

## Universal Periodic Review Ireland

### Submission by the Rialto Rights in Action Project for the 12<sup>th</sup> session of the UPR Working Group October 2011 21 March 2011

This joint submission has been prepared by the Rialto Rights in Action Project which is a collaboration of Rialto Residents, Dolphin House Community Development Association, The Dolphin and Fatima Health Projects, Community Response, Community Action Network and Participation and Practice of Rights Project.

#### Introduction and methodology

Dolphin House is Dublin's second largest remaining public housing flat complex. There are major physical and social problems on the estate. Many of the flats are substandard in terms of size, private open space, energy efficiency and accessibility. Furthermore, the residents of Dolphins House have experienced serious and sustained levels of damp, mould and poor sewerage disposal which have lead to many negative effects on the health and well being of people living there. Socially, the estate has suffered historical neglect, exclusion, and serious social problems.

This report was based upon input from residents and local community workers, voluntary agencies, community organisations from other areas and human rights experts. This was achieved through the means of weekly consultations which were complemented by monthly meetings of a Strategy Group, meetings with the PPR<sup>i</sup>, and open meetings with residents of Dolphin House. These meetings cumulated in the Human Rights Hearing<sup>ii</sup> which involved local residents as well as human rights experts and the Rialto group.

This report is also based on scientific assessment of the housing conditions and upon the results of indicators which were used as a method of monitoring and evaluating a State's compliance with housing rights obligations in accordance with the principle of Progressive Realisation.<sup>iii</sup>

#### A-Background and Framework

##### Constitution

The 1937 Irish Constitution contains certain socio-economic rights in relation to education. In *Ryan v Attorney General*<sup>iv</sup> it was held that there is a number of unenumerated rights contained in Article 40.3 arising from the 'Christian and democratic nature of the Constitution'<sup>v</sup> which grant a number of personal rights to the individual.<sup>vi</sup> However in light of the decision in *TD v. Minister of Education*<sup>vii</sup> in which the scope of the protection offered by unenumerated was limited to those established by precedent it is unlikely that there will be a finding that there is an unenumerated right to housing in future.

##### Legislation

The Housing Acts 1966-2002 provide the legislative basis for public housing in Ireland. While limited security of tenure is provided for social housing tenants, this legislation does not confer any statutory right to housing. Instead the legislation confers wide range of administrative discretion. Limited protection applies to local authority tenants who do not enjoy the additional protections provided for by The Residential Tenancies Act 2004.<sup>viii</sup> Social housing is subject to the Housing (Standards for rented houses) Regulation 1993, 2008 and 2009.<sup>ix</sup> However local authority tenants enjoy limited protection under these regulations.<sup>x</sup>

Ireland gave further effect to the ECHR<sup>xi</sup> in Irish law through the means of the European Convention on Human Rights Act 2003 (ECHR Act). Section 3(1) of the ECHR Act places a new statutory duty on "organs of the State" (usually but not always public bodies), to "perform its functions in a manner compatible with the State's obligations under the Convention provisions." Article 8 of the ECHR provides for the right to respect for private and family life and the home. The right to housing was addressed in the case of *Guzzardi v Italy*<sup>xii</sup> where it was held that while no obligation to provide housing can be found in the ECHR, public authorities are under an obligation to ensure that they do not impose intolerable living conditions on a person or on a family. In

*Donegan v Dublin City Council*<sup>xiii</sup> and *Dublin City Council v Gallagher*<sup>xiv</sup> the High Court found that Section 62 of the Housing Act 1966, (which allows for the summary eviction of local authority tenants in the District Court), was incompatible with Article 8. These judgments are currently subject to an appeal to the Supreme Court.

### **Scope of International Obligations**

In 1989 Ireland ratified the International Covenant on Economic, Social and Cultural Rights. (“ICESCR”) which recognises a right to adequate housing.<sup>xv</sup> Under Article 2(1) of the ICESCR the Irish Government is under a general obligation, “to the maximum of its available resources”, to take steps to achieve *progressively* the full realisation of the rights to adequate housing. Under the ICESCR adequate housing must be habitable protecting them from (amongst other things) damp and other threats to health.<sup>xvi</sup>

### **Recommendations**

- Ireland should amend the Constitution to include a right to adequate housing which would offer a means of empowerment to those excluded from the dominant housing market and grant access to a minimum unit of social housing as a human right.
- Ireland should legislate and provide for actual and enforceable rights to housing for social housing tenants. Protection offered to local authority tenants should be extended to include the same degree of protection offered to private tenants.
- As per the recommendations of the UN CESCR Committee<sup>xvii</sup> Convention rights should be fully transposed into domestic legislation.

## **B - Government Policy and its Implementation on the Ground**

In Ireland the overall aim of housing policy is to enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment and as far as possible at the tenure of its choice.<sup>xviii</sup> According to The Housing Policy Framework – Building Sustainable Communities (December 2005), the Government are committed to delivering high quality social housing in mixed community settings. It is not acceptable that the social housing domain should be compared unfavourably with private housing development. There has been a proliferation of non-statutory Strategies, Action Plans and Agencies which outline housing policy however these plans and strategies do not have a statutory basis and at no stage is the concept of rights included in these plans.<sup>xix</sup>

### **Discrimination against Public Authority Tenants**

Social housing is subject to the Housing (Standards for rented houses) Regulation 1993, 2008 and 2009.<sup>xx</sup> Under these regulations property should be maintained by landlords in a condition that is reasonably fit for human habitation and not defective due to dampness or otherwise.<sup>xxi</sup> However, local authority housing is not afforded some of the additional protections offered to private tenants under 2009 Housing (Standards for rented houses) Regulation.<sup>xxii</sup> Local authority tenants do not enjoy the additional protections provided for by The Residential Tenancies Act 2004 such as recourse to the Private Residential Tenancies Board and improved security of tenure.

While Irish legislation provides the legislative authority for a housing authority to take action if it deems a dwelling to be unfit for human habitation, there is no obligation imposed on the authority to take action in respect of unfit local authority housing.<sup>xxiii</sup> Instead the legislation provides that the local authority should take action if it deems a dwelling to be unfit. There is no independent mechanism whereby tenants of local authority housing can seek redress for failure to provide them with adequate housing. It is a conflict of interests for local authorities such as Dublin City Council to both provide local authority housing and to enforce housing standards for local authority housing. Effectively this means local authority tenants do not receive the same level of protection as private tenants who have recourse to the PRTB<sup>xxiv</sup> (an independent body which was set up to

ensure private tenants could get a swift resolution to any hosing difficulties) and local authorities who would be acting independently in this.

In the context of Dolphin House, according to the Wastewater Backup Report by Tobin Engineers “The network (in Dolphin House) connects the household showers, baths and toilet to the mains sewer. Wastewater from the household exits the dwelling and is sent for treatment via the Dolphins Barn sewer network. This sewer is not a closed sewer network and as a result may not be independent of surface water factors occurring as a result of inclement conditions.” This is contrary to Part H of the second schedule to the building Regulations 1997-2010. While these regulations are only applicable to new builds it is clear social housing in Dolphin House do not comply with minimum standards as set out of the Department of Environment.

## **Recommendations**

- Ireland should develop a rights based approach to housing policy as well as implementing current strategies and policies and ensuring that they have a statutory basis where appropriate.
- Ireland should comply with its own policy of ensuring that the social housing domain should be compared favourably with private housing development.
- Reform current legislation so that public authority tenants have the same degree of protection afforded to private tenants.

## **C-Access to Effective Remedies**

There are significant gaps in protection of social tenants’ rights and many individuals are unable to access effective remedies. Housing policy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under Article 11 of the ICESCR. The Irish state has failed to implement the human rights standard outlined in CESCR General Comment 4, Paragraph 9 in relation to the right of Dolphin House residents to participate in the decision making relating to their housing issues. The duty bearers (the Government Minister for the Environment, the Minister for Housing and the Department of the Environment) have not engaged in any meaningful way with residents, nor have they provided resources to address the poor conditions. The Minister for the Environment and Minister for Housing, and the Department of Environment have not attended either Human Rights Hearing, despite being invited, nor have they met a representation from the group. They have not made any financial, or otherwise, commitment to address the housing issues. In Dolphin House there is a long history of sub-standard conditions in the complex.<sup>xxv</sup> The failure to ensure the progressive realisation of these rights is contrary to the ICESCR. Ireland failed to realise this rights even through a period of substantial economic growth. While Ireland’s economic position is now less favourable the rights of these individuals must still be vindicated.

## **D-Human Rights in Dolphin House- Main Issues of Concern**

### Sewerage

Residents have experienced grey and black wastewater repeatedly backing up into household fixtures such as sinks, showers, baths and washing machines for a period of approximately 20 years. The serious sewerage problems that the residents of Dolphin House have experienced have deprived them of full enjoyment of their rights. Analysis of this wastewater indicate that, the water is highly polluted and has 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) The report also found that Faecal Coliform result was very elevated. The elevated coliforms, suspended

solids, phosphate (ortho), phosphorous (total) and BOD in it were consistent with partially treated and untreated sewerage waste.<sup>xxvi</sup>

*“The sewage that come up through my hand basin in my bathroom, my sink –black, all the black stuff coming up. It came out on to my floors. Human faeces or whatever faeces was in it .... The smell of it in my toilet coming up through my bath, my hand basin. Since then to be honest with you I’ve been at the doctor with stomach bugs and bacterial infections and its costing me a fortune”<sup>xxvii</sup>*

The severe and prolonged sewerage problems experienced by the residents of Dolphin house are a violation of their right to adequate housing under Article 11 of the ICESCR.

### Dampness

Residents have experienced severe problems with dampness over an extended period of time. As far back as 2002 residents’ surveys showed serious maintenance problems which showed that 145 flats out of 165 surveyed had complaints covering sewage, plumbing and dampness.<sup>xxviii</sup> Indicators of Progress towards the Human Rights Standard have shown that from the first monitoring survey in September 2010 and onwards conditions had not changed for residents regarding their unacceptable housing conditions. Furthermore there was a slight increase in those reporting dampness and mould (72% to 77% and 64% to 66% respectively). There remained over three quarters (77%) reporting sewage problems.<sup>xxix</sup>

Analyses of Damp spores have shown very high levels of fungal contamination. The analysis detected colonies of *Aspergillus fumigatus*, *Mucor*, *Rhizopus* and *Penicillium* in most of the test locations.<sup>xxx</sup> *Aspergillus fumigatus* 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 the houses could cause deterioration in asthma and bronchitis.

*“It’s every where. All the rooms. The bedrooms more so. It’s all around the beds. The walls be soaking wet. The walls are literally black. I have to wash them down with bleach and its 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”<sup>xxxi</sup>*

The severe and prolonged dampness problems experienced by the residents of Dolphin house are a violation of their right to adequate housing under Article 11 of the ICESCR.

### Health

Scientific analysis of damp spores and sewerage present in the many of the houses has shown that these problems have exposed residents to serious health risks.

*“The fungal contamination evident in these houses is far greater than I have every recorded in domestic dwellings is a significant threat to the health of the occupants.”<sup>xxxii</sup>*

Testing of the waste-water backup experienced by residents indicated that it was in a highly polluted state.<sup>xxxiii</sup>

### **Methadone users**

In relation to health issues surrounding methadone users in Dolphin House, Rialto Rights In Action has demonstrated that there is a denial of the right to health and the right to participate in decisions that impact these individuals. This is taking place in relation to the practice of urine sampling, and the lack of an annual review for each person where there is meaningful engagement and choice, and the lack of real choice for treatment options. The group conducted a series of conversations with people who are on methadone to gather the evidence of these issues. The experience is that, in most cases, there is not a genuine choice, when a person presents for treatment, other than Methadone which was never intended as a long-term treatment option. We believe the treatment of methadone users is a contravention of Article 12 (1) and Article 12.2 (d) of the International Covenant of Economic, Social and Cultural Rights.

### **Inadequate outdoor play and youth facilities in Rialto**

This issue entails the inadequacy of provision of outdoor play and leisure facilities for the approximately 1,300 children and young people in Rialto and their lack of input regarding planning and development of their own play spaces, activities and opportunities. Our research has found that the play facilities that exist do not meet the needs of the children. In the general Rialto area there are no outdoor play or leisure facilities and traffic is a major problem. In Dolphin House there is only one playground to meet the need of hundreds of children. The playground has a broken swing, a broken slide, burned out play parts and the football pitch is unusable for young children. The play areas are affected by anti-social behaviour, have broken glass, no lighting, are not accessible or safe. We have gathered this evidence by working with children from Dolphin House and the wider Rialto area and researching parents' experiences. We believe the conditions of play facilities and the lack of involvement in children and young people in decision making around this issue is a contravention of Articles 12, 27, and 31 of the United Nations Convention on the Rights of the Child.

### Developments

Residents and the City Council decided that the complete demolition and regeneration of Dolphin House was necessary in 2009. Significant work has been done in the last three years on setting up structures of a local regeneration board with Dublin City Council and local politicians and community organisations. Positive developments include the establishment of a Joint Redevelopment Board (JRB), for the proposed regeneration of the Dolphin House estate as well as the appointment of an architect and planner to start working on the Masterplan which will incorporate physical and social regeneration. However progress of developing the regeneration plans has been far too slow and there is no indication of a start date of regeneration. Furthermore, whilst regeneration is ultimately the solution to the housing and play facilities situation, it is essential the environmental conditions are improved immediately so that this can be a sustainable community which does not go the way of other estates; entering a downward spiral of anti social behaviour, vandalism, despair and ultimately, complete breakdown.

### **Recommendations**

- Ireland should comply with the right to adequate Housing contained in the ICESCR by complying with its own standards in relation to private dwellings as set out in the Housing (Standards for rented houses) Regulation 1993, 2008 and 2009 and ensuring that the problems of damp and sewerage are resolved.
- The Masterplan needs to be developed as soon as possible. Furthermore, there is no indication where the funding will come from for regeneration when the Masterplan is ready. This information must be provided and funding must be secured.
- The necessary financial and employee resources to address the housing conditions in Dolphin House, provide adequate play facilities in Rialto and provide choice for methadone users must be provided.
- The relevant responsible central state body must engage with the various rights holders to develop plans in partnership about how to address the concerns raised
- Ensure the responsible state agencies at a local level engage in a real and respectful way with the rights holders to address the issues

### Issue's particular to Ireland

Ireland is undergoing particular economic difficulties which has impacted housing policy. However it should be recognised that while Dublin City Council is stating that finance is not available to address these issues due to cuts from its funding sources including the Department of the Environment, this should be contrasted with the ability of the Irish State to finance the rescue of the financial system. It should also be noted that these unacceptable housing conditions were not addressed either during the economic boom; therefore finance is not the only issue. It is about commitment to ensuring adequate housing conditions for all in society, and particularly those on lower incomes and marginalized in social housing estates such as Dolphin House. Furthermore, taking the view that conditions cannot be improved because of a lack of finance is a short sighted approach. It will be much more costly to the State to address the health problems arising from mould, damp and sewerage, and the constant repairs and maintenance required by DCC, than to spend money now to bring homes up to the Human Rights Standard.

Footnotes:

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- i Practice and Participation Rights Project. This project offers support to groups and individuals to enable them to actively assert and campaign for their social and economic rights.
- ii May 25<sup>th</sup> 2010, at St. Andrew's Community Centre in Rialto in Dublin
- iii See Wastewater Backup Report by Tobin Engineers
- iv [1965] IR. 294
- v *Ibid* per Kenny J.
- vi See Report of the Constitutional Review Group (1998) at 49
- vii [2001] 4 IR 259
- viii Such as recourse to the Private Residential Tenancies Board and improved security of tenure.
- ix Effective since 1998
- x The standards set out in the 2008 and 2009 Regulations are not applicable to local authority housing. Local authority housing is subject to the less rigorous standards of the 1993 regulation. See part B – Discrimination against Public Authority Tenants.
- xi European Convention of Human Rights
- xii Application No. 7367/76, report of 7 December 1978
- xiii [2008] IEHC 288
- xiv [2008] IEHC 354
- xv Article 11 (1)
- xvi CESCR General comment 4 (8)
- xvii 2002 recommendations at para 31 iii
- xviii See Department of the Environment, Heritage and Local Government, *Statement of Strategy 2005-2007*, p 44.
- xix National Anti-Poverty Strategy (2002), National Development Plan (2000-2006), *Delivering Homes Sustaining Communities*-statement on housing policy, The Housing Policy Framework – Building Sustainable Communities (December 2005), Towards 2016, Ten-Year Framework Social Partnership Agreement 2006-2015
- xx Effective since 1998
- xxi SI no 147 of 1993, para 5.
- xxii Measures such as requirement for landlords to maintain the house in a proper state of structural repair including the requirement that the house must not be defective due to dampness or otherwise the requirement for the provision of a fire blanket, fire alarms, cloth washing facilities and cloths drying facilities if there is no yard and provision of a ventilated room with a shower and bath and toilet.
- xxiii S. 66 of the Housing Act 1966
- xxiv Private Residential Tenancies Board as established by the Residential Tenancies Act 2004
- xxv Report On The First Monitoring Of Housing Conditions In Dolphin House Rialto Dublin 8
- xxvi See Wastewater Backup Report by Tobin Engineers
- xxvii Testimony of a resident at the Public Rights Hearing may 25th
- xxviii Report On The First Monitoring Of Housing Conditions In Dolphin House Rialto Dublin 8
- xxix See annex One
- xxx Dr. Kevin Kavanagh Senior Lecturer in Microbiology in a letter detailing the results of damp spore analysis
- xxxi Testimony of a resident at the Public Rights Hearing may 25th
- xxxii Dr. Kevin Kavanagh Senior Lecturer in Microbiology in a letter detailing the results of damp spore analysis
- xxxiii See Wastewater Backup Report by Tobin Engineers

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## Annex

### 3. Summary of findings on each indicator on first monitoring;

What follows is

The baseline survey result for each indicator from May 2010

The Human Rights standard according to the Committee for Economic Social and Cultural Rights,

The target result for First Monitoring (September 2010), set by residents under the principle of Progressive Realisation and endorsed by the Irish Human Rights Commission and Human Rights experts

The actual result for that indicator in September 2010.

#### Indicator 1.

##### Percentage of residents reporting dampness

Human Rights Standard;

“Adequate housing must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.”

*CESCR General Comment 4, Paragraph 8 (d)*

Benchmark as of May 2010	<b>72%</b>
<b>Target Result at First Monitoring</b>	
+4 months September 2010	<b>55%</b>
<b>Actual Result</b>	<b>77%</b>
<i>Increase of 5% in residents reporting dampness</i>	

#### Indicator 2.

##### Percentage of residents reporting mould

“Adequate housing must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.”

*CESCR General Comment 4, Paragraph 8 (d)*

Benchmark May 2010	<b>64%</b>
<b>Target Result at First Monitoring</b>	
+4 months September 2010	<b>40%</b>
<b>Actual Result</b>	<b>66%</b>
<i>Increase of 2% of residents reporting mould</i>	

#### Indicator 3

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## Percentage of residents reporting sewerage invasion/smells

### Human Rights Standard

“An adequate house must contain certain facilities essential for health, security, comfort and nutrition...safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”

*CESCR General Comment 4, Paragraph 8 (b)*

Benchmark May 2010	<b>89%</b>
<b>Target Result at First monitoring</b>	
+4 months September 2010	<b>50%</b>

**Actual Result** **77%**

*(Asked on a scale of 1 to 10 how bad are the smells 80% stated it was 8, 9 or 10 )*

*Decrease of 12% in residents as opposed to target of 50%*

## Indicator 4

### Percentage of residents concerned about health because of sewerage or damp

#### Human Rights Standard

“An adequate house must contain certain facilities essential for health, security, comfort and nutrition...safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”

*CESCR General Comment 4, Paragraph 8 (b)*

Benchmark May 2010	<b>91% (of those who had</b>
<b>damp/ sewerage)</b>	
<b>Target Result at First Monitoring</b>	
+4 months September 2010	<b>50%</b>
<b>Actual Result</b>	<b>90%</b>

*Decrease of 1% as opposed to target of 50%*

## Contact

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