tenants.
3. There is a serious deficiency incorporating any housing/human rights approaches in regeneration policy and plans – particularly in relation to Article 30 RESC on the rights to protection against poverty and social exclusion – no timetables are set or deadlines established for the implementation of these rights.

²⁰Watson, D., & Williams, J., (Nov 2003), *Irish National Survey of Housing Quality 2001-2002*, Dublin, The Economic and Social Research Institute
http://www.esri.ie/publications/search_for_a_publication/search_results/view/index.xml?id=1706 accessed 18 June 2014

²¹UN Doc A/HRC/17/34/Add.2. *Report of the independent expert on the question of human rights and extreme poverty*, Magdalena Sepúlveda Carmona, Mission to Ireland. (17 May 2011), p. 20.

III. COMPLAINT IN DETAIL

A. Failure to adopt the Charter rights within the legal, policy and administrative framework of housing in Ireland.

Introduction - Local Authority Housing in Ireland

The Irish State Department of Environment, Local Government and Community (“the Department”) is the responsible government Department for housing in Ireland. It develops housing policy and law and allocates central government funding for social housing to local authorities and voluntary housing bodies who are then responsible for the direct provision and maintenance of social housing.

The Census of 2011 showed that there were some 130,000 rented social housing units in Ireland.²² Since the 1980s, the Department has provided funding through a number of Schemes which local authorities used to refurbish their housing stock.²³ However, the schemes failed to have a significant effect on the most disadvantaged estates as the policies were restricted to external physical renewal, thus neglecting problems within the housing units and, in particular, the deep social and economic inequalities that emerged in specific geographic urban areas of deprivation in the 1980s and 1990s. The physical conditions also dis-improved due to inadequate maintenance and upkeep of the estates, while housing allocation practices added to the instability. In the last three decades there has also been a deterioration of the relationship between tenants and local authority landlords.²⁴

The sale of local authority housing stock has meant that while local authority housing comprised 15.5 % of all residences in 1971, it now accounts for only 7% and thus is a minority proportion which increasingly accommodates a population which is socio-economically disadvantaged – a process known as “residualisation”.²⁵

The issues affecting families and children, those living in, or at risk of, poverty and social exclusion and those with disabilities in disadvantaged areas of local authority housing include: substandard housing conditions, overcrowding and dampness, inadequate estate management and insufficient policing responses to persistent anti-social behaviour. The population living in these areas experiences significantly higher

²²The 2011 Census in Ireland revealed that 129,033 households rented from local authorities on a permanent basis accounting for 354,992 people.

²³See Fahey, T., Norris, M., McCafferty, D. and Humphreys, E. (2011) *Combating Social Disadvantage in Social Housing Estates: The policy implications of a ten-year follow-up study*, Dublin, Combat Poverty Agency, Working Paper 11/02, available at: http://www.combatpoverty.ie/publications/workingpapers/2011-02_WP_CombatingSocialDisadvantageInSocialHousingEstates.pdf.

²⁴See Bissett, J. (2009) *Regeneration: Public Good or Private Profit?* Dublin, Tasc/New Island; Hearne, R. (2011) *Public private partnerships in Ireland; failed experiment or way forward*. Manchester University Press.

²⁵See Nolan, B. and Whelan, C. ‘Urban housing and the role of ‘underclass’ processes: the case of Ireland’, *Journal of European Social Policy*. 2000. Vol. 10. (1). pp. 5-21.

than national average levels of unemployment, dependency on social welfare, lone parent poverty, child and elderly poverty, drug addiction, early school leaving and lack of participation at third-level. Despite these issues, it is important to note that tenants and residents express a strong commitment to and identify with their local community, emphasising the importance of family and neighbourhood connections for support. Furthermore, an ESRI report carried out in 2001 revealed that:

Local Authority renters emerged as most likely to experience problems on indicators of financial strain. They were more likely than other groups to lack household appliances or other goods and services because they could not afford them. One-third found housing costs a heavy burden; one-quarter had been in arrears in housing or utility bills and one-fifth had “great difficulty” in making ends meet. Other groups experiencing substantial problems in terms of housing affordability and financial strain were lone parents and households in the lowest income category.²⁶

Research into local authority housing conditions presents evidence of how poor maintenance and management by local authorities have contributed to problems within estates.²⁷ The quality of dwellings and of the public space in some estates is poor and crime and anti-social behaviour is commonplace. Therefore, rather than improving the quality of life of residents, living in these estates can actually undermine their quality of life.

A recent examination of local authority housing by Fahey *et al* states: provided the following quote, which typifies the situation facing many local authority tenants:

There has been a significant level of expenditure on area-based interventions to improve Local Authority estates, with mixed results. Yet despite widespread improvement, problems of stigmatisation and marginalisation of parts of the estates and of sub-sections of the community remain. There is evidence that internal estate stratification is still salient. Respondents noted the continuing problem with motivating and integrating young men, many of whom are early school leavers. The presence of poorly functioning families on some estates remains a challenging problem.²⁸

Effectiveness and Enforcement

The ECSR has stated that the State must ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock,

²⁶Watson, D., & Williams, J., (Nov 2003), *Irish National Survey of Housing Quality 2001-2002*, Dublin, The Economic and Social Research Institute, p. vii.

²⁷Fahey, T. (1999) (Ed.) *Social Housing in Ireland: A Study of Success, Failure and Lessons Learned* Dublin: Oaktree Press; Fahey, T., Norris, M., McCafferty, D. and Humphreys, E. (2011) *Combating Social Disadvantage in Social Housing Estates: The policy implications of a ten-year follow-up study*, Dublin, Combat Poverty Agency, Working Paper 11/02; Hearne, R. (2011), *Public private partnerships in Ireland; failed experiment or way forward*. Manchester University Press; Hourigan, N. (2011) (Ed.) *Understanding Limerick; Social Exclusion and Change*, Cork University Press.

²⁸Fahey, T., Norris, M., McCafferty, D. and Humphreys, E. (2011) *Combating Social Disadvantage in Social Housing Estates: The policy implications of a ten-year follow-up study*, Dublin, Combat Poverty Agency, Working Paper 11/02. p. 54.

injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.²⁹

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States parties to the Charter are responsible, under their international obligations, to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving, at a minimum, supervision and regulation of local action, lies with the government, which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.³⁰

Charter housing and related rights ignored

In general, housing law and policy in Ireland does not adopt any timeframe, or measurable progress towards realising the rights set out in the Charter and RESC for Local Authority tenants. Thus, there are no means of ensuring the steady progress towards achieving the goals laid down by the Charter for these particular groups of people.

Indeed, housing legislation or policy in general does not address or even refer to the housing and associated rights set out in the Charter and RESC.

The Irish State does not adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter. There is no timetable in existence for achieving the objectives under each of the relevant Articles of the RESC and Charter in this Complaint.

The State does not maintain meaningful statistics on the housing needs of those living in local authority housing (aside from the regular assessments of waiting lists for social housing and homelessness). There are no published statistics on the standard of local authority housing (although the required standards for rented housing generally are set out in law), or any relevant statistics on targets and resources for fully meeting the obligations of the ESC Articles, especially the provisions requiring adequate housing for families.

The State does not pay close attention to the impact of the policies adopted on each of the categories of persons concerned in the Articles of the Charter, particularly the most vulnerable.

²⁹European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, 2003, France, p. 224.

³⁰*European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, para 26; *FEANTSA v France*, Complaint No. 39/2006, para 79.

III. Complaint in Detail

B. The adequacy, habitability and suitability of some Local Authority housing violates the Charter and RESC.

1. There is evidence of substandard housing conditions experienced by families and children, those living in, or at risk of, poverty and social exclusion living in a significant proportion of local authority housing in officially designated disadvantaged areas. These conditions indicate a failure on the part of the Irish State to take practical steps towards realising Article 16 of the RESC in relation to the promotion of “the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing” and Article 30 of the RESC in relation to taking measures “to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance” and “to review these measures with a view to their adaptation if necessary.” These conditions for tenants have been highlighted in many reports set out below.
1. Much Local Authority housing does not meet the legal standards for private rented housing. In any case, while Local Authorities carry out a range of limited inspections of private rented properties, there are no such inspections of Local Authority (LA) housing. This illustrates the clear conflict of interest in this situation and the failure to respect the rights of LA tenants. The result is that in practice the general standards for rented housing are not applied to Local Authority tenancies (unlike private sector tenants).
2. There is a lack of effective remedies open to Local Authority tenants to ensure compliance with the standards and redress for violations (compared with private tenants through the PRTB³¹).
3. Besides limited census, there is a lack of meaningful statistics on housing conditions and social exclusion in Local Authority housing – the last State sponsored assessment study was in 2002.³²
4. The health and well-being of tenants in Local Authority housing is being affected by the poor housing conditions.
5. Local authority tenants are deprived of an effective right to protection against poverty and social exclusion.

³¹The Private Residential Tenancies Board (PRTB) was established in 2004 to operate a national tenancy registration system and to resolve disputes between private landlords and tenants. See <http://www.prtb.ie/home>

³²Watson, D., & Williams, J., (Nov 2003), *Irish National Survey of Housing Quality 2001-2002*, Dublin, The Economic and Social Research Institute
http://www.esri.ie/publications/search_for_a_publication/search_results/view/index.xml?id=1706 accessed 18 June 2014

B.1. Defining the Housing and Other Rights Standards

B.1.1. ECSR jurisprudence.

The standard of housing a family enjoys has a multifaceted impact on their standard of living.³³ The Committee has acknowledged that housing is a critical policy area in fighting poverty and social exclusion.³⁴ In ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental rights. There should also be monitoring mechanisms involving all stakeholders, including representatives of civil society and persons affected by exclusion. This approach must link and integrate policies in a consistent way.³⁵

The adequacy of emergency housing or shelter has been examined by the Committee. In *ERRC v. Bulgaria*³⁶ the Committee again emphasised that the temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.³⁷ In *FEANTSA v France*,³⁸ the Committee held that the temporary provision of accommodation, even decent accommodation, cannot be considered a satisfactory solution and people living under such conditions must be offered housing of an adequate standard within a reasonable time.³⁹

Following these significant developments of Charter standards for emergency housing, the defining of standards for access to State provided social housing including the required standards of management, adequacy, conditions and related issues **would greatly assist social housing providers to understand and meet their obligations in this area.** This is particularly relevant in the context of the residualisation of social housing (ie. lettings made almost wholly to low income households). Issues of personal and community safety, freedom from crime, fear, ensuring that facilities for the development of children and communities are safe and free of crime, quality of life and access to services and facilities. The housing rights standard of the right “to live somewhere in security, peace and dignity” offers a potentially significant standard, if applied to some contemporary underserved social

³³Department of the Environment, Community and Local Government, 2011, Regulatory Impact Assessment “Where tenants are renting accommodation below the new standards the main benefits [of introducing a higher standard] will be an improvement in their living conditions which could have positive health, wellbeing and quality of life benefits.” p. 7, available at <http://www.environ.ie/en/Legislation/DevelopmentandHousing/Housing/FileDownload.19126.en.doc>

³⁴European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, 2003, France, Article 30, P. 218

³⁵*European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, para 93.

³⁶Complaint No. 31/2005.

³⁷Complaint No. 31/2005, para 34.

³⁸Complaint No. 39/2006.

³⁹Complaint No. 39/2006. para 108.

housing estates. The integration of these human rights standards into social housing management and regeneration of residualised estates is a critical next step in the implementation of European housing rights.

Adequacy

The Committee has set some detailed housing obligations arising from the Charter in relation to the definition and scope of the term “adequacy” of housing:

States must guarantee to everyone the right to adequate housing.⁴⁰ They should promote access to housing in particular to different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.⁴¹

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to owner-occupied housing.⁴²

Ireland is also bound by the International Covenant on Economic, Social and Cultural Rights (ICESCR), in particular Article 11(1), which addresses the right to an adequate standard of living, and General Comment No. 4 and No. 7 where CESCR has clarified what the right to adequate housing entails. The concept of housing adequacy is addressed in CESCR General Comment 4,⁴³ particularly in paragraphs 7 & 8.

In the Committee's view, the right to 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 seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources” (para 7).

The concept of adequacy must relate to the prevailing social, economic, cultural and other factors. Indeed, in European States where the normative standards of housing

⁴⁰European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, 2003, France, p. 221. See Mikkola, M. (2010) *Social Human Rights of Europe*, Helsinki: Legisactio Oy, p. 348.

⁴¹European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, Italy, p. 342.

⁴²European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, 2003, France, p. 221. *FEANTSA v France*, Complaint No. 39/2006, para 77.

⁴³UN Doc. E/C.12/1771/4, CESCR. *General Comment No. 4. The Human Right to Adequate Housing*, Geneva.

enjoyed are clearly established in law and policy, the housing rights standard of adequacy cannot be lower than this.

Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context.⁴⁴

Habitability and Standards

In *ERRC v Italy*,⁴⁵ the Committee emphasised the obligations of adequacy under Article 31.1. A dwelling must be structurally secure, safe from a sanitary and health point, i.e. possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; not overcrowded and with secure tenure supported by law.

The notion of adequate housing must be defined in law. "Adequate housing" means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, and so on and where specific dangers such as the presence of lead or asbestos are under control;
1. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence,
2. a dwelling with secure tenure supported by the law.

In *FEANTSA v France*⁴⁶, the Committee pointed out that it attaches great importance to General Comments 4 and 7 of the CESCR.⁴⁷ The obligations established under the General Comments (albeit minimalist in some areas in the context of the European welfare state provisions) will apply to the evaluation of compliance with Article 16 of the RESC.⁴⁸

⁴⁴UN Doc. E/C.12/1771/4, CESCR. *General Comment No. 4. The Human Right to Adequate Housing*, Geneva, para 8.

⁴⁵Complaint No. 27/2004.

⁴⁶Complaint No. 39/2006.

⁴⁷*FEANTSA v France*, Complaint No. 39/2006, para 67.

⁴⁸The United Nations Committee on Economic, Social and Cultural Rights (UN-CESCR) in its Concluding observations on Ireland, May 2002 at paragraph 20 also noted «The Committee is concerned that: (a) many new households cannot secure adequate and affordable housing; and (b) some 1,200 families of the traveller community are living in roadside encampments without access to water and adequate sanitary facilities, and are liable to be forcibly evicted. » and made particular suggestions and recommendations at paragraph 32 "The Committee also urges the State party to accelerate its social housing programmes in order to reduce the waiting time for social housing. Moreover, the State party should enhance its efforts: (a) to provide, as early as possible, alternative accommodation for the 1,200 traveller families who are living in roadside encampments without adequate facilities and to respect General Comments Nos. 4 and 7 of this Committee; and (b) to meet its target of providing all necessary

Suitability

Suitability is often related to size, surroundings and location in relation to work, school and services. The cultural background of tenants should also be taken into consideration to evaluate suitability. The criteria used by the CESCR General Comment 4 – notably location, cultural adequacy, accessibility and habitability should be applicable,⁴⁹ although this will encompass the higher European modern normative standards of housing. are particularly relevant elements of General Comment 4.

B.1.2. Irish Legal Standards for Rented Housing

In Ireland, regulations for housing standards are set out in primary and secondary legislation in the Housing Act 1966, and Regulations in 1993, 2008 and 2009, supplemented by the Residential Tenancies Act 2004 (as amended in the Housing (Miscellaneous Provisions) Act 2009). There is therefore a clear legal standard relating to the quality and adequacy of all rented housing (although not affordability) in existence, and while these standards are enforced in private rented housing on a discretionary and variable way, there is no enforcement system in place for local authority housing. There is discrimination between local authority and other tenants in relation to the enforcement of housing standards.

There are many standards for the quality and condition and use of housing, but none for the quality of life that tenants should enjoy within the neighbourhood context. This results in a rather narrow understanding of housing standards as relating only to physical conditions. In fact, the social conditions on Local Authority estates can have more impact on the quality of life and well-being of Local Authority tenants.⁵⁰

Part V of the Housing Act of 1966 addresses overcrowding and unfit houses. Section 66 of the Housing Act defines unfit housing:

66(1) Where a housing authority are of opinion that a house is unfit for human habitation in any respect, the authority shall, unless they are also of opinion that the house is not capable of being rendered so fit in such respect at a reasonable expense, serve on the owner of the house and, in so far as it is reasonably practicable to ascertain such person, on any other person having an interest in the house whether as mortgagee, tenant or otherwise, a notice in writing (in this Act referred to as a repairs notice) specifying the matters in respect of which it is alleged that the house is unfit for human habitation and requiring the owner to execute, within a period specified in the notice, being not less than twenty-eight days beginning on the date of the notice, such works as may be necessary to make the house, as respects the matters specified in the notice, fit for human habitation, and in particular, a repairs notice may, if the authority think fit, specify the works which are, in the opinion of the authority,

traveller accommodation by 2004.”

⁴⁹UN Doc. E/C.12/1771/4, CESCR. *General Comment No. 4. The Human Right to Adequate Housing*, Geneva.

⁵⁰See Hourigan, N. (2011) (Ed.) *Understanding Limerick; Social Exclusion and Change*, Cork University Press.

necessary to make the house so fit for human habitation or to prevent the structure of the house deteriorating, and such owner, his servants or agents shall carry out the works necessary to comply with the requirements of the notice and may, for that purpose, enter on any land.

The matters to which a Housing Authority are to have regard in considering whether a house is unfit for human habitation are set out in the second schedule of the Housing Act 1966:

Section 66 – Second Schedule

1. Stability
1. Resistance to spread of fire
2. Safety of staircases and common passages including the state of paving in any yard or open space appurtenant to the house;
3. Resistance to moisture;
4. Resistance to transmission of heat;
5. Resistance to transmission of sound;
6. Resistance to infestation;
7. Water supply, sanitary arrangements and drainage;
8. Air space and ventilation;
9. Natural and artificial lighting;
10. Facilities for preparing, storing and cooking food;
11. The extent to which the house does not comply with any standard or requirement (other than a standard or requirement relating to any matter hereinbefore mentioned) of building bye-laws in force in the area under the Local Government (Sanitary Services) Acts, 1878 to 1964, or building regulations in force in the area under the [Local Government \(Planning and Development\) Act, 1963](#) .

Local authorities have primary responsibility for the repair and maintenance of the public housing stock. The State has provided guidance to assist local authorities in this respect. In particular, the State sponsored Centre for Housing Research ‘Good Practice in Housing Management – Guidelines for Local Authorities’ published in October 2000 sets out a best practice prioritisation and response model for local authorities in repair and maintenance of housing:

- emergency repairs, which include situations where there is a risk to the life of the tenant or general public
- urgent repairs, which include situations where there is a risk to the landlord’s and/or the tenant’s property
- routine repairs, which include situations where there is no risk to the tenant or to the property but the repair is not included under the preventive maintenance programme.⁵¹

There are minimum standards for all rental accommodation in matters relating to structural condition, sanitary facilities, heating facilities, ventilation, food preparation

⁵¹Department of the Environment, Community and Local Government -The Housing Unit, April 2001, *Good Practice in Housing Management, Guidelines for Local Authorities Managing Voids : Co-ordinating the Monitoring, Repair and Allocation of Vacant Dwellings*, Department of the Environment, Community and Local Government, p.20.

and laundry, lighting, fire safety, refuse facilities, and electricity and gas.⁵² These standards are detailed primarily in the Housing (Standards for Rented Houses) Regulations 2008⁵³ and Housing (Standards For Rented Houses) (Amendment) Regulations 2009.⁵⁴ Several provisions of the Housing (Standards for Rented Houses) Regulations 1993⁵⁵ remained operational until February 1 2013, and are being substantially phased out, however some provisions of the Regulations 1993⁵⁶ will remain operational with respect to local authority tenants exclusively.⁵⁷

The Residential Tenancies Act 2004 (RTA 2004) has created a range of implied terms in every private rented lease, whether oral or in writing, and with special dispute resolution machinery outside the courts. However, the RTA 2004 is applicable only to private renters and local authority housing tenants have no such dispute resolution procedure.⁵⁸

Article 5 of the Housing (Standards for Rented Houses) Regulations 2008 provides that the house shall be maintained in a proper state of structural repair.⁵⁹ “[A] proper state of structural repair” requires that the house be “sound, internally and externally, with roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs, doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas maintained in good condition and repair and not defective due to dampness or otherwise.”⁶⁰ This definition differs significantly from the definition advanced in the Housing (Standards For Rented Houses) (Amendment) Regulations 2009.⁶¹ Indeed, by widening the remit of the definition, it demands a higher standard in several areas. In particular, by removing the preposition “*serious*” from the 2008 definition regarding dampness, the 2009 definition⁶² has a wider scope of application. Furthermore, the Regulations 2009⁶³ definition is more detailed in several respects, for instance setting out that the house must be “*sound, internally and externally*”. In this respect, the Regulations 2009⁶⁴ definition also removes the preposition “*essentially*” from the Regulations 2008⁶⁵ definition and this allows for a wider application of the standard.

⁵²Under section 18 of the Housing (Miscellaneous Provisions) Act 1992.

⁵³S.I. No. 534 of 2008.

⁵⁴S.I. No. 462 of 2009.

⁵⁵S.I. No. 147 of 1993.

⁵⁶S.I. No. 147 of 1993.

⁵⁷In particular, art.14(3) of the Regulations 2008 set out that art.7, with respect to heating facilities of the 1993 Regulations, shall continue to apply where the house is let by a housing authority under s.56 of the Housing Act 1966 (as amended) or by a housing body approved under s.6 of the Housing (Miscellaneous Provisions) Act 1992.

⁵⁸In private law there are certain obligations on local authorities in relation to standards for rented housing. In *Siney v Dublin Corporation* [1980] IR 400, the Supreme Court held that the obligations and powers set out in the Housing Act 1966 conferred an implied warranty on lettings agreements of local authorities that the house was fit for human habitation. In *Burke (a minor) v Dublin Corporation* [1991] 1 IR 341 the Supreme Court held that the implied warranty that a house being let was fit for habitation on a continuing basis.

⁵⁹S.I. No. 534 of 2008.

⁶⁰S.I. No. 534 of 2008, as amended by Housing (Standards For Rented Houses)(Amendment) Regulations 2009 (S.I. No. 462 of 2009) article 5.

⁶¹S.I. No. 462 of 2009.

⁶²S.I. No. 462 of 2009.

⁶³S.I. No. 462 of 2009.

⁶⁴S.I. No. 462 of 2009.

⁶⁵S.I. No. 534 of 2008.

Thus, the standards for rented housing derive from the Housing Act 1966, and also a number of Regulations on 1993, 2008 and 2009, supplemented by the RTA 2004 (as amended in the Housing (Miscellaneous Provisions) Act 2009.

B.1.3. Substandard Conditions in Local Authority Housing

This section provides evidence of substandard housing conditions experienced by families and children, those living in, or at risk of, poverty and social exclusion and those with disabilities living in a significant proportion of local authority housing in officially designated disadvantaged areas in Ireland. The evidence reveals how local authority tenants experience substandard housing conditions and how government housing and regeneration policy and practice, rather than improving social exclusion and poverty, has exacerbated it for vulnerable populations living in these areas.

B.1.3.1. Conditions in some Local Authority Housing Estates

The extent of substandard conditions in some local authority housing estates is demonstrated below. The data⁶⁶ was gathered from local community NGOs and locally based tenant groups, the Central Statistics Office Census results, statutory reports and Dublin City Council data.

A summary of the key survey data is provided in the following Table. This is followed by a detailed explanation of the conditions on the case study estates.

Table 1. Substandard issues in local authority accommodation: results of tenant surveys & research 2007-2012

Local Estate/Area	Authority	Housing Units	Question	Proportion of tenants/residents affected
Dolphin Dublin	House,	436	Dampness and fungal contamination	72%
ditto			Sewage invasions and odours	89%
St. Theresa's Gardens Dublin		346	Not satisfied with maintenance	79.9%
ditto			Dampness in bedroom	40%

⁶⁶Community Action Network (2010) *Telling it as it is: A Human Rights Based Approach to Housing* (Dublin: CAN), Central Statistics Office (2012) *This is Ireland*, Table 40A (Cork, Ireland, CSO), Inner City Organisations Network (2012) *Improve our homes; A dossier of maintenance issues in Dublin City Council Estates*, Fitzgerald, J. (2007) *Report to the Cabinet Committee on Social Inclusion on Limerick Regeneration*. The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, Tenants First (2009) *Housing for Need Not Greed* (Dublin: Tenants First & Public Communications Centre). Tenants First and CAN undertook research into approximately twenty communities living in disadvantaged local authority estates in Dublin, Limerick, and Cork. The research involved focus groups, public meetings, one-to-one interviews, site visits, and audio-visual documentation of conditions and residents' testimonies. In total almost 300 tenants, residents and community workers were interviewed or partook in the research.

Eight Dublin City Centre Authority Local Flat Complexes	800	Substandard maintenance issues	85%
Balgaddy, Co. Dublin	465	Poor quality materials, presence of pyrite, dampness and mould	85%
Moyross, Limerick	1100	Housing unsuitable for remediation-require demolition	33%
Southill, Limerick	1000	Housing unsuitable for remediation-require demolition	50%
Eight Dublin City Centre Authority Local Flat Complexes	800	Of tenants who reported their problems to the local authority were not happy with the outcome.	90%

Case Study 1. Dolphin House and the Rialto Rights in Action Tenant Survey.⁶⁷

The Dolphin House complex is a local authority housing estate, located off the South Circular Road in Dublin's South Inner City. It is comprised of 436 units in 4-storey apartments (flats) and was built in the 1950s. The population of the estate is affected by extreme deprivation. For example, national census figures from 2011 show that, a mere 4.6% of people aged 15 years and over went on to participate in third-level education in comparison to national figures in 2006 of 29.1%.⁶⁸ Only 34% of people aged 15 and over in Dolphin are employed 'at work', which is significantly below Dublin City and national rates of 51% and 50% respectively. Some 29.9% of people aged 15 and over in Dolphin were unemployed in 2011 in comparison to Dublin City and national rates of 11.5% and 19% respectively.

The Rialto Rights in Action Project is a collaboration of the Dolphin House Community Development Association, The Dolphin and Fatima Health Projects, and Rialto Residents Community Action Network which monitor housing conditions in the Dolphin House complex.

The research by the Rialto Rights in Action Group (RRIAG) found that;

- 72% of residents reported dampness
- 63% of residents reported mould
- 89% of residents reported sewage invasions and smells
- 62% of residents concerned about health because of sewerage or damp
- 65% of residents given no satisfactory information/explanation as to why problems occur

⁶⁷This was a survey of 80 households. For firsthand accounts of the living conditions in such estates, see DVD, *Abandoned Housing*, as filmed by Community Action Network – submitted with this Complaint.

⁶⁸The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin.

- 65% of residents reporting no information given on how issues of dampness and sewerage are to be addressed
- 80% of residents reporting that they are not included in decisions affecting them regarding dampness and sewerage⁶⁹

The problems with sewage invasions and smells included grey and black wastewater repeatedly backing up and overflowing into household fixtures. Delays of up to four days by Dublin City Council (DCC) in responding to such blockages were reported. A tenant surveyed in March 2011 explained:

The bath – it (sewage) gurgles, it comes up a couple of inches. I have to put the plug in every night and I have a big heavy candle I put over it. If the kids are in the bath, well as soon as we hear that gurgle, I have to drag them out of the bath because it will come up in on top of them and you don't know what's coming up. (RRIAG, 2012, 4).

DCC had denied that the waste-water was dangerous to health, but the scientific analysis indicated that the waste water was highly polluted.⁷⁰ The April 2010 survey also found that some 72% of flats were affected by dampness and fungal contamination. The scientific analysis found that the fungal contamination level is 'far greater' than that ever recorded in domestic dwellings. Colonies of *Aspergillus fumigatus*, *Mucor*, *Rhizopus* and *Penicillium* were detected in most of the test locations. *Aspergillus fumigatus* is a known human pathogen, which can cause pulmonary (lung) diseases in humans, potentially resulting in asthma and bronchitis at the levels identified.⁷¹ DCC responded by claiming that there was no serious mould or damp but just condensation, caused by tenants drying clothes on radiators and not opening windows, and that it was the tenant's responsibility to rectify as per the Tenants Handbook (DCC, 2010, 20). This is contradicted by the report, as one tenant explained in the April 2010 survey:

"It's everywhere...It's all around the beds. The walls are soaking wet. The walls are literally black. I have to wash them down with bleach and it's back a couple of weeks later. The vents are all open anyway. There is nothing I'm doing wrong. I don't dry clothes in the bedrooms. It's in the walls. It's black and furry and disgusting to look at."⁷²

Other tenants surveyed as part of the RRIAG in May 2010 explain the impact on their children:

⁶⁹The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, pages 5-7.

⁷⁰The sampled waste-water was found to have "constituents which can be described as harmful to human health when compared broadly with the categories given in Statutory Instrument No. 294 of 1989 - *European Communities (Quality of Surface Water Intended for the Abstraction of Drinking Water)*". It found that "*the elevated coliforms, suspended solids, phosphate (ortho), phosphorous (total) and BOD in it were consistent with partially treated and untreated sewerage waste*" (Tobin Consulting Engineers, 2011, 3).

⁷¹The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network.

⁷²The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, p. 4.

The dampness is in the little girl's room. It started at the back of the edge of the skirting board and worked its way right up to the top, up to the ceiling. It's all over the windows as well. Then I noticed, a few years back, it started in the bathroom. It grew and grew and grew. I've painted it and done everything with it. It's just so severe.⁷³

My daughter is in the room with me because I only have a two bedroom flat... the whole wall is destroyed with a big damp mark, there is mildew over my windows in the front and the back bedrooms and a little bit of my sitting room and the smell of sewage is coming up my bath.⁷⁴

The RRIAG Research revealed how the conditions were having significant health implications for tenants, particularly children and families. Supporting medical evidence detailed how young children repeatedly suffered from serious chest infections, pneumonia, bronchitis and e-coli infections related to the housing conditions. Tenants explained in the survey how children were infected on their face and hands from sewerage overflows in the play area. Adults reported suffering headaches from the smells and their mental health was affected, emphasising the stress and embarrassment caused by living in such conditions⁷⁵.

As a result of the RRIAG research, Dublin City Council undertook, for the first time, a conditions survey of a local authority housing flats complex. Between July and December 2011, Dublin City Council Architects Division undertook a survey of 376 flats in the Dolphin House complex. This found that:

- 212 flats (56%) had dampness
- 114 flats (30%) had high levels of damp
- 95 units (25%) had mould present
- 252 flats (67%) of flats reported drainage odours in kitchen and bathrooms⁷⁶

The report of Rialto Rights in Action Group commented as follows on this DCC report:

The City Council's Investigative Survey Report of March this year identifies the principal causes of dampness and mould as structural problems such as cold walls, insufficient ventilation and insulation, and overcrowding. DCC made commitments to address these conditions immediately. However, despite the acknowledgement of the scale of the problem, it is two years on and still tenants of Dublin City Council remain living in substandard conditions that have been proven to affect the health of the inhabitants.⁷⁷

⁷³The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, pp 5-7.

⁷⁴Ibid.

⁷⁵The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, pp 5-7.

⁷⁶Investigative Survey, Dolphin House Complex, Dublin City Council, City Architects Division March 2012 p.10

⁷⁷The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin.

Dr. Kavanagh of National University of Ireland (NUI), Maynooth commented on the spores found in Dolphin House flats:

The presence of *Aspergillus fumigatus* is very worrying since this is a known human pathogen and can cause a variety of pulmonary (lung) diseases in humans. Prolonged exposure to this fungus at the level present in most of these houses could cause a deterioration in asthma and bronchitis.⁷⁸

The residents of Dolphin House estate have experienced substantial difficulty in having the substandard conditions addressed by Dublin City Council even though the substandard housing conditions have been acknowledged by a Government Minister:⁷⁹

“I am assured that the council is taking a proactive approach to resolving issues in relation to ingress of damp, drainage and ventilation in Dolphin House. I accept that accommodation which was designed and built more than 50 years ago has not kept pace with modern lifestyles.”⁸⁰

A legal case was brought by a disabled tenant of Dolphin House and this reached court in 2011, where a Circuit Court awarded the tenant €15,000 damages against Dublin City Council. The Judge ruled that the evidence showed the flat was “unfit for human habitation and in breach of the council’s contractual duty of care under the Housing Act.”⁸¹

Case Study 2. St. Theresa’s Gardens.

St. Theresa’s Gardens is an estate similar to Dolphin House, located in Dublin’s South Inner city, which has 346 apartments in 4 storey ‘blocks’. It was estimated in 2006 that in excess of 80% of the working-age population depended on social welfare as their primary source of income and that less than 0.5 % of the population was in third-level education. A survey of tenants undertaken by the Regeneration Board in 2010 found that 79.9% of respondents (from a 74.4% response rate) were not satisfied with the maintenance of their flat and the flat buildings in St. Theresa’s. A total of 475 internal maintenance problems were identified in the 134 households, 66.9% of which had already been reported to DCC. Some 40% had problems with dampness in their bedroom. Problems with rats were reported in 9 of the 14 ‘blocks’. Other problems reported included broken glass, anti-social behaviour, sewage and drainage problems.⁸²

⁷⁸The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, page 10.

⁷⁹The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, pages 5-7.

⁸⁰Willie Penrose, TD, Statement to Dail Eireann on Local Authority Housing, Dail Debates May 17th 2011 Vol. 372 Col. 349 <<http://debates.oireachtas.ie/dail/2011/05/17/00028.asp>>

⁸¹Managh, R. (2011) ‘Damages for Disabled Man over Sewage in Council Flat Shower,’ *The Irish Times*, 8 July 2011

⁸²Deputy Catherine Byrne, Regeneration Projects, Dáil Debates 21 February 2013, available at <http://oireachtasdebates.oireachtas.ie/debates/%20authoring/debateswebpack.nsf/takes/dail2013022100038>

Case Study 3. Substandard conditions in eight Dublin City Centre Local Authority Flat Complexes.

A Report entitled *Improve Our Homes*,⁸³ published in 2012 by the North Dublin Inner City Community Organisation Network (ICON) highlights that 85% of tenants in eight local authority flat complexes in Dublin's North Inner city had issues of substandard conditions. The estates varied in size from 70 to 350 units.

The main findings included:

- Hazardous levels of mould/condensation/damp and/or moisture in homes
- Constant problems with the drains including a lack of proper drainage both within the homes and on balconies, roofs and ground floor areas
- Sewerage problems
- Dirty and badly maintained environment
- Poor estate lighting
- Fire safety
- Draughty and poorly fitting windows and doors
- Poor workmanship at times
- Serious problems with roofs⁸⁴

Some 90% of tenants who reported their problems to the local authority were not happy with the outcome. Issues in relation to this included:

- Repairs not carried out satisfactorily, or at all.
- Work having to be constantly redone due to old buildings, underlying problems, or poor workmanship.
- A denial that an issue exists in the first place.
- How tenants are treated by the system in relation to the quality of customer service.
- Tenants who are in arrears cannot access the maintenance system.⁸⁵

The Report revealed that evidence was found of heavy/significant levels of mould infection in some homes and the mould colour and pattern was indicative of *Pencillium spp14*. In eight cases, out of the ten that were assessed, it was recommended that the infected rooms be fogged/fumigated using anti-mould disinfectant to ensure that all airborne spores are killed. This was noted in all cases to be an immediate need⁸⁶.

⁸³Inner City Organisations Network (2012) *Improve our homes*; A dossier of maintenance issues in Dublin City Council Estates. Dublin, ICON.

⁸⁴Inner City Organisations Network (2012) *Improve our homes*; A dossier of maintenance issues in Dublin City Council Estates

⁸⁵Inner City Organisations Network (2012) *Improve our homes*; A dossier of maintenance issues in Dublin City Council Estates

⁸⁶Inner City Organisations Network (2012) *Improve our homes*; A dossier of maintenance issues in Dublin City Council Estates

Other issues raised included the complex interaction of social problems and maintenance issues, for example older people living alone. These residents need social support to get the maintenance work done but no effort appears to be made with them. There are also particular concerns for older tenants in relation to emergency repairs and the charge of €100 that DCC will put on a tenant's rent if a call out is not deemed an emergency.

Case Study 4. Balgaddy development

Balgaddy development comprises 465 social houses and apartments built on the outer suburbs of Dublin between 2004 and 2007. This case study represents the increasing evidence emerging from new build homes in local authority estates where poor quality materials and the presence of pyrite are resulting in unsafe buildings. In addition, these new buildings are already showing signs of dampness, mould and the other symptoms of poor construction.

From an early stage, residents of Balgaddy complained about the poor condition of the housing, the lack of adequate community facilities, and more recently an increase in anti-social behaviour.

South Dublin County Council, the responsible Local Authority, report that 4,606 maintenance requests were received from tenants of the estate from the beginning of 2007 to end of 2011:

Table 2. Maintenance Requests received by Local Authority in relation to Balgaddy housing development⁸⁷

Year	2007	2008	2009	2010	2011
Complaints	337	790	972	1,210	1,297

A report by independent architects found defects and dilapidation relating to the buildings, including external windows and doors being generally badly fitted, warped, out of alignment and evidence of severe cold throughout the development, doors to the common area not being certified fire doors and missing fire seals. There are ongoing problems with the heating systems, with reported leaks or malfunctioning systems. There are numerous issues with the electrical installation. The plaster work in some apartments is very poor and is cracking. There is poorly installed insulation. Some vent pipes are terminating in the attic space which results in a foul smell and there are areas of non-compliance with Building Regulations in Fire, Ventilation, Stairs and Disability.⁸⁸

Case Study 5. Limerick City.

The conditions in social housing areas in Limerick City were outlined in a report commissioned by the Government and undertaken by former local authority City Manager, John Fitzgerald in 2007.

⁸⁷Balgaddy: A Housing Scandal, *An Phoblacht*, 30th April 2012, <http://www.anphoblacht.com/contents/21812>

⁸⁸Balgaddy: A Housing Scandal, *An Phoblacht*, 30th April 2012, <http://www.anphoblacht.com/contents/21812>

The Moyross and Southill areas of Limerick suffer from some acute problems of disadvantage. In particular they have a high unemployment rate (5 times the national average), a high proportion of one-parent families, significant educational disadvantage with educational attainments well below the national norm. In terms of socio-economic status, CSO analysis shows that these estates are among the most deprived in the country. They also have the lowest scores in terms of socio-economic status in Limerick city. There is a high rate of crime, particularly violent and drug-related crime, which has come to particular public attention in the past 12 months as a result of a number of high profile incidents. Criminal elements in certain parts of these estates exert a highly negative influence on young people, and cause fear and intimidation among residents. The situation with regard to drug use is also serious. The National Drugs Strategy Team has identified Limerick city as the area of most concern with regard to problematic drug use combined with indicators of social deprivation.

The overall appearance of Moyross, Southill, St Marys Park, and parts of Ballinacurra Weston, is very poor. There is extensive illegal dumping and littering. The appearance of the estates is made worse by the number of burnt-out houses, which are often the result of criminal activity. The state of the housing stock is poor, particularly in O'Malley Park.

There are approximately 1,100 houses in Moyross, of which more than a third are not suitable for further remediation work. There are also approximately 1,000 houses in Southill, over half of which are in a similar state. Overall then, excluding St. Mary's Park, there are approximately 900 houses that need serious attention, and to date remediation work has not addressed the problem in these estates. Indeed the state of the housing stock has degenerated to such an extent that remediation is not anymore a realistic option⁸⁹.

The Limerick Regeneration Masterplan which was published in October 2008 outlined a framework plan for the four city areas identified for regeneration [Moyross, Southill, St Mary's Park/King's Island and Ballinacurra Weston], which proposed the demolition of all housing, community and retail facilities and their replacement with new, better quality neighbourhoods and an overall investment in the regeneration programme of €3 billion from both private and public sources. The launch of the plans coincided with the economic crisis, with the result that only a fraction of the proposed investment was realised, with much demolition of homes but little replacement.

The Limerick Regeneration Framework Implementation Plan which was launched in October 2013 reflected this, reporting that as of the 31st December 2012, there are now 726 occupied and unoccupied homes in Southill, of which 199 are to be demolished, 527 homes are to be refurbished and a total of 209 new homes are proposed for the area. According to the 2013 Plan, there are now 530 local authority

⁸⁹Fitzgerald, J. (2007) *Report to the Cabinet Committee on Social Inclusion on Limerick Regeneration*

homes in Moyross, of which a further 257 are to be demolished and 273 are to be refurbished.⁹⁰

The evidence demonstrates that these conditions indicate a failure on the part of the Irish State to take practical steps towards realising Articles 16 of the RESC in relation to the promotion of “the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing” and Article 30 of the RESC in relation to taking measures “to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance” and “to review these measures with a view to their adaptation if necessary.”

These poor conditions also demonstrate the failure to realise Article E of the RESC in relation to non-discrimination in the enjoyment of the rights outlined in Articles 16 and 30 on the grounds of “social origin, health, association with a national minority, birth or other status”. Tenants of local authority housing are among the poorest in Irish society.⁹¹

B.1.3.2. Heating Facilities

The ESRI report previously cited has also revealed that local authority renters experience a significantly worse experience with regard to central heating than private renters:

There are substantial differences between households in prevalence of central heating, with the lowest figures found for Local Authority renters (70%).⁹²

Heating facilities for rented housing are addressed in art.7 of the Regulations 2008.⁹³ Article 7(1) of the Regulations 2008 requires that:

“every room that is used, or intended for use, by the tenant of the house as a habitable room shall contain a permanently fixed appliance or appliances capable of providing effective heating and suitable and adequate facilities for the safe and effective removal of fumes and other products of combustion to the external air.”⁹⁴

⁹⁰Limerick Regeneration Framework Implementation Plan, (September 2013), Limerick City Council Office of Regeneration

⁹¹Fahey, T., Norris, M., McCafferty, D. and Humphreys, E. (2011) *Combating Social Disadvantage in Social Housing Estates: The policy implications of a ten-year follow-up study*, Dublin, Combat Poverty Agency, Working Paper 11/02, available at:

http://www.combatpoverty.ie/publications/workingpapers/2011-02_WP_CombatingSocialDisadvantageInSocialHousingEstates.pdf, and, Hearne, R. (2011) *Public Private Partnerships in Ireland*, Manchester, Manchester University Press

⁹²Watson, D., & Williams, J., Nov 2003, *Irish National Survey of Housing Quality 2001-2002*, Dublin, The Economic and Social Research Institute, page ix.

⁹³S.I. No. 534 of 2008.

⁹⁴S.I. No. 534 of 2008.

In addition, Article 7(2) introduces a requirement that the operation of the appliances required in Article 7(1) shall be capable of being independently manageable by the tenant.

The requirement that the operation of the appliances required in Article 7(1) shall be capable of being independently manageable by the tenant is significant. In effect, multi-unit accommodation, where one heating system was used to heat the entire property, will have to be altered so as to allow for a separate heating system to be installed in every unit so that the heating system shall be capable of being independently managed by the tenant.

Several provisions of the Housing (Standards for Rented Houses) Regulations 1993⁹⁵ will remain operational with respect to local authority tenants exclusively. In particular, Art.14(3) of the Regulations 2008 set out that Art.7, with respect to heating facilities of the Housing (Standards for Rented Houses) Regulations 1993 shall continue to apply where the house is let by a housing authority under S.56 of the Housing Act 1966 (as amended) or by a housing body approved under S.6 of the Housing (Miscellaneous Provisions) Act 1992. This does not require individual heating facilities in all rooms. Other lower standards also apply to local authority tenancies.

This means that families living in local authority housing are placed at a disadvantage relative to private renters, and as such enjoy a lower standard of housing.

It is disconcerting to note that Census 2011 has revealed that 2,305 local authority households have no central heating, approximately 1.8% of all local authority tenants. The Census revealed that 17,235 owner occupied households are without central heating, equating to .0149% of all owner-occupier households.⁹⁶ While this in itself may not indicate a breach of the Regulations,⁹⁷ it does raise concerns regarding the inadequacy of heating systems in State rented accommodation which is ten times greater than that in owner-occupied housing.

Clearly, from the accounts of local authority housing set out below, much of this housing does not meet the Irish legally defined standards for rented accommodation.

It is clear from the evidence presented here that dampness is a key concern among local authority tenants. Dampness can threaten the structural security of the property and can also present sanitary and health dangers. This indicates that there is a failure to progressively realise the standards required as part of the understanding of adequate housing under the RESC.

B.2. Less effective remedy processes for Local Authority tenants

This section addresses the situation which prevails where Local Authority tenants cannot access effective remedies around housing standards in comparison to private tenant processes. There are essentially two main issues. Firstly, that of housing

⁹⁵S.I. No. 147 of 1993.

⁹⁶*Census 2011 — This is Ireland: Published Reports* (Central Statistics Office, 2011) available at <http://www.cso.ie/en/census/census2011reports/census2011thisisirelandpart1/> (Last accessed May 18, 2012).

⁹⁷S.I. No. 534 of 2008, S.I. No. 462 of 2009 and S.I. No. 147 of 1993.

standards both in terms of the standards required and their enforcement by the State, and secondly, how individual tenants can effectively access remedies to ensure compliance with such standards.

B.2.1 Conflict of interest of Local Authorities in meeting standards for rented housing.

The fact that there is no regular examination of housing conditions and standards in local authority housing means that the State is unable to comply with its obligations to ensure Charter compliance.

Standards for rented housing derive from the Housing Act 1966, and also a number of Regulations on 1993, 2008 and 2009, supplemented by the RTA 2004 (as amended in the Housing (Miscellaneous Provisions) Act 2009. There is therefore a clear legal standard relating to the quality and adequacy of all rented housing (although not affordability) in existence, and these standards should be enforced within local authority housing, but are not. There is discrimination between local authority and other tenants in relation to the enforcement of housing standards.

Standards in rented housing are enforced by local authorities under the provisions of the Housing (Miscellaneous Provisions) Act 1992. However, while responsibility for the enforcement of the Regulations rests with the relevant local authority, it is a matter for each individual local authority to decide the specific details of its enforcement strategy and inspection arrangements. Indeed, there is a wide variation between the levels of inspections of private rented housing across authorities as the table below shows. Local authority inspectors inspect rental properties for the purpose of ensuring they comply with the regulations and where a property does not comply the authority can engage a number of sanctions against the landlord. These include issuing an Improvement Notice which sets out the works a landlord must carry out, within a set timeframe to remedy any breach of the regulations. Where an Improvement Notice is not complied with, a housing (local) authority may issue a Prohibition Notice, which directs a landlord not to re-let a property until the breach of the regulations has been rectified. A person who obstructs an authorised person in the lawful exercise of their powers or who contravenes the regulations is guilty of an offence under the Housing (Miscellaneous Provisions) Act 1992. Failure to comply with an Improvement Notice or a Prohibition Notice is also an offence. The maximum fine for an offence is €5,000 and €400 for each day of a continuing offence. Where a person is guilty of an offence under this Act, the court shall, unless there are particular reasons for not doing so, order that person to pay the costs and expenses incurred by the housing authority in relation to the prosecution of the offence.

Table 3. Enforcement of Standards in Private Rented Houses by Local Authorities (2012)⁹⁸

Local	Dwellings	Inspections	Do not	Notices served on	Legal
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⁹⁸Source. Department of Environment, Heritage and Local Government - website: <http://www.environ.ie/en/PublicationsStatisticsandRegularPublications/HousingStatistics/> The numbers of inspections of private rented housing by all local authorities between 2005 and 2012 is set out at: <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,30202,en.pdf>

Authority/ County Councils	Inspected	carried out	meet requiremen ts	landlords improvements to be carried out	for action initiated
Carlow	225	380	221	4	4
Cavan	737	737	60	0	0
Clare	706	843	659	0	0
Cork	613	735	612	16	0
Donegal	532	532	0	0	0
Dun Laoire Rathdown	279	545	371	4	0
Fingal	231	380	177	0	0
Galway	74	67	33	49	0
Kerry	951	814	301	0	0
Kildare	573	692	312	271	0
Kilkenny	163	273	54	0	0
Laois	173	246	73	0	0
Leitrim	66	66	0	0	0
Limerick	135	149	5	0	0
Longford	268	277	217	0	0
Louth	61	122	61	22	0
Mayo	562	728	98	95	0
Meath	58	81	12	4	0
Monaghan	342	390	27	0	0
North Tipp.	438	451	40	37	0
Offaly	62	102	62	62	0
Roscommon	260	468	319	0	0
Sligo	921	1092	719	443	0
Sth Dublin	880	1087	207	0	0
Sth Tipp.	208	211	42	0	0
Waterford	600	600	0	0	0
Westmeath	311	459	137	0	0
Wexford	1122	1122	704	0	0
Wicklow	1082	1083	77	0	0
City Councils					
Cork	628	827	380	380	0
Dublin	1701	2831	876	867	36
Galway	88	124	54	0	0
Limerick	488	581	318	26	0
Waterford	515	515	120	0	0
TOTALS	16,055	19,616	7,348	2,280	40

The table shows inspections carried out in relation to private tenancies.

By way of comparison, no inspections of this nature are conducted for Local Authority dwellings.

It is significant that the legislation does not grant any rights to tenants to request or have a right to an inspection of their dwelling – a denial of rights in itself. Local authorities have powers, which are discretionary, in relation to inspections and enforcement of standards in private rented sector properties. While the standards also apply to local authority housing, there are no such inspections of this accommodation, clearly discriminating against this group of tenants.

Whilst Local Authorities carry out a range of limited inspections of private rented properties, there are no such inspections of Local Authority housing. This illustrates the clear conflict of interest in this situation and the failure to respect the rights of LA tenants. The result is that these standards for rented housing are not applied to Local Authority tenancies (unlike private sector tenants). One of the consequences (aside from denying local authority rights to adequate housing and associated rights) is that there is no statistical information on the housing conditions of local authority housing.

Clearly, there are two issues here that demonstrate a breach of Articles 16, 30, and E in relation to the right to the provision of social housing, and non-discrimination against those from a certain social origin and minority.

The right to housing includes the right to access to remedy. In *ERRC v. Bulgaria*, the Committee found that the inadequate housing situation of Roma families violated Article 16 and indeed stated that the law must provide legal remedies and offer legal aid to those who need it to seek redress from the courts⁹⁹. Legal remedies for violations of the right to housing also have to be accessible in practice. In *INTERIGHTS v. Greece*, the Committee noted that although there were legal remedies available, these were not sufficiently accessible because many families were not sufficiently aware of their rights, did not know how to exercise them, and in particular did not avail themselves of their right to legal aid.¹⁰⁰ In *International Movement ATD Fourth World v. France*, the Committee also found that the system of legal redress for people who were denied social housing was “subject to serious shortcomings” because it was not available in all municipalities and was not sufficiently efficient, and therefore violated the right to housing.¹⁰¹

Local authority tenants in Ireland lack access to remedy as the local authority landlord is also the adjudicator and enforcer of regulations as outlined above. In this system, a conflict of interest arises where the local authority is at once landlord of the local authority housing and also the body responsible for enforcing the Housing (Standards) Regulations. It is clear that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective.¹⁰²

⁹⁹*ERRC v. Bulgaria*, Complaint No. 31/2005, Decision on the Merits, 18 October 2006 p. 36 and 52.

¹⁰⁰International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, Decision on the Merits, 11 December 2009, p. 64, 67

¹⁰¹*International Movement ATD Fourth World v. France*, Complaint no. 33/2006, Decision on the Merits, 5 December 2007 para 131, See also, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, 5 December 2007 para 161

¹⁰²European Committee of Social Rights, Conclusions of the Committee of the European Committee of Social Rights, 2003, France, Italy, Slovenia and Sweden; 2005 Lithuania and Norway; FEANTSA v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, paras. 80-81.

B.2.2 Lack of effective remedy or process for Local Authority tenants to ensure compliance with standards, and seek redress for violations (compared with private tenants).

The management of local authority housing places families living in such housing in manifest disadvantage relative to those in private rented accommodation. In particular, a conflict of interest in management reduces the affected families' enjoyment of an effective and legally supported right to housing.

There is no effective independent dispute resolution system for local authority housing tenants to address their complaints on poor standards of housing, inadequate management of estates or eviction proceedings. Furthermore, while Regulations in 1993, 2008 and 2009, impose a legal duty on landlords to ensure that the rented property conforms to certain minimum standards, this is completely ineffective for local authority tenants as inspections of rented accommodation are to be carried out by the relevant local authority, but no inspections are carried out of local authority housing.¹⁰³

The Residential Tenancies Act 2004 regulates the tenant-landlord relationship in the private residential sector. The Private Residential Tenancies Board (PRTB) dispute resolution service replaces the courts in relation to the majority of private rental landlord and tenant disputes.

The PRTB process is only available to households in private rented accommodation,¹⁰⁴ thus excluding 355,000¹⁰⁵ people from that legislative framework (plus an amount renting temporarily from local authorities whether they be traditional renters or requiring Traveller specific accommodation).¹⁰⁶ There is no comparable process available to local authority renters.

The only opportunities to seek remedies for violations which are available to families living in local authority housing are the Courts or the Office of the Ombudsman. The Ombudsman avenue is not much used as the table below shows, and in any case the decisions of the Ombudsman are not binding on a local authority.

¹⁰³Department of Environment, Community and Local Government, *2005-2011: Breakdown of Payments to Local Authorities for the Inspection of Private Rented Accommodation*, Dublin, The Stationery Office.

¹⁰⁴Except for a small amount of local authority tenants in a limited scheme called the Rental Accommodation Scheme which is essentially a hybrid arrangement but technically should allow local authority tenants to access the PRTB. It is proposed to expand this legislation to voluntary housing tenants. However, at present it is only available to private tenants thus excluding the poorest of tenants and families who cannot afford to rent privately. If the legislation is extended to voluntary housing associations (which are essentially charities recognised by the State to assist in meeting housing need in the State) local authority housing tenants alone would remain outside the framework.

¹⁰⁵The 2011 Irish Census records 354,992 people resident in 129,033 households rented permanently from local authorities. Census 2011 accessible at www.cso.ie <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.aspxmaintable=CDD44&PLanguage=0>

¹⁰⁶The Census does not appear to categorise Traveller Specific housing whether temporary or permanent.

Table 4. Complaints to the Ombudsman in relation to local authority housing¹⁰⁷

	2000	2011
Housing	331	384
Repairs	63	79

Local authority tenants do not have a formal internal process to review decisions of their landlords and access to independent external accountability is severely restricted by Court costs, procedure and restriction on legal aid. Few cases ever reach the courts, although a small number of Community Law Centres and private solicitors undertake some cases. In any case there is almost no entitlement to legal aid in these disputes.

There is no proposal to extend the remit of the PRTB dispute resolution process to local authority tenants.

This clearly violates Article 16, 30 and E of the Charter and RESC.

B. 3. Lack of “meaningful statistics” on social housing conditions and social exclusion in Local Authority housing.

Under the RESC States are obliged to maintain meaningful statistics¹⁰⁸ on needs, resources and results; and undertake regular reviews of the impact of the strategies adopted. However, as explained earlier in this complaint, the most recent official assessment of local authority housing conditions in Ireland, the Irish National Survey of Housing Quality (NSHQ), was undertaken over a decade ago, in 2002 by the Economic and Social Research Institute (ESRI) for the Department of the Environment Heritage and Local Government. The only other publicly available statutory conditions survey include the 2007 Fitzgerald Report on Limerick and the survey undertaken by Dublin City Council of one estate, Dolphin House, as a result of the research of the Rialto Rights in Action Group, in 2012.¹⁰⁹ This is clearly inadequate in terms of keeping relevant up-to-date statistics on housing conditions for the most marginalized and those suffering social exclusion in Ireland.

B. 4. Health and well-being

Article 11 of the Charter on the right to protection of health states that;

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;

¹⁰⁷Office of the Ombudsman, Ombudsman *Annual Reports 2000 – 2011*, Dublin, Office of the Ombudsman.

¹⁰⁸*FEANTSA v. France*, Complaint No. 39/2006, Decision on the Merits, 5 december 2007 para 56

¹⁰⁹Investigative Survey, Dolphin House Complex, Dublin City Council, City Architects Division March 2012.

1. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
2. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

The presence of dampness has significant implications for the health and well-being of the occupants and, consequently breaches local authority tenants' rights under Article 11. Recent research on the environmental burden of disease associated with inadequate housing has revealed:

Since the 1990's dampness, moisture and mould in indoor environments have been associated with adverse health effects in population studies in Europe, North America and elsewhere. Based on extensive reviews, the findings have been remarkably similar (IOM, 2004; WHO, 2009). Most commonly reported health effects are airways symptoms, such as cough and wheeze, but other respiratory effects, and skin and general symptoms have also been reported. Associations with both new-onset asthma and asthma exacerbations have been documented especially in children, and to some extent also in adults (Bornehag et al., 2001; Bornehag et al., 2004; Jaakkola, Jaakkola, 2004; Fisk et al., 2007). Asthma in childhood is ... the most common chronic disease in childhood and thus of major public health importance.¹¹⁰

The Rialto Rights in Action Third Monitoring Report states:

... 40% of tenants who report that their children are suffering from either respiratory or stomach upsets either related to or aggravated by the dampness, mould and sewage conditions.¹¹¹

Dolphin House estate residents are in ill health as they wait for healthy homes:

Over 40% of adults and children living in Dolphin House estate have trouble breathing easily and over 90% are worried about their health because of the persistence of damp and sewerage in their homes, according to a latest survey published today. Over 60% reported that their illness developed or worsened only since moving into a flat with damp, mould or sewerage. A new analysis of damp and mould concluded that living in Dolphin is bad for your health. In particular, it showed a continuing high presence of the mould spore *Aspergillus Fumigatus* which is known to cause a range of lung ailments.¹¹²

Similarly, a tenant from O'Devaney Gardens outlines their issue:

My son's bedroom is very, very damp. The walls are cracking. I can't put him in there because when I do he gets sick within a few days. So he sleeps in the same room as myself and my two little girls. He is tired all the time because he

¹¹⁰Braubach, M., Jacobs, D.E & Ormandy, D. (2011) *Environmental burden of disease associated with inadequate housing*, Copenhagen, World Health Organisation, p.5

¹¹¹The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8, Community Action Network*, Dublin, pp. 5-8.

¹¹²The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8, Community Action Network*, Dublin, p.10.

can't get a good night's sleep and he has just gone into first year in secondary school.¹¹³

The findings clearly indicate that poor housing conditions have multiple negative consequences for families:

Of those reporting respiratory and or stomach upsets/nausea issues for children related to the housing conditions 92% stated that their child or children had missed school as a result of these illnesses in the last year. Most had missed over ten days, some missing up to 22 days, with others stating the children had missed 'numerous', and 'a lot' of days as a result of the illnesses.¹¹⁴

The impact of poor living conditions is consistent across the estates, and individual residents feel a mixture of shame, embarrassment, stress and tension.¹¹⁵ Poor housing leads to poor health (in particular, to respiratory problems and stress-related conditions), with accompanying financial costs in terms of health care. As people are beginning to notice the health impacts, especially in terms of the high numbers of children suffering from asthma and other illnesses they question themselves:

"I must be a terrible parent to leave my children living in these conditions which I know are causing their ill health." - Resident Dolphin House¹¹⁶

The costs associated with trying to pay for endless repairs or 'more bottles of Milton' (bleach), damp-proofing, and redecorating are crippling, especially for people who are already financially challenged.¹¹⁷ Tenants share experiences of frustration, anger and powerlessness in relation to seeking responses to their issues from local authorities.

"You are going every week. They say they will send someone out. You have to go back three and four times but they never come. You get tired and say I'll leave it. What's the point? They just aren't listening to you when you say you have sewage coming up your bath. They don't care. We are left to rot. We are not treated with respect." - Resident, St. Teresa's Gardens¹¹⁸

"I feel DCC has dismissed us and think we are all mad. They don't think it is as bad as we are making out. I feel pushed aside, ignored. It makes me angry and very disheartened." – Resident, Bluebell¹¹⁹

In 2000 the Department of Environment sponsored Housing Unit, published as part of its Good Practice in Housing Management – Guidelines for Local Authorities, the Guide on *Repair and Maintenance of Dwellings*.¹²⁰ These guidelines are "intended to be a practical working tool for local authority housing managers and, with this in

¹¹³Community Action Network, Interviews with O Devaney Gardens Tenants, 2012

¹¹⁴The Rialto Rights in Action Group, 5/6/2012, Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8, Community Action Network, p.9.

¹¹⁵Community Action Network, Interviews with O Devaney Gardens Tenants, 2012

¹¹⁶The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, pp. 15-16

¹¹⁷Community Action Network, Interviews with St. Theresa's Gardens Tenants, 2012

¹¹⁸Tenants First and CAN research 2012.

¹¹⁹*ibid*

mind, the guidelines have been laid out in a user-friendly style...”¹²¹ The Guide states that local authorities should “Ensure, through local weekly and monthly reviews, the achievement of target completion times for emergency, urgent and routine items of response maintenance.”¹²²

From the evidence presented above it is apparent that dampness poses a risk to the health of the residents and as such should at least be categorised as an urgent repair and should be addressed within the recommended timeframe.

B. 5. Local Authority tenants are deprived of an effective right to protection against poverty and social exclusion.

The highly vulnerable lifestyle that is forced on families living in local authority housing in Ireland because of the authorities' failure to provide them with adequate social, legal and economic protection means that they are also deprived of an effective right to protection against poverty and social exclusion.

With respect to Article 30, the Committee has set out:

[T]hat governments must adopt an overall and coordinated approach, which must comprise an analytical framework, and take measures promoting access to social rights, in particular employment, housing, training, education, culture and social and medical assistance for persons in, or at risk of finding themselves in, a situation of poverty or social exclusion.

As such, in characterising the signatory States' obligations under Article 30 the Committee have consistently set out that Article 30 has a direct link with the right to housing.¹²³ In *ERRC v France* the Committee endorsed an inclusivity centric interpretation of Article 30 after setting out that living in a situation of social exclusion violates the dignity of human beings.¹²⁴ The Committee further advocated monitoring mechanisms involving all relevant actors, including civil society and persons affected by exclusion.¹²⁵

The Committee has stated that:

¹²⁰The Housing Unit, *Good Practice in Housing Management – Repair and Maintenance of Dwellings* (Dublin, The Housing Unit.)

¹²¹*Ibid*, p. 5.

¹²²*Ibid*, p. 39.

¹²³European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights*, 2009, Article 30, Italy, p. 37.

¹²⁴Complaint No. 51/2008, para 93.

¹²⁵With a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental rights. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by exclusion. This approach must link and integrate policies in a consistent way. European Committee of Social Rights, *Conclusions of the Committee of the European Committee of Social Rights* 2003, Article 30, France, p.214.

The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.¹²⁶

Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken.¹²⁷

As long as poverty and social exclusion persist, alongside the measures, there should also be an increase in the resources deployed to make social rights possible. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.¹²⁸

The UN Committee on Economic, Social and Cultural Rights has set out that the right to participate in public decision making is indispensable if the right to adequate housing is to be realised and maintained by all groups in society.¹²⁹ Indeed, the right to participate has been cast as intrinsically linked with human dignity.¹³⁰

While enormous amounts of expenditure have taken place in relation to tenant participation in estate management schemes and similar approaches over the past ten years, there is still no rights-based participation by tenants. The Committee has held that Article 30 requires states parties to put in place control mechanisms involving all relevant actors, including civil society and persons affected by exclusion.¹³¹

A culture of “managerialism,”¹³² while bringing many improvements in local authority housing management, can only regard “participation” as perfunctory “consultation” and is not linked to any human or housing rights-based approaches. Significantly, aside from the Tenants First network in Dublin (which has no state funding support), there are no national or regional tenants’ associations in Ireland, and no State support in place to set them up.

¹²⁶Conclusions 2003, France, p. 214.

¹²⁷Conclusions 2005, Norway, p. 580.

¹²⁸Conclusions 2005, Slovenia, p. 674.

¹²⁹The UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 states- “The right to adequate housing cannot be viewed in isolation from other human rights ... the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society.”

¹³⁰“*Participation and active involvement in the determination of one’s own destiny is the essence of human dignity*” – Mary Robinson, also “*The right to participate in decisions which affect one’s life is both an element of human dignity and the key to empowerment – the basis on which change can be achieved.*” Amnesty International, *Our Rights Our Future*, p. 48.

¹³¹*Médecins du Monde-International v. France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012 para 105 ; *European Roma Rights Centre (ERRC) v. France*, Complaint No.51/2008, decision on the merits of 19 October 2009, §§ 93-94)

¹³²See Norris, M. & O’ Connell, C. *Social Housing Management, Governance and Delivery in Ireland: ten Years of Reform on Seven Estates*, *Housing Studies*, Vol. 25. Issue 3, (2010) 317-334.

III. Complaint in Detail

C. Regeneration – the failure to respect Charter rights

Successive governments, the Department of the Environment and local authorities have in recent years, sought to deal with substandard housing conditions, social exclusion and poverty in some estates through regeneration projects. However, many of these have failed to address the situation and indeed have made it worse in many instances.

Regeneration was commenced in the local authority housing area of Ballymun in Dublin's suburbs in 1997 and was based on state funding, but from 2001 onwards, Public Private Partnerships (PPPs) were promoted as the principal mechanism to create regeneration in these areas. This involved land transfer arrangements between local authorities and private developers, alongside private investment. The Department of Environment's 2005 Housing Policy Framework: *Building Sustainable Communities* showed that almost €1 billion had been spent on regeneration and remedial works for local authority housing estates since 1997. It outlined the intention to roll out a programme of regeneration for all run-down estates nationwide and a prioritisation of maintenance and management of social housing estates. It stated that "it is not acceptable that the social housing domain should be compared unfavourably with private housing development...the Government will ensure that new housing is designed and planned on quality principles, includes an appropriate housing mix and provides necessary social infrastructure."

Guidelines for Regeneration were also developed, although these do not incorporate any references to the Charter or RESC.¹³³ A National Regeneration Programme was developed in this period to include projects ranging from large-scale urban regeneration projects such as Ballymun and Limerick City, to smaller estate-wide regeneration projects in parts of Dublin City and regional towns including Sligo, Dundalk and Tralee.

The Programme was underpinned by the analysis outlined in Department of Environment June 2011 Housing Policy Statement: "the problems afflicting parts of Dublin and Limerick cities and other large urban centres have been significantly driven by a too narrow conception of housing support in the past". This holistic programme of physical, social and economic regeneration would address the various causes of spatial deprivation in the country's most disadvantaged estates "to build sustainable communities through a combination of social, educational and economic initiatives and also by rejuvenating the built environment."¹³⁴

In 2007, two new special purpose Government Agencies were established through legislation to drive the regeneration of the aforementioned disadvantaged areas in

¹³³Set out in Department of Environment, Heritage & Local Government (2007) *Delivering Homes and Sustaining Communities*, Dublin, The Stationery Office at Chapter 8, and the Comptroller and Auditor General's *Special Report No. 61 on Ballymun Regeneration* (November 2007), the Treadwell Shine, K. & Norris, M. (2006) *Good Practice in Housing Management: Guidelines for Local Authorities*, Dublin, Centre for Housing Research.

¹³⁴Department of the Environment, *Housing Policy Statement*, 2011, Dublin p. 3. Dublin, Department of the Environment, Community and Local Government.

Limerick City. The Master plan included planned investment of €3 billion from combined public and private sources to build and replace 7,240 homes, including a mix of 2,450 local authority houses and 4,790 private dwellings. By early 2008, Dublin City Council was planning the regeneration of at least twelve large disadvantaged local authority estates in inner city locations involving over 2,000 of its stock of 11,000 inner city flats, through the PPP mechanism. These PPP projects were viewed as ‘flagships’ and ‘catalysts’ for regeneration across Ireland.¹³⁵

Regeneration areas were also supported by state funded area-based social inclusion programmes implemented through national anti-poverty policies and schemes including the community development programme, community drugs and youth services, Family Resource Centres, after school clubs, and youth services.¹³⁶

The property crash from 2008 onwards revealed the extent of overreliance of the regeneration projects on private sector funding and a booming housing market. As property prices plunged, the private residential and commercial aspects were no longer deemed economically viable by private finance and all of the PPP projects collapsed, except for the Fatima estate, which was mostly completed at the time of the crash. The planned investment in regeneration was radically reduced as private finance evaporated and state investment was reduced as part of a series of austerity budgets (see Table below). As a result, the regeneration Master plans for the areas in the National Regeneration Programme have been reduced, redeveloped and rescaled and are now predominantly based on Exchequer funding only.

Table 5. Government investment in National Housing Regeneration Projects (€m)¹³⁷

City	2008	2009	2010	2012	2013
Limerick	13	11.25	25	27.5	28
Dublin city Flat complexes	8.5	51.5	63.7	25	15
Ballymun	65			25	16
Cork city	15	15	15		12
Tralee	1	5.5	5		4
Sligo	7.5	4	3.5		3
Dundalk	1	1	1		2
Waterford	10	9	3.5		
Total	121	97	116	90	80

The result has often been the disintegration and dislocation of these estates as significant parts of the communities and tenants have been permanently removed from their communities and those remaining left in substandard housing conditions. The

¹³⁵ Department of Environment, Heritage & Local Government (2007) *Delivering Homes and Sustaining Communities*, Dublin, The Stationery Office.

¹³⁶ Fahey, T., Norris, M., McCafferty, D. and Humphreys, E. (2011) *Combating Social Disadvantage in Social Housing Estates: The policy implications of a ten-year follow-up study*, Dublin, Combat Poverty Agency, Working Paper 11/02, available at: http://www.combatpoverty.ie/publications/workingpapers/2011-02_WP_CombatingSocialDisadvantageInSocialHousingEstates.pdf.

¹³⁷ Source: *Dail Statements, various Ministers for the Environment, 2008-2012.*

impact of the state regeneration policies can be described as a process of de-regeneration or regeneration through displacement.

C. 1. Poor Housing Conditions persist despite regeneration.

The Department of the Environment and local authority emphasis has been on relocation of residents and demolition instead of focusing on sustaining the living conditions for the existing communities. Once de-tenanting commences on an estate, management and maintenance tended to be reduced, and this, combined with high vacancy rates, has resulted in estates becoming more difficult to live on, leading to a ‘downward spiral’ effect, where the remaining tenants become disillusioned and want to leave. The process has resulted in the removal and dispersal of existing working-class communities, thus irreversibly dismantling the original social structures. The destabilisation, decay and destruction of existing communities are a significant and irreplaceable loss to individuals, communities and the social, historical and cultural fabric of these areas.

The residents that remain are left waiting in poor conditions and are, generally, those suffering the most intense social and economic inequalities, such as high levels of vulnerability, poverty and disadvantage (e.g. the elderly, lone parents, single men).

The extent of displacement is highlighted in the following table:

Table 6. Occupancy rates on estates planned for regeneration in Dublin City

Estate	Original Units	Units Occupied June 2010	Units Occupied March 2013
Croke Villas	87	30	17
St. Michael’s Estate	346	4	0
St. Theresa’s Gardens	346	180	108
Charlemont Street	181	100	70
Bridgefoot Street	143	0	0
Chamber Street/Weaver court	60	0	0
O’Devaney Gardens	278	98	50
Dominick Street	198	78	62

Tenants highlight that the de-tenanting impacts severely on the existing residents through the loss of neighbours and community spirit. People are now suspicious of one another and have lost support, their communities are losing hope, anti-social behaviour increases, and there is a loss of a sense of place, as people are separated from their family and friends.¹³⁸

Tenants believe that local authorities have a strategy of neglecting estates in the pre-regeneration phase as part of a strategy of removing the existing poor populations from these areas. The environment deteriorated to the point that some tenants felt that

¹³⁸Hearne, R (2013) Spatial Justice and Social Housing, forthcoming Chapter in Kitchin, R. (ed) Spatial Justice in Ireland, Dublin, Royal Irish Academy

they had no choice but to leave. The land in these areas is prime development land that local authorities have promoted for private development.¹³⁹

Tenants First describe how...

“...[T]he conditions in the estates in Limerick and Dublin are now far worse than they were when regeneration was first mentioned. The issues of maintenance are being neglected; areas are being de-tenanted, rundown and are now left in a mess.”¹⁴⁰

Parents have outlined how the issues of anti-social behaviour are so bad that they do not only fear for their own safety but the safety of their children when playing and are worried about young teenagers getting involved in drug dealing gangs. There is a real sense of disempowerment.¹⁴¹ An *Irish Times* report from 17 November 2012 stated the following about the O’Devaney Gardens estate in Dublin’s North Inner City:

“Almost all of the 276 flats have been emptied, a process which began when the original regeneration plans were put in place. Demolition of the vacant blocks began in September 2008 after a summer of vandalism and violence culminated in a stand-off with riot police.

Most of the blocks known as “the luxuries” – as they were originally built as private housing in the 1950s but were taken over by the council for social housing soon after construction – have been demolished.

Just 44 flats, known as “the long balconies”, so-called as access to each flat is off a communal balcony, are occupied. The small group of tenants who remain live amid a wasteland of boarded-up derelict blocks.

Few people living in O’Devaney Gardens want to talk. Some say they fear it will affect their chances of a transfer out, others say they don’t see what good talking to reporters has ever done them. Anyone who does talk insists their real name not be used.

“Danny” and “Claire”, both in their mid-30s, were born and raised in O’Devaney Gardens. They are raising their own children in the long balconies.

“This place is a down-and-out horrible kip. That’s a terrible thing to say about the place you grew up, but it’s true,” says Danny.

It is hard to disagree with him. Looking out the back of their ground-floor flat, there is scrubland where there used to be a crèche. It was torn down about two years ago. Beside it is a playground, a single toy left in the centre. It is no longer in use, screened off with metal gates.

¹³⁹Hearne, R (2013) Spatial Justice and Social Housing, forthcoming Chapter in Kitchin, R. (ed) Spatial Justice in Ireland, Dublin, Royal Irish Academy

¹⁴⁰Tenants First, 2008. Housing for Need not Greed, p.4.

¹⁴¹Tenants First and Community Action Network, Research with tenants from various local authority estates in Ireland, 2012.

The view from the front door is of an almost-empty block. Two flats remain occupied on upper floors. The windows and doors of the rest have been covered with metal sheets.

About 20 eight-foot poles are set into the concrete area in between, the washing lines they used to support have been cut away. Seven pairs of runners hang from the phone wires at the end of the block, signalling heroin is for sale.

It wasn't always like this, Claire says. "We loved living in the flats but since everyone else started leaving it hasn't been the same. They've let them run down. There's sewage coming up from other flats. It's the contents of someone else's toilet coming up your bath. There's damp on the wall in the kids' bedroom and the bathroom, the paint on the wall is all bubbles."

Perhaps the worst thing though is not being able to let the children outside, she says. "The place is all smashed bottles. You can't let the kids out to play once they get in from school, that's it. Almost every night the fire brigade is down. There was one day when they were down five times in the one day. People set fire to the bins and they get into the empty flats and set fire to whatever's there."

Scenes which resulted in the attendance of riot police in 2008 are now a regular occurrence, Danny says. "You'd want to see this place at the weekend. The police don't give a damn. There are gangs of people drinking every Friday until Sunday. They don't even live here. Years ago if it happened the guards would come in and take drink off them but now they don't bother. You've to be your own law."

Claire now just wants out. "The place had so much going for it. It's close to town, close to the park, schools, doctors, but you can't bring up kids here. I don't want them thinking what happens out there is normal."

Another neighbour, "Orla", is suspicious about the council's intentions. At almost 15 acres, the site is exceptionally large and is in an excellent location. "They want the land. There's the Phoenix Park, the courts, the barracks. What do you think they'll do? They're not going to want to keep all that for tenants. They'll wait till it's worth a bit more money then they'll sell it privately."

A statement made in *Dáil Eireann* (National Parliament), on Thursday 21st Feb 2013, by the *Fine Gael* TD, Catherine Byrne, outlines the similar process that affected the St. Theresa's Gardens estate:

"I am concerned that, due to the collapse of public private partnerships, some regeneration did not happen, particularly in St. Michael's estate where I live. A wonderful job has been done on Fatima Mansions and work has now commenced on St. Teresa's Gardens. In the 1950s, Dublin Corporation built St. Teresa's Gardens with 346 flats in 16 blocks, as well as ten houses and ten shops. At the time it was heralded as the greatest place to live. I know many people who grew up there over the years and they would still say the same thing today.

Since those years, however, many problems have occurred within the flat complex, including dampness, mould and sewerage. The area has fallen into a poor state of repair. These problems are at times compounded by serious anti-social behaviour, criminal activity and drug dealing. The situation has become a nightmare for the 120 residents living there.

The regeneration board was established in 2005 and spent several years working on a masterplan for redeveloping the flats complex. The project was to be completed through a public private partnership. In 2009, however, the plan was abandoned as that regeneration project and four others in the city fell victim to the recession and the demise of the developer Mr. Bernard McNamara who was supposed to complete the projects at that time. It was devastating news for the residents, public representatives and the wider community.

Since then, the remaining residents of St. Teresa's Gardens have been left in limbo. The council has been unable to proceed due to lack of funding, as the Minister knows. Conditions have worsened and the tenanting process has come to a halt. This is because the city council is finding it difficult to re-house the other 120 residents.

Last October, Dublin City Council started to demolish two of the housing blocks, and that work has now been completed. In recent months, residents have been called to meetings about the rebuilding of St. Teresa's Gardens. They have been asked to consider the refurbishment of three of the blocks there - which did not go down very well at one of the meetings - and the development of 57 new units, including 27 houses and 30 apartments. This is still not progress because no masterplan has been produced for the people living there.

Can the Minister clarify whether this project will proceed in future and, if so, how will his Department support it? Rumour has it that the Department of the Environment, Community and Local Government will supply funding to develop 57 housing units, which are included in a plan shown to local residents. Because of the time that has elapsed since 2009, people feel that answers are required. I look forward to the Minister's reply in this regard."¹⁴²

The regeneration of Limerick has faced similar problems and, to date, there have been very few new houses constructed as the emphasis has been on demolition and the relocation of residents.¹⁴³ The Limerick Regeneration Agency was closed in April 2012 and its functions taken over by Limerick Local Authority. Only €116m has been spent by the Department of Environment to date, in contrast with the planned €3 billion regeneration investment announced in 2007, €20m of which has been used to

¹⁴²Deputy Catherine Byrne, Regeneration Projects, Dáil Debates 21 February 2013, available at <http://oireachtasdebates.oireachtas.ie/debates/%20authoring/debateswebpack.nsf/takes/dail2013022100038>

¹⁴³Ballinacurra Weston Residents' Alliance (2012) Newsletter Christmas 2012, http://www.limerickregeneration.org/BWRA_Newsletter_Christmas_2012.pdf

demolish 700 homes and a further €53m used to buy 365 homes in other parts of the city to relocate families from the regeneration areas.

The former head of the Limerick Regeneration Agency stated that after five years of this regeneration it has left some families worse off— with 1,000 residents moving out because of the lack of progress: "We have to be conscious that some people's living conditions are worse than what they were, as nice neighbours have moved out and there are vacant sites beside them."¹⁴⁴

A survey undertaken in 2011 by a local residents group in Limerick of residents in the Ballinacurra Weston estate found that 71.2% of residents felt that conditions have deteriorated since the establishment of the Southside Regeneration Agency, while 66.6% said they didn't feel safe and secure in the estate.

In spite of the physical housing regeneration in Ballymun there has been a significant lack of progress in other areas such as progression to education, with social exclusion of local authority residents in regeneration areas continuing in 2012:

[J]ust 3 % of Ballymun students progress to third-level education, the Oireachtas Joint Committee on Jobs, Social Protection and Education heard yesterday. Eleanor McClorey of the Young Ballymun project told the committee that the figure showed the restrictions on a child's educational potential if they are born in a disadvantaged community such as Ballymun. Young Ballymun, set up in 2006, is a 10-year early intervention programme aimed at improving outcomes in education, health and mental health for children and families in the area.¹⁴⁵

C. 2. Cuts to community and social services.

The reduction in government spending has also affected regeneration areas significantly through the reduction in funding for voluntary community organisations, such as Community Development Projects, youth services, partnership companies, and community drugs projects. These were more severe than the reductions in overall government spending.

From 2008 to 2012, government spending on current services fell by 2.82%. In comparison the voluntary social housing (capital assistance scheme) was reduced by 54%, the local Community Development Programme by 35%, initiatives against drugs by 29%, family support projects by 17%¹⁴⁶. It is estimated that by the end of 2013, the voluntary and community sector will have contracted by 35% on its 2008 level, leading to a loss of 11,150 jobs in the sector. Employment in the community and voluntary sector is projected to be down to 36,638 by the end of 2015¹⁴⁷.

¹⁴⁴Jimmy Woulfe, '5 years, €116m and not a house built', *The Irish Examiner*, January 12th, 2012, Brendan Kenny, former head of the Limerick Regeneration Agency quoted in *The Examiner* newspaper.

¹⁴⁵'Only 3% of Ballymun pupils move on to third level' *The Irish Times*, Thursday, 24 May, 2012.

¹⁴⁶Harvey, B. (2012) Changes in employment and services in the voluntary and community sector in Ireland, 2008-2012, Dublin; ICTU.

¹⁴⁷Harvey, B. (2012) Changes in employment and services in the voluntary and community sector in Ireland, 2008-2012, Dublin; ICTU.

In 2010, funding was withdrawn for regeneration development workers in a number of estates by Dublin City Council in Dublin. The community employment scheme was also significantly altered, as its training budget was reduced and the length of time for participants was reduced.

These reductions in spending have been compounded by the reduction in resources and the employment embargo for key, area-based, social public services, such as the Gardaí, local authority estate managers and local health services - also by the closure of state agencies, valued by and important for the functioning of an effective voluntary and community sector.¹⁴⁸ Current government policy in this area holds out the prospect of further contraction in education, community employment, housing, mental health, disability and especially services for the protection and welfare of children.¹⁴⁹ The regeneration communities, which have high concentrations of ‘at risk of poverty’ groups, such as lone parents, people who are unemployed, or people with low skills and education levels are, thus, being negatively impacted from multiple directions by austerity.¹⁵⁰

Census 2011 results demonstrate the unemployment crisis that is affecting these disadvantaged areas. Central Statistics Office (CSO) statistics also show that 50% of lone parent households delayed or missed paying a bill over the past two years. The *Survey on Income and Living Conditions in Ireland* shows that, in the 12 months from 2010 to 2011, the percentage of those ‘at risk of poverty’ increased from 14.7% to 16%. In 2011, almost one quarter (24.5%) of the population experienced two or more types of enforced deprivation. This compares with 22.6% in 2010 and 11.8% in 2007. Ireland’s ‘consistent poverty’ rate has soared over the past three years with the ‘consistent poverty’ rate for children rising from 8.8% in 2010 to 9.3% in 2011. 250,000 children are ‘at risk of poverty.’¹⁵¹

C.3. Absence of inclusion of housing/human rights approach in regeneration policy and plans¹⁵²

Article 30 RESC, which Ireland has ratified, states that “Everyone has the right to protection against poverty and social exclusion.” The Committee has set out in a number of Conclusions the obligations of States in relation to this right.

Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must

¹⁴⁸Redmond, D. & Hearne, R. (2013) *Starting Afresh, Housing Associations, Stock Transfer and Regeneration*, Dublin, Cluid Housing Association.

¹⁴⁹Harvey, B. (2012) *Changes in employment and services in the voluntary and community sector in Ireland, 2008-2012*, Dublin; ICTU.

¹⁵⁰*ibid*

¹⁵¹*ibid*

¹⁵²The use of a Human Rights Based Approach to tackling the housing conditions outlined here has been undertaken by an alliance of community activists and human rights experts over the past few years. See Hearne, R. & Kenna, P. (2014) ‘Using the Human rights based Approach to tackle Housing Deprivation in an Irish Urban Estate’, *Journal of Human Rights Practice*, No. 1.

link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

... The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. The Committee emphasizes that this list does not exhaust the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena.

“The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.”¹⁵³

Particular attention should be given to the effectiveness of the policies, measures and actions undertaken.¹⁵⁴

A wide range of schemes to fund estate regeneration measures has been established by central government departments and agencies in Ireland. These include tapping into funds available for community development and social inclusion initiatives, and those targeted at specific groups (for example young people or Travellers). The Department also finances estate regeneration, but many of its funding schemes are geared towards refurbishing the built environment.¹⁵⁵

However, there is no detailed national regeneration policy which addresses housing rights, and there is no legally established and measurable set of standards or guidelines for regeneration which explicitly incorporate Article 30 or indeed any Articles of RESC or the Charter.¹⁵⁶ Significantly, in complying with obligations of the Charter in relation to adequacy of housing, there are no deadlines or timetables for ensuring that all local authority housing meets the required standards. A series of ad hoc arrangements exist. The area-based regeneration plans require clearly defined targets and schedules, benchmarks and monitoring, clear dedicated funding, timetables for implementation, and sufficient mechanisms for community participation. In this regard, the UN Expert on Poverty and Social Exclusion, Magdalena Sepulveda, detailed a recommendation to Ireland in 2011, following a country inspection: “The State should consider adopting a legislative framework for a National Public Housing Estates Regeneration Programme to ensure that international

¹⁵³Conclusions 2003, France, p. 214.

¹⁵⁴Conclusions 2005, Norway, p. 580.

¹⁵⁵See Treadwell Shine, K. & Norris, M. (2006) *Regenerating Local Authority Housing Estates: Review of Policy and Practice*, Dublin, Centre for Housing Research.

¹⁵⁶See Ballymun Regeneration Ltd (2010) - *Housing Strategy Revised September 2010* - A Strategy to Identify Future Housing Options in Ballymun accessed at www.brl.ie/pdf/Housing%20S_2010_Web.pdf; Ballymun Regeneration Ltd (2009) *Housing Strategy 2009- A Strategy to Identify Future Housing Options in Ballymun* accessed at www.brl.ie/pdf/Housing_Strategy_2009.pdf; Limerick Southside Regeneration Agency (2011) - *Our Community, Our Vision, Our Future: Regeneration of Southill and Ballincurra Weston* accessed at www.limerickregeneration.ie/wp-content/uploads/2011/03/southside-vision-ewport3.pdf; Limerick Northside Regeneration Agency (2011) - *Our Community, Our Future, Our Vision: Regeneration of Moyross* accessed at www.limerickregeneration.ie/wp-content/uploads/2011/03/northside-vision-report.pdf.

human rights standards and community participation are ensured in all regeneration projects in the country.”¹⁵⁷

C.4. Poor participation by tenants in the regeneration process.

There is a State failure to develop and support proper participation by tenants and residents in these regeneration schemes (as well as in the management of local authority housing generally) as well as inadequate community and social services. Indeed, there has been no State support for the development of any representative tenants’ organisations.

Tenants and residents consistently highlighted their anger and frustration with the lack of consultation and participation with and information from local authorities about progress on plans and their estate management. They expressed a lack of accountability and poor communication from the local authority.¹⁵⁸ For example, in 2010 Dublin City Council sought to downgrade the remit and authority of locally established regeneration boards that had previously ensured good participation of tenants and residents. In Limerick, the regeneration boards consisted mainly of very senior officials in relevant Government Departments with significantly less tenant engagement. Despite many State commitments to tenant participation there is no organisation of tenants to provide input into law and policy making.

The experience of poor participation is highlighted by the experience of the Ballinacurra Weston Residents’ Alliance, who outlined their negative experience with the Southside Regeneration Agency;

We tried to engage with the Southside Regeneration Agency in September 2010, looking for their support for our environmental projects. It didn’t go well, to say the least. Of course, it wasn’t our first time meeting with the Agency as most of our committee had spent three fruitless years as representatives on an informal residents’ forum while our area continued to degenerate into a ghetto with scenes reminiscent of the third-world. Anti-social behaviour and illegal dumping encouraged people to leave. Residents were bought out for a pittance and turned back into tenants, their homes boarded up by the Council, leaving them to be vandalised and eventually burnt-out. Things had gotten worse, not better.

Our involvement with the forum meant that we were being officially consulted while being ignored at the same time. There was a lot of talk about social regeneration but little evidence of it on the ground; one by one we left in

¹⁵⁷UN Doc A/HRC/17/34/Add.2. *Report of the independent expert on the question of human rights and extreme poverty*, Magdalena Sepúlveda Carmona, Mission to Ireland. (17 May 2011), p. 20.

¹⁵⁸Community Action Network (2010) *Telling it as it is: A Human Rights Based Approach to Housing* (Dublin: CAN,) Inner City Organisations Network (2012) *Improve our homes; A dossier of maintenance issues in Dublin City Council Estates*, The Rialto Rights in Action Group, 5/6/2012, *Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8*, Community Action Network, Dublin, Tenants First (2009) *Housing for Need Not Greed* (Dublin: Tenants First & Public Communications Centre). Tenants First and CAN primary research 2012/2013.

despair and disgust. I personally felt that I had wasted three years of my life....The present structures for community engagement are clearly inadequate and cannot deliver. The few members that remain on the forum are not representative of our community and do not even bother to consult with residents. In fact, very few residents are even aware of the forum's existence; it is irrelevant and ineffective and should be dissolved immediately. What we want is a level playing field where we as residents can participate as equals in the decisions that directly affect our lives. What we need is real community participation and genuine power sharing.¹⁵⁹

They conducted a residents' survey of attitudes towards regeneration from June to September 2010. Of the 179 respondents 90% felt that they hadn't been properly consulted about what they wanted in the Master Plans, 78% were unaware of the existence of the forum, the mechanism by which consultation was supposed to take place, and 81% were unaware of who represented them on the forum. A staggering 94% said that they did not trust the Southside Regeneration Agency.¹⁶⁰

Indeed, the UN Expert on Poverty and Social Exclusion, Magdalena Sepúlveda, recommended that the State should consider adopting a legislative framework for a National Public Housing Estates Regeneration Programme to ensure that international human rights standards and community participation are ensured in all regeneration projects in the country.¹⁶¹

The UN Special Rapporteur on extreme poverty and human rights has pointed out that:

Currently many participatory processes are limited to "consultation" – a higher authority giving information to or extracting information from members of the public. Participatory processes that are not designed and implemented with a human rights perspective may in fact be disempowering, and serve to exclude or reinforce existing power structures. In contrast, human rights-based participation is an important tool to empower people living in poverty by allowing them to exercise their voice to influence relevant decision making processes.¹⁶²

The UN Special Rapporteur on extreme poverty and human rights has also pointed out that:

To fully respect dignity and autonomy, participatory processes must be meaningful for those living in poverty and they should be able to exert influence over the final outcome. They should be included in all stages of the relevant

¹⁵⁹Ballinacurra Weston Residents' Alliance (2012) Newsletter Christmas 2012, http://www.limerickregeneration.org/BWRA_Newsletter_Christmas_2012.pdf

¹⁶⁰Ballinacurra Weston Residents' Alliance (2012) Newsletter Christmas 2012, http://www.limerickregeneration.org/BWRA_Newsletter_Christmas_2012.pdf

¹⁶¹UN Doc A/HRC/17/34/Add.2. *Report of the independent expert on the question of human rights and extreme poverty*, Magdalena Sepúlveda Carmona, Mission to Ireland. (17 May 2011), p. 20.

¹⁶²UN Doc, A/HRC/23/36. *Report of the UN Special Rapporteur on extreme poverty and human rights*, Magdalena Sepúlveda Carmona, (11 March 2013), para 72.

decision making processes so that they have the chance to set priorities or question the agenda in fundamental ways.¹⁶³

¹⁶³UN Doc, A/HRC/23/36. *Report of the UN Special Rapporteur on extreme poverty and human rights*, Magdalena Sepulveda Carmona, (11 March 2013), para 39.

IV. SUMMARY

In consideration of the above, the ECSR is respectfully asked to find Ireland to be in violation of the following provisions of the European Social Charter and RESC alone or in conjunction with Article E.

Articles 11, 16, 17, and 30 taken together or cumulatively in respect of the failure of the State to:

- adopt the Charter rights within the legal, policy and administrative framework of Local Authority housing in Ireland;
- ensure the adequacy, habitability and suitability of some Local Authority housing which violate the Charter and RESC standards;
- respect Charter rights in State Regeneration programmes.

The ECSR is respectfully requested to direct the payment of costs incurred in the preparation of this report, to be detailed in due course.

V. ANNEXES

Community Action Network, *Notes from Research conducted by Community Action Network, 2011-2012.*

Dolphin House Complex, *Investigative Survey, March 2012*

Housing for Need not Greed, *Current Irish Housing Policy, its Effects on Community, and the Urgent Need for Change, 29 April 2009*

John Fitzgerald, *Report to the Cabinet Committee on Social Inclusion: Addressing issues of Social Exclusion in Moyross and other disadvantaged areas of Limerick City, April 2007*

Newsletter of the Ballinacurra Weston Residents' Alliance, *Time for Change, Christmas 2012*

Pauline Faughnan, on behalf of CAN, *Telling it as it is: A Human Rights Based Approach to Housing, November 2010*

Rialto Rights in Action, *Report on the First Monitoring of Housing Conditions in Dolphin House Rialto Dublin 8, 5 October 2010*

Rialto Rights in Action, *Report on the Third Monitoring of Housing Conditions in Dolphin House Rialto Dublin 8, 5 June 2012*

Tobin Consulting Engineers, *Assessment of Wastewater Backup into Residential Dwellings at Dolphin House, Dublin 8, August 2010*

Paris, 18 July 2014



Karim LAHIDJI

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