



Universal Periodic Review Ireland

**Submission by Mercy Law Resource Centre (MLRC)
for the**

**12th Session of the UPR Working Group October
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EXECUTIVE SUMMARY

MLRC's submission focuses on two key points; firstly, the right to adequate housing and secondly, the discrimination between private law and local authority tenants, particularly in the areas of lack of access to justice and denial of fair procedures.

I. BACKGROUND

MLRC is an Independent Law Centre, set up in 2009. It provides free legal advice and representation to persons who are homeless or at risk of becoming homeless primarily in the areas of housing and social welfare law. The Centre also seeks to advocate change in laws, policies and attitudes which unduly and adversely impact its client group.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

(i) Constitutional and legal reforms aimed at protecting human rights

Under the Irish Constitution, socio-economic rights are not justiciable and are only included as Directive Principles for Social Policy.ⁱ Furthermore, the Equality legislationⁱⁱ, which prohibits discrimination on nine stated grounds, does not include a socio economic status ground.

The European Convention on Human Rights (ECHR)ⁱⁱⁱ was given further effect in Irish law via the European Convention on Human Rights Act 2003 through a weak interpretative model.^{iv} Under this act, every organ of the State must perform its functions in a manner compatible with the State's obligations under the Convention.^v There is also a minimalist remedy in the form of a declaration by the Irish High Court that a law or act of a public body is incompatible with the Convention.^{vi} Such a declaration does not affect the validity or continuing operation of the provision. The Taoiseach is merely obliged to lay a copy of the declaration before the Houses of the Oireachtas within 21 days.

(ii) Scope of international obligations

Whilst Ireland has ratified a number of international human rights treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has not yet ratified the Optional Protocol to ICESCR and has opted out of Article 31 of the European Social Charter (Right to Housing).^{vii}

Further, as Ireland is a dualist state, ratified treaties cannot be relied upon in national courts until they are incorporated into Irish Law. Despite being a party to six core human rights treaties^{viii}, very few elements of international human rights instruments have been incorporated^{ix} making them effectively unenforceable in the Irish courts.

Policy measures

While we welcome the commitment in the recent programme for government to end long-term homelessness and the need for people to sleep rough and the aim to "*offer homeless people suitable, long term housing in the first instance and radically reduce the use of hostel accommodation*"^x, there are no concrete steps in place to achieve this.

B. Implementation of International Human Rights Obligations

Right to adequate housing

Article 11(1) IESCR recognises “*the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*”. This is also echoed in article 25(1) UDHR, article 5(e)(iii) ICERD, article 14(2) CEDAW and article 27(3)CRC. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

CESCR General Comment 4^{xi} at paragraph 7 provides that the right to housing should not be interpreted in a narrow or restrictive sense and should be seen as the right to live somewhere in security, peace and dignity.

Seven aspects of the right to *adequate* housing were identified in CESCR General Comment 4 paragraph 8, including legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

There is a disturbingly large gap between the standards set in General Comment 4 and article 11 (1) of the Covenant and the situation prevailing in Ireland where there are significant problems of homelessness and inadequate housing.

(i) Legal Security of Tenure

Article 17 ICCPR, places an obligation on the State to ensure that no person is subject to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. CESCR General Comment 4 paragraph 9 recognises this right as a very important dimension in defining the right to adequate housing.

Section 62 of the Housing Act 1966^{xii} is a summary procedure for the recovery of possession of local authority housing. Under this procedure, a local authority is not obliged to give reasons as to why it is seeking to recover possession and no independent or impartial hearing of the merits of the case takes place.

Where a local authority tenant has been subject to section 62 possession proceedings on the basis of a decision by a local authority that the tenant has engaged in anti-social behaviour, the future entitlements of the individual will also be affected. Section 14 of the Housing (Miscellaneous Provisions) Act 1997^{xiii} provides that where a local authority considers that a person was engaged in anti-social behaviour it may refuse to make, or defer the making of a letting of a dwelling to such a person. Also under section 16 of the Housing Act 1997^{xiv}, the Health Service Executive may also determine that such an individual is not entitled to a payment of rent supplement allowance for private accommodation.

A person found guilty of anti-social behaviour may thus end up in emergency accommodation indefinitely. This affects a wide range of other human rights. Residents in emergency accommodation generally have to leave their home all day. Access to adequate cooking facilities is totally interrupted. Health will suffer as a

result of poor diet. The family unit is totally disjointed. Education and ability to remain employed or gain employment also suffers.

The lack of an independent or impartial hearing on the merits of the case where so fundamental a matter as one's entitlement to remain in one's home is concerned has led the Irish courts in a number of recent cases (following the European Court of Human Rights^{xv}) to make a declaration under section 5 ECHR Act 2003 that section 62 is incompatible with Article 6 (right to a fair hearing) and Article 8 (right to respect for private life and the home) of the ECHR.^{xvi} One case strongly suggests that it is also in breach of constitutional rights and natural justice.^{xvii}

As previously detailed, declarations of incompatibility under section 5 ECHR Act 2003 do not affect the validity or continuing operation of the provision and local authorities still continue to issue notices to quit and proceed to recover possession pursuant to Section 62.

The Irish Human Rights Commission, have published a policy statement noting, inter alia, that the powers under '*Section 62 of the Housing Act 1962 do not conform with international human rights standards relating to the security of tenure of tenants living in local authority dwellings*^{xviii}'. This document also highlights the imbalance of rights between local authority tenants and tenants of private rented dwellings who, under the Residential Tenancies Act 2004,^{xix} have a tribunal system to deal with their cases and have a right of reply following the issuing of a notice to terminate. The Commission has called upon local authorities to consider other options for the recovery of possession of its property which would not offend against fair procedures and human rights. Such options include (i) the amendment of Section 62 to allow the District Court to hear and adjudicate upon the substantial issues in the case; (ii) the extension of the remit of the Private Residential Tenancies Board (PRTB) to hear and determine such cases; or (iii) the setting up of an independent tribunal to hear and determine cases involving local authority housing.

Local authority tenants are further disarmed in section 62 proceedings as such proceedings have been interpreted as falling within one of the exemptions to the entitlement to Civil Legal Aid i.e. "*disputes concerning rights and interests in or over land*"^{xx}.

(ii) Habitability.

CESCR General Comment 4 provides that "*adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.*"

Local authority homes are not maintained to an adequate standard and many regeneration projects have been delayed or put on hold. One example includes a local authority flat complex in Dublin, Dolphin House, where residents have experienced unprecedented levels of damp, mould and sewage in their homes.^{xxi} The flats in which the residents are living date back to the 1950s and were due to be regenerated by Dublin City Council in late 2009.^{xxii} Tests carried out on water coming up through the plug holes of sinks and baths in the flat complex found the levels of faecal coliforms were consistent with those found in raw sewage.^{xxiii} Research shows that 75% of

residents surveyed are living in damp, 64% report mould, 84% have sewage coming up through their sinks and baths and 91% say their health is affected (asthma and other bronchial problems).

There is no independent forum to complain to if local authorities do not comply with minimum standards.^{xxiv} This leads to lengthy waiting times for repairs and disputes regarding the obligation of repair.

(iii) Accessibility.

CESCR General Comment 4 provides that “adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources... Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”

While there is no reliable data on homelessness at national level, the Homeless Agency in Dublin carries out a regular count of rough sleepers to assess the extent of homelessness in Dublin. The latest data show that rough sleeping has not been eliminated in Dublin^{xxv}, contrary to what was committed to by Dublin City Council in its local action plan^{xxvi}.

There are significant waiting lists for social housing and persons with homeless priority may have to wait a number of years before receiving an offer of accommodation. By 2008, the number of households on the waiting lists for local authority housing had grown to 56,249, an increase of 33% from 2005. Of the 56,249 households, 49% had been waiting for more than two years^{xxvii}. This is despite the fact that the housing crisis has created a large surplus of housing stock throughout the country

Equality and non-discrimination

The position of a tenant of a local authority compares unfavourably with that of a private law tenant. As local authority tenants are generally households on lower income this discrepancy in treatment is more likely to affect lower income households.

The Residential Tenancies Act 2004, which does not apply to housing authority tenants, established minimum obligations applying to private law landlords and tenants; provisions relating to rent settings and review; security of tenure for tenants; and procedures for the termination of tenancies, including required notice periods linked to the duration of the tenancy. It also established the Private Residential Tenancies Board (PRTB) which provides independent and impartial mediation and adjudication and is a financially efficient venue for landlords and tenants to make complaints to if there have been any failures to comply with tenancy agreements e.g. maintenance, rent reviews, evictions etc.

Access to justice is therefore a serious problem for local authority tenants. If such a tenant has a dispute relating to any aspect of their tenancy, they have no system of review, appeal or independent enquiry. If a tenant wishes to complain about maintenance issues; the manner in which rent is being charged; alleged rent arrears; or other matters regarding breach of tenancy, there is no lower court to which tenants can

go to force their landlord, the local authority, to take action or desist from the particular action. A tenant could potentially sue for damages for breach of contract in the District Court but in order to apply for injunctive relief they must go to the Circuit Court or High Court which are costly, extremely adversarial, and very intimidating particularly if a tenant has to represent themselves.

The lack of an independent enquiry raises very serious issues for a local authority tenants in relation to allegations of anti social behaviour (ASB), which as detailed above, can lead to many adverse consequences in terms of both allocation of and eviction from local authority housing.

The rules in relation to ASB are set out in each local authority's ASB strategy. Quite often the definition of ASB is very broad and the differing consequences for minor and major breaches are not set out. This is a violation of the principle of legality and proportionality. There is also no spent complaints policy i.e. adverse acts allegedly committed by a tenant are recorded on the system indefinitely and this may prejudice an applicant long after the incident occurred.

When an allegation of ASB is made, it is quite often the same person, an employee of the local authority, who meets both the complainant and tenant and makes a determination that a notice to quit should issue. Once the decision is made the evidence is never tested. Oftentimes, the person who makes the complaint remains anonymous and only vague details are put to the tenant for them to reply to and attempt to defend. This is to be contrasted with tenants in private rented accommodation who can challenge any notice to terminate on foot of ASB in the PRTB, an independent forum.

Recommendations:

- 1) *The right to housing should be recognised in Irish law and assimilated into national and local government housing policy.*
- 2) *The Equality Legislation should be extended to include a socio-economic status ground.*
- 3) *Commitments set down in the homeless strategy should be placed on a statutory footing including setting a revised date to end long-term occupancy of emergency homeless accommodation.*
- 4) *Section 62 of the Housing Act 1966 should be repealed in its entirety.*
- 5) *The Civil Legal Aid system should provide legal aid to persons who are subject to proceedings in which they are likely to lose their home.*
- 6) *The remit of the PRTB should be extended to include local authority and voluntary housing association tenancies. This would provide independent adjudication and fair procedures in cases of eligibility for social housing, evictions, repairs/maintenance, ASB, rent/arrears, etc.*
- 7) *In an effort to bridge the gap between properties for which there are no buyers and households which are unable to access housing, the National Asset Management Agency (NAMA) should act as a conduit through which government spending on social housing is channelled towards the purchase of NAMA properties. NAMA was established, following the recent collapse of the Irish property market, to take over and manage impaired loan assets, largely comprised of land and buildings which cannot be sold in the current market.*

APPENDIX

ⁱ http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf

ⁱⁱ See the Equal Status Act 2000 at <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html> and the Equality Act 2004 at <http://www.irishstatutebook.ie/2004/en/act/pub/0024/index.html>

ⁱⁱⁱ <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>

^{iv} <http://www.irishstatutebook.ie/2003/en/act/pub/0020/print.html>

^v Section 3 ECHR Act 2003.

^{vi} Section 5 ECHR Act 2003.

^{vii} <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Presentation/ESCRBooklet/English.pdf>

^{viii} ICCPR; ICESCR; CRC; CEDAW; ICERD and UNCAT.

^{ix} These include the Genocide Act, 1973; Incitement to Hatred Act, 1989 on foot of Article 20 (incitement to hatred) of the ICCPR; the Criminal Justice (United Nations Convention Against Torture) Act 2000 and the European Convention on Human Rights, Act 2003.

^x http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.html at p46

^{xi} <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>

^{xii} <http://www.irishstatutebook.ie/1966/en/act/pub/0021/sec0062.html#sec62>

^{xiii} <http://www.irishstatutebook.ie/1997/en/act/pub/0021/sec0014.html#sec14>

^{xiv} <http://www.irishstatutebook.ie/1997/en/act/pub/0021/sec0016.html#sec16>

^{xv} *Connors v United Kingdom* (Application No. 66746/01) Judgment of the 27 May 2004, *McCann v United Kingdom* (Application No. 19009/04) Judgment of the 13 May 2008

^{xvi} *Pullen & Others v. Dublin City Council* [2008] IEHC 379; *Dublin City Council v. Gallagher* [2008] IEHC 354; *Donegan v. Dublin City Council* (Unrep, High Court, 8 May 2008).

^{xvii} *Dublin City Council v. Gallagher* (op cit).

^{xviii} IHR Policy Statement on Section 62 of the Housing Act 1966 for the Recovery of Possession of a Local Authority Dwelling (March 2009)

^{xix} <http://www.irishstatutebook.ie/2004/en/act/pub/0027/index.html>

^{xx} Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995

<http://www.irishstatutebook.ie/1995/en/act/pub/0032/sec0028.html#sec28>

^{xxi} Louise Hogan (2010) ‘Life-threatening fungus found in flats “not fit to house animals”’ Irish Independent, 26 May 2010, last accessed from

<http://www.independent.ie/national-news/lifethreatening-fungus-found-in-flats-not-fit-to-house-animals-2194161.html> on 23 November 2010.

^{xxii} Regeneration work was postponed following the collapse of the Public/Private Partnership deals set up for the purposes of renewal.

^{xxiii} Olivia Kelly (2010) ‘Regeneration of Dolphin House flats “years away”’, Irish Times, 6 October 2010, last accessed from

<http://www.irishtimes.com/newspaper/ireland/2010/1006/1224280473698.html> on 23 November 2010.

^{xxiv} Housing (Standards for Rented Houses) Regulations 1993 (<http://www.irishstatutebook.ie/1993/en/si/0147.html>), 2008

(<http://www.irishstatutebook.ie/2008/en/si/0534.html>) and 2009
(<http://www.irishstatutebook.ie/2009/en/si/0462.html>).

^{xxv} The last periodic assessment on homelessness in Dublin was undertaken by the Homeless Agency in 2008. A total of 2366 adults were in homeless services in 2008 with 110 adults reported as sleeping rough.

<http://www.homelessagency.ie/getdoc/10ba727c-4a3f-4450-9478-15c083b899de/Counted-In,-2008.aspx>

^{xxvi} Key to the Door, 2007-2010 available at <http://www.homelessagency.ie/homeless-action-plan-2007-2010.aspx> and Department of the Environment Heritage and Local Government in its national strategy document entitled The Way Home. Strategy to Address Adult Homelessness in Ireland, 2008-2013, available at <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,18192,en.pdf>.

^{xxvii} Dept of Environment, Heritage & Local Government, *Annual Housing Statistics Bulletin*, 2008
<http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/>