



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

1 December 2015

Case Document No. 3

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

**FIDH'S RESPONSE TO THE GOVERNMENT'S
SUBMISSIONS ON THE MERITS**

Registered at the Secretariat on 26 November 2015

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COUNCIL OF EUROPE

**FIDH (International Federation for
Human Rights)**

v.

Ireland

Collective Complaint No. 110/2014

**Response to the Submission of
the Government on the Merits**

26 November 2015

Table of Contents

- I. Introduction
- II. Preliminary objections
- III. Background to the maintenance and management of local authority housing in the Republic of Ireland
- IV. Alleged failure to adopt the Charter Rights within the legal, policy and administrative framework of housing in Ireland
- V. Allegation regarding adequacy, habitability and suitability of local authority housing
 - V.1 Allegation of substandard conditions
 - V.2 Allegation that standards applied to local authority housing are not the same as those applied to privately rented properties
 - V.3 Allegation of less effective remedies being open to local authority tenants
 - V.4 Allegations of lack of meaningful statistics on local authority housing conditions and social exclusion in local authority housing
 - V.5 Allegation that the health and well-being of tenants in local authority housing is being affected by poor housing conditions
 - V.6 Allegation that local authority tenants are deprived of an effective right to protection against poverty and social exclusion
- VI. Regeneration
 - VI.1 Housing Conditions
 - VI.2 Participation
 - VI.3 Funding
 - VI.4 Framework
- VII. Conclusion

I. Introduction

1. FIDH (the International Federation for Human Rights reiterates its assertion that the Irish State has not ensured the satisfactory application of Articles 11, 16, 17, 30 and E 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. For ease of reference, the observations follow the same structure as the Irish State Observations in response ('SO').¹
2. In response to § 4 SO, the State's observation that it has not adopted Article 31 RESC is not relevant – neither did FIDH assert this, nor, as the Irish State concedes, does it diminish Ireland's responsibility in this regard. FIDH points out that the Complaint is directly addressed to matters that fall within Article 16 of the Charter, and any reference to Article 31 RESC relates to the functional overlap that exists between those provisions which has been accepted by the European Committee of Social Rights ('Committee' or 'ECSR') in a number of decisions including *European Roma Rights Centre (ERRC) v Greece*², *ERRC v Bulgaria*³, and more recently in *FIDH v Belgium*.⁴
3. In response to § 4 SO, FIDH rejects the objections made by the Respondent that the Complainant fails to set out sufficient reasons in relation to other

1 The structure followed by the State in its submission is maintained in order to facilitate the European Committee of Social Rights' work and ensure clarity and consistency. However, this in no way reduces any of the arguments raised in the original Complaint.

2 Complaint No. 15/2003, Decision on the Merits (DM), [16].

3 Complaint No. 31/2005, DM, [17].

4 Complaint No. 62/2010, DM, [44-47].

provisions such as to satisfy the criteria of Article 4 of the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (“Protocol”). FIDH reiterates that sufficient reasons are set out to satisfy the criteria of Article 4 of the Protocol and will further demonstrate this by engaging with and refuting the issues which the Respondent has selected as part of the SO.

II. Preliminary objections

4. In response to § 8-11 SO, FIDH rejects the Respondent’s argument on the nature of the overlap between Article 16 and Article 31 of the Charter with regard to housing. FIDH reiterates that Article 16 in its very wording in the Charter (English) 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 *ERRC v Greece*⁵ and reiterated this more recently in *FIDH v Belgium*.⁶ FIDH asserts that the substance of this complaint relates to the right with respect to housing under Article 16 and other Articles, as set out by the Committee.
5. In response to § 12 SO, FIDH rejects the Respondent’s submission as being irrelevant. The jurisprudence developed in *FEANTSA v France*⁷ itself stems from cases, such as *Autism-Europe v France*⁸, which do not concern Article

5 Complaint No. 15/2003, Decision on the Merits (DM), [16].

6 Complaint No. 62/2010, DM, [44-47].

7 Complaint No. 39/2006.

8 Complaint No. 13/2002, *Autism-Europe v France*.

31. FIDH reasserts that 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 *ERRC v Greece*⁹ and reiterated this more recently in *FIDH v Belgium*.¹⁰ FIDH asserts that the substance of this complaint relates to the right with respect to housing under Article 16 as set out by the Committee.

6. In response to § 13 SO, FIDH rejects outright the respondents assertion. In the first place, the Summary of Social Housing Assessments 2013 is not an assessment of local authority tenants housing conditions or needs. As such, this is somewhat irrelevant to the Complaint and it is unclear whether the State is contending that it does not have any obligations to provide adequate housing for single person households, as they are not regarded as ‘families’.
- Secondly, FIDH asserts the jurisprudence of the ECSR in relation to Article 16 is, of course, relevant to the application of these standards of adequacy, only to families. In relation to the definition of ‘family’, the ECSR has pointed out that the protection afforded in this provision covers single parent families. The definition is supported by reference to the decisions of the European Court of Human Rights (ECtHR) in relation to Article 8, which states that ‘Everyone has the right to respect for his private and family life, his home and his correspondence’:¹¹ *‘Since ‘family’ can mean different things in different places*

9 Complaint No. 15/2003, Decision on the Merits (DM), [16].

10 Complaint No. 62/2010, DM, [44-47].

11 The ECtHR 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 31041/04), Judgment 25 June 2010, where the ECtHR held that a same-sex couple living in a defacto relationship fell within the notion of ‘family life’.

and at different times, the Charter refers to the definitions used in national law. No distinction is made between various models of family and, in keeping with the case law of the European Court of Human Rights in relation to Article 8 of the Convention; 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. States enjoy a margin of appreciation to choose the means in their endeavour to ensure the social, legal and economic protection of the various types of families that can be found in the population.¹²

Indeed, section 2 of the Irish Housing (Miscellaneous Provisions) Act 2009 defines a 'household' (subject to sections 20 and 84), as a person who lives alone or 2 or more persons who live together.

7. In further response to § 13 SO, FIDH wishes to highlight a number of specific instances where families living in local authority housing face substandard housing conditions. Overcrowding is defined in the Housing Act 1966 as a sleeping area where a person has 'less than four hundred cubic feet' or where two people of opposite sex over the age of ten have to sleep in the same room when they are not 'living together as husband and wife'. It is demonstrable that overcrowding impacts on the well-being and social inclusion of inhabitants, particularly children as does substandard housing conditions. For example, children sharing overcrowded space with siblings are disadvantaged in terms of completing schoolwork and illness arising from living with damp

¹² Conclusions 2006, Statement of Interpretation of Article 16, 13.

conditions affects school attendance.¹³

FIDH would like to draw attention to survey of housing conditions among tenants taken in March 2014 by St Michael's Regeneration Board in Tyrone Place, Inchicore, Dublin – a Council flat complex, found that:

- Out of 47 units, families in 29 had damp issues
- 24 had repeating mould growth with 18 of these reporting respiratory problems, including in children
- 30 found their accommodation cold or very hard to heat and had high heating costs
- 20 had strong smells and/or backwash of dirty liquids into sinks

In March 2014, Scott and MacNeill Architects (SMA), carried out an inspection at Tyrone Place and identified a wide range of poor housing conditions.¹⁴

8. FIDH rejects the Respondents argument in § 14 for the reasons already outlined.
9. In response to § 15-17 SO, FIDH rejects the argument that the Complaint fails to support allegations of Articles 17 and E of the Charter. FIDH reasserts that the Complaint identifies a range of specific instances where children's rights to appropriate legal and economic protection are undermined by the State's failure to ensure adequate housing¹⁵ or protection from poverty and social

13 See 'Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto, Dublin 8', (Dublin, Community Action Network, 2012), p. 7. This report found that 92% of those in poor conditions report their child or children had missed school as a result of these illnesses in the last year.

14 Scott and MacNeill architects Report on Preliminary Inspection of Tyrone Place Complex for Community action Network March 2014

15 'UNCESCR Concluding Observations for Ireland', (UNCESCR, 2015), para 26.

exclusion.¹⁶ In relation to § 16 of the State response there are many reports which show the link between inadequate housing and health and these links are widely established in housing research. In relation to § 17, there are many children and young people living within local authority housing whose rights to social, economic and legal protection are inherently linked with the substance of this Complaint. Failure to recognise the rights further illustrates the inadequate implementation of the Charter in Ireland.

10. In response to § 18 – 21 SO, FIDH rejects the argument that the Complaint fails to support allegations of Articles E. The Complaint does not seek to set out private rented sector tenants as a comparator. FIDH asserts that the example of private tenants and the operation of the regulatory body with responsibility for governance of the private rented sector in Ireland (the Private Residential Tenancy Tribunal) is used to illustrate the failure to respect adequacy of housing, redress for failure to ensure adequate housing etc. for social tenants.

11. FIDH rejects outright the contention in § 21 & 22 SO, and reiterates that the Respondent has not ensured the satisfactory application of Articles 11, 16, 17, 30 and E of the Revised European Social Charter, particularly with regard to local authority housing and the associated rights of several groups of people.

III. Background to the maintenance and management of local authority housing in the Republic of Ireland

12. In relation to § 24 – 25, FIDH asserts that this appears to make a claim that

¹⁶ The increase in the number of people living in consistent poverty or at-risk-of-poverty has been criticised by UNESCR. See ‘UNCESCR Concluding Observations for Ireland’, (UNCESCR, 2015), para 24.

local authorities are not responsible for the adequacy of housing of its tenants who are in privately owned housing leased by the local authority. Clarification that this is not the case would be welcome, as using this mechanism to avoid State obligations could be seen as a flouting of Charter and indeed other human rights obligations, such as those under the ECHR Act 2003. In respect of § 25 SO, FIDH reiterates that regardless of the fact that a duty has been imposed on the housing authority to make inspection and to assess adequacy of supply and condition of housing, no systematized programme of inspections of local authority housing takes place. In *Autism Europe v France*, the ECSR established that the measures taken to implement the Charter Articles must meet three criteria: (i) a reasonable timeframe; (ii) a measurable progress; and (iii) a financing consistent with the maximum use of available resources.¹⁷ In *FEANTSA v France*, the ECSR pointed out that the implementation of the rights to housing must be monitored as well as their impact. The failure to inspect local authority housing amounts to a failure to give full effect to the rights recognised in the Charter and in particular the failure to take measures that allow the Respondent 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.¹⁸

13. In relation to § 26 SO, this clearly establishes that local authorities have legislative control and responsibility for housing which they own and other services provided by them. On § 27 SO written reports of policy to date do not

¹⁷ Complaint No. 13/2002, *Autism-Europe v France*, DM, [53].

¹⁸ *Ibid.*

include any references to the Charter or other Council of Europe rights. In relation to § 28 SO this confirms the legislative obligations on local authorities in relation to adequacy issues as we have already stated in the Complaint.

14. In respect of § 29-30 SO, this confirms the legislative obligations as stated in the Complaint. In respect of § 31 – 32 SO, FIDH points out that the ‘housing service plan’ makes no reference to the European Social Charter and does not make reference to the rights therein. Strategies, by their nature, are management tools, not legally binding, and do not establish or vindicate rights such as those set out in the Charter.

15. With regard to § 33 SO, FIDH sets out that the guidance documents referred to are not legally binding and do not promote rights under the European Social Charter. However, they may well be useful in developing the essence of human rights standards in the context of implementation of rights.

16. In respect of § 34 – 35 SO, FIDH dismisses the general terms of the proposals and expenditures outlined in these paragraphs which do not set out in specific terms how such measure will meet the three criteria set out in *Autism Europe v France*¹⁹ This part of the State response raises some questions on how the State is implementing the Charter in its regeneration commitments, and it is unclear whether the State has considered at all, how it will comply with Charter obligations to tenants in these situations.

17. In respect to § 36 SO, FIDH points out that the National Oversight and Audit Commission (NOAC) is a State body, and is not independent as it receives

¹⁹ Complaint No. 13/2002, *Autism-Europe v France*, DM.

significant support, including its secretariat, from the Department of the Environment etc.²⁰

18. In respect of § 37 – 39 SO, FIDH welcomes the proposal from the NOAC to commence a thematic review during 2015 of the performance of the function of maintaining and managing local authority stock generally but point out that such action is long overdue and in the absence of such action the right to housing has been undermined. This represents both a failure to maintain meaningful statistics on needs, resources and results and also a failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the policies adopted on each of the categories concerned particularly the most vulnerable.

IV. Alleged failure to adopt the Charter Rights within the legal, policy and administrative framework of housing in Ireland

19. In respect to § 40 SO, FIDH reiterates that sufficient reasons are set out to satisfy the criteria of Article 4 of the Protocol and will further demonstrate this by engaging with and refuting the issues which the Respondent has selected as part of the SO. FIDH re-assert that the complaint is directly addressed to matters that fall within Article 16 and other Articles, and any reference to Article 31 relates to the functional overlap that exists between those provisions which has been accepted by the Committee in the cases referred to above.

20. In response to § 41 – 43 SO, FIDH rejects the Respondent's submission that

²⁰ National Oversight and Audit Commission Annual Report 2014, p. 4.

Section A of the Complaint is framed in general terms. This section of the Complaint outlines in detail a range of specific failures to fulfil the rights of local authority tenants under Article 16 and other Articles in respect of housing. § 43 SO erroneously suggests that *Autism Europe v France*²¹ relates to Article 31 of the Charter. While FIDH welcomes the Respondents acceptance of the criteria set out in *Autism Europe v France*²² for the progressive achievement of objectives which are particularly complex, FIDH reiterates that Irish housing law and policy does not adopt any timeframe, or measurable progress towards realising the rights set out in the Charter. For instance, as acknowledged by the Respondent, the last national examination of the condition of local authority housing was carried out in 2002 – over 13 years ago.²³ This represents both a failure to maintain meaningful statistics on needs, resources and results and also a failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the policies adopted on each of the categories concerned particularly the most vulnerable. This failure is unacceptable given the fundamental and well established relationship between securing adequate housing and improved quality of life, health and the protection against poverty and social exclusion.

21. In response to § 44 SO, FIDH rejects the submission with regard to the making of ‘Development plan every six years’ as irrelevant. Quite simply, this plan is focused on new homes and not on existing homes and therefore does

21 Complaint No. 13/2002, *Autism-Europe v France*, DM.

22 *Ibid.*

23 D Watson & J Williams, ‘Irish National Survey of Housing Quality 2001-2002’ (Dublin, Economic and Social Research Institute, 2003), see Appendix 13.

little to address the difficulties facing current local authority tenants as set out in Section A – C of the Complaint. In any case there is no statutory obligation to consult with local authority tenants on their particular needs as part of the plan.

22. FIDH rejects the submissions in § 45 SO as being irrelevant to the material difficulties, outlined in Section A – C of the Complaint, faced by families presently living in local authority housing. The social housing assessment is simply an assessment of those persons who have an unmet need for social housing and does not address the problems faced by current local authority tenants.
23. In respect of § 46 SO, FIDH again asserts that the *Social Housing Strategy 2020* does not improve the position of current families living in local authority housing or address the difficulties which those families face as outlined in Section A – C of the Complaint. The Strategy is not legally binding and makes no reference to the Charter.
24. FIDH rejects the submissions in § 47 – 48 SO as being largely irrelevant to the material difficulties faced by families presently living in local authority housing and detailed in Section A – C of the Complaint. The investment referred to relates to new homes and not to the situation facing existing families living in local authority housing.
25. In respect of § 49 SO, while FIDH welcomes the planned increase in monitoring of the performance of local authorities, it rejects the submissions as being irrelevant to the material difficulties faced by families presently

living in local authority housing and detailed in Section A – C of the Complaint. In any case, none of the actions mentioned in § 49 SO have involved a commitment to implement the Charter or indeed any human rights obligations.

26. In respect of § 50 – 54 SO, FIDH points out that the Respondent outlines a range of actions (including various proposals) which do not directly address the difficulties faced by families living in local authority housing at present. FIDH reiterates that the criteria set out in *Autism Europe v France*²⁴ for the progressive achievement of objectives which are particularly complex require that measures taken to implement the Charter Articles must meet three criteria: (i) a reasonable timeframe; (ii) a measurable progress; and (iii) a financing consistent with the maximum use of available resources.²⁵ FIDH dismisses the general terms of the proposals and expenditures outlined in these paragraphs which do not set out in specific terms how such measures will meet the three criteria set out in *Autism Europe v France*²⁶. This part of the State response raises some questions on how the State is implementing the Charter in its leased housing schemes, and it is unclear whether the State has considered at all, how it will comply with Charter obligations to tenants in these situations.

In respect of § 55 SO, FIDH reiterates that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.²⁷

24 Complaint No. 13/2002, *Autism-Europe v France*, DM.

25 *Ibid.*

26 *Ibid.*, [53]

27 Complaint No. 1/1998, *International Commission of Jurists v. Portugal*, DM, [32].

It has been recommended to the Department of the Environment that Social Regeneration Funding should not be so dominated by built environment measures but needs to be an integrated flexible package backed by a range of Departments which can be drawn on to meet the needs in a specific place whether they be social, economic or physical. This has not been implemented by the Government. Shine and Norris write:

*The terms of central government finance arrangements pose two problems. First, local authorities have direct access to only a limited number of funds. Second, these funds tend to support primarily built environment interventions. ... many potential funding schemes only fund very specific types of interventions. As such, the funding that local authorities are able to directly access may not necessarily be sufficient to address the precise needs of a particular estate. Moreover, there is evidence to suggest that local authorities employ built environment interventions more often than necessary in regeneration projects... the type and limitations of funding directly available to local authorities can be particularly problematic when generating interventions relevant to the social and economic aspects of regeneration. These problems can be overcome by establishing strong working partnerships with other agencies.*²⁸

27. In respect of § 56 SO, FIDH rejects outright the respondents submission.

FIDH reiterates that the Complaint outlines in detail a range of specific

28 Shine & Norris (2006) *Regenerating Local Authority Housing Estates: Review of Policy and Practice* (Dublin, Centre for Housing Research), p. 27 – 28.

failures to fulfil the rights of local authority tenants under Article 16 and other Articles in respect of housing. FIDH re-asserts that the Complaint is directly addressed to matters that fall within Article 16 and other Articles and any reference to Article 31 relates to the functional overlap that exists between those provisions which has been accepted by the Committee in the cases referred to above and rejects the Respondent's submission here in respect of Article 31. Furthermore, FIDH rejects the Respondent's assertion that a framework exists to fulfil the Charter's objective within a reasonable time, with measurable progress, to an extent consistent with the maximum use of available resources, while being mindful of the impact that choices will have for groups with heightened vulnerabilities. FIDH asserts that the Respondent's argument fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.²⁹ The Respondent State argument rests on a series of vague proposals and general assessments of those in need of social housing which do not address or even shed light on the difficulties faced by families presently living in local authority housing. The SO completely fails to address the specific issues identified in Section A of the Complaint.

²⁹ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

V. Allegation regarding adequacy, habitability and suitability of local authority housing

28. In respect of § 57 SO, this appears to accept that the Complaint is not based on Article 31 of the Charter.

V.1 Allegation of substandard conditions

29. FIDH dismisses the submission in § 58 SO (a). The overlap between Articles 16 and 31 in respect of housing has been accepted by the Committee in a range of decisions. FIDH reiterates that Article 16 provides for the right to housing of families as an element of the right of the family to social, legal and economic protection. 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.’³⁰ The concepts of adequate housing are the same under Article 31 as Article 16.³¹ Furthermore, in *FEANTSA v France*, the Committee pointed out that it attaches great importance to General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights.³²

30. In response to § 58 SO (b), FIDH wishes to point out that while the right to housing cannot be interpreted as imposing on states an obligation of “results”, the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.³³ FIDH reasserts that the State fails in this regard.

30 Complaint No. 15/2003, *ERRC v Greece*, DM, [16]. Also see Conclusions 2003, France, 221.

31 Complaint No. 62/2010, *FIDH v Belgium*, DM, [44 – 47].

32 Complaint No. 39/2006, *FEANTSA v France*, DM, [67].

33 Complaint No. 1/1998, *International Commission of Jurists v. Portugal*, DM, [32].

31. In relation to § 58 SO (c), FIDH wishes to clarify that what the Committee has set out is that where one of the rights in question is exceptionally complex and particularly expensive to implement, States parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.³⁴ FIDH reasserts that the State fails in this regard.
32. In response to § 58 SO (d), FIDH does not dispute that States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, however States Parties must take measures that allow 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.³⁵ FIDH reasserts that the State fails in this regard.
33. In response to § 58 SO (e), FIDH dismisses the significance afforded by the Respondent to fact that standards were not assessed as part of the Committee's Conclusions in relation to the Respondents adherence to Article 16.³⁶ The Collective Complaints system was specifically introduced in order to supplement the reporting process by drawing attention to specific compliance issues. Furthermore, FIDH rejects the contention that the margin of appreciation afforded to State Parties means that State Parties can overlook the extensive jurisprudence of the Committee in relation to housing standards.³⁷

34 Complaint No. 13/2002, *Autism Europe v. France*, DM, [53].

35 Complaint No. 64/2011, *European Roma and Travellers Forum v. France*, DM, [96].

36 Conclusions of the European Committee of Social Rights 2011, Ireland, p. 14.

37 There are also overlaps with the minimum standards established under Articles 2, 3 and 8 of the European Convention of Human Rights, where the protection of life, prevention of inhuman and degrading treatment, and respect for home and family life have established minimalist benchmarks. See *Moldovan v Romania* (2005) 44 EHRR 16; *Moreno-Gomez v Spain* (2005) 41 EHRR 40.

34. FIDH does not dispute § 58 SO (f). Similarly, Article 30, which has been ratified by the Respondent State, includes a range of obligations on participation which have not been addressed in the State response.
35. In response to § 59 SO, FIDH did not submit that the Charter imposes obligations of results. FIDH has submitted that families and children in local authority housing face substandard housing conditions. FIDH has provided evidence to indicate the substandard conditions facing families and children in local authority housing. FIDH has further submitted that because the last State assessment into the condition of local authority housing took place over 13 years ago, in 2002, there is a failure to take measures that allow the State 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. The total lack of meaningful statistics in this regard undermines measures taken by the State to achieve the rights set out in the Charter and compromises the rights of families and children in local authority housing under Article 16.
36. In response to § 60 SO, FIDH dismisses the submission as irrelevant. The assessment of housing need referred to does not relate to existing tenants but rather to those with an unmet need for social housing. It would appear that the respondent State does not view Article 30 as applying to local authority tenants, but only those on waiting lists for housing.
37. In response to § 61 SO, FIDH rejects the failure of the Respondent to respond to the specific instances of families and children in local authority housing

facing substandard housing conditions. The Respondent cannot at once dismiss the Complaint for failure to engage in specifics and at the same time ignore the specific evidence put forward in the Complaint. FIDH re-asserts that this evidence, in the absence of up to date and meaningful State statistics on the condition of local authority housing, illustrates a trend of neglect on the part of the State towards families and children living in local authority housing. FIDH reiterates the Complaint is not addressed at results but at the failure of the State to take appropriate measures to ensure the realisation of the rights applicable to housing under Article 16.

38. In response to § 62 SO, FIDH rejects the argument made by the Respondent and points out that even if under domestic law local or regional authorities are responsible for exercising a particular function, States party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the Irish State.³⁸ The Respondent State suggestion that local authorities are a separate entity from the State and not responsible for the State obligations on human rights appears to be in conflict with Charter jurisprudence.
39. In response to § 63 SO, FIDH points out that guidance from the Department of Environment, Community and Local Government to local authorities referred to by the Respondent does not incorporate a rights based approach derived from the rights set out in the Charter.
40. In response to § 64 SO, FIDH points out that the guidance document ‘*Quality*

³⁸ Complaint No. 15/2003, *ERRC v Greece*, DM, [29].

*Housing for Sustainable Communities*³⁹ promotes some positive elements but does not incorporate the rights set out in the Charter, or indeed any rights for tenants.

41. In response to § 65 SO, FIDH asserts that the Respondent's submission fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁴⁰ In short the Respondents argument rests on a series of vague proposals and does not offset the issues raised in the Complaint.
42. In response to § 66 SO, FIDH welcomes the installation of central heating in local authority housing however this submission says little about the condition of local authority housing more generally and does not displace the evidence put forward in the Complaint that families and children living in local authority housing experience substandard housing.
43. In response to § 67 SO, FIDH welcomes measures to improve the least energy efficient local authority homes however this submission says little about the condition of local authority housing more generally and does not displace the evidence put forward in the Complaint that families and children living in local authority housing experience substandard housing.
44. In response to § 68 SO, FIDH dismisses the submission regarding the Social

39 'Quality Housing for Sustainable Communities', (Dublin, Department of the Environment, 2007).

40 Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

Housing Strategy 2020. FIDH points out that the Respondent outlines a range of proposed/planned actions which do not directly address the difficulties faced by families living in local authority housing at present as outlined in the Complaint.

45. In response to § 69 SO, FIDH rejects outright the failure of the Respondent to engage with the specific instances highlighted in the Complaint⁴¹ which illustrate the difficulties facing families living in local authority housing. These difficulties are the direct result of the failure of the State to vindicate the right of families in regards to housing under the Charter.
46. In response to § 70-71 SO: FIDH rejects the Respondent's submission which rests on a vague survey of local authorities which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. FIDH asserts that the response of the local authorities is a temporary fix to a reoccurring problem. In this sense the response fails to address the difficulties faced by families faced with these substandard housing conditions.
47. In response to § 72 SO, FIDH asserts that the right to housing of families living in local authority housing is undermined by the failure to address the difficulties faced by tenants in respect of waste-water. As well as presenting a manifest risk to the health of families and children living in local authority housing, waste water discharge can exacerbate substandard housing conditions.

⁴¹ For instance see Complaint No.110/2014, B.1.3.1. Conditions in some Local Authority Housing Estates, B.2.1. Conflict of interest of Local Authorities in meeting standards for rented housing, etc.

48. In response to § 73 SO, FIDH re-asserts that damp and mould growth is a serious problem for many families and children living in local authority housing. The failure of local authorities to take appropriate measures in respect of provision of adequate housing to realise the rights under Article 16 exacerbates the problem. FIDH wishes to draw particular attention to the following section of § 73 SO outlining the policy of local authorities in this regard: *‘In addition, an information booklet (produced by Homebond) about the prevention of condensation in the home and the treatment of condensation-related mould growth is generally (but not always) given to the tenant* (emphasis added). FIDH would like to draw attention to the fact that this ‘booklet’⁴² is 20 years old and is not fit for the purpose for which it is supplied to some, but not all, local authority tenants. Indeed, it compares condensation in housing with cars. FIDH welcomes the frank admission from the Respondent that that this ‘booklet’ is not given to all tenants and submits that such a document is in design, and by its use, woefully inadequate as a means of addressing the difficulties faced by families and children living in local authority housing. The real issue which the Respondent has failed to address is enforcement of housing standards as set out in the Housing (Standards for Rented Houses) Regulations 2008 (as amended).⁴³ The Complaint has made clear that local authority tenants are denied effective enforcement procedures. Should a local authority tenant seek to report that their housing condition falls below the basic legal standard set out in the

42 Appendix 7.

43 Housing (Standards for Rented Houses) Regulations 2008 (S.I. No. 534) as amended by Housing (Standards for Rented Houses) (Amendment) Regulations 2009 (S.I. No. 462). See Appendices 14 and 15.

Regulations they are faced with the prospect that the body responsible for enforcing the Regulations is also their landlord i.e. the local authority. This conflict of interest, in combination with the unavailability of legal aid to pursue a complaint in the civil courts, reduces the ability of families and children living in local authority housing from effective redress and undermines their right with respect to housing under Article 16 and other Articles of the Charter.⁴⁴

49. In response to § 73 SO, FIDH further asserts that the Government response contradicts their own technical guidance to the Irish Building Regulations 1997 - 2014, parts F & L.⁴⁵ Since 2002 there has been a test for the design of buildings to avoid mould growth included in the Irish building regulations. All Dublin City Council flats that Dublin Institute of Technology students have assessed fail the test.⁴⁶ This test relates only to the design of the buildings and specifically excludes usage patterns, ventilation, cooking, clothes drying, etc. The test defines whether the building has been designed to avoid mould growth or not. FIDH asserts that families in local authority housing live in housing which has not been designed to avoid mould growth. FIDH therefore asserts that the directive from Dublin City Council to tenants that problems arising from condensation originated damp and mould are their responsibility requires residents to fix a problem they could never fix. This is because the

44 The lack of legal aid has been criticised by UNCESCR. See ‘UNCESCR Concluding Observations for Ireland’, (UNCESCR, 2015), para 8.

45 Building Control Regulations (S.I. No. 496 of 1997) (as amended).

46 Although unpublished the conclusions of the Dublin City Council report were published in an article available online. See following link at the section headed "A Case Study Supporting A Local authority"<http://passivehouseplus.ie/ci/articles/heating/thermal-bridging.html>

building itself is the root cause and this cannot be remedied by any action on the part of the residents. FIDH asserts that even where residents comply with the advice in the Homebond leaflet, they experience the same issues. Thus Dublin City Council continues to place residents in units they know are prone to extensive damp and mould which cannot be remedied by any action on the part of the residents.

50. As evidence for this, FIDH submits a review of the issues of condensation and mould growth in Dublin local authority flats prepared by Joseph Little⁴⁷, one of Ireland's foremost consultants on environmentally sustainable buildings and senior lecturer in the Dublin Institute of Technology (Bolton Street), School of Architecture. Little analyses all factors that contribute to condensation in a dwelling and who has responsibility in terms of causation, for each of these. His conclusion is that it is unfair that tenants will be responsible in the buildings occupied by Local Authority tenants. He also points out that DCC had commissioned investigation of these issues by him in the past and so are aware of the realities of the situation.⁴⁸

51. FIDH also submits an analysis by Scott and MacNeill Architects (SMA) who have carried out a number of surveys of Local authority buildings. SMA point out that DCC "...are aware of the evidence based on a number of studies that these buildings are effectively unable to provide adequate thermal and ventilation environmental performance in their current condition. The result is extensive heat loss, the strong likelihood of extensive heat loss and mould

⁴⁷ J. Little, 'The causes of surface condensation and the responsibility of relevant parties to alleviate it', 24th October 2015.

⁴⁸ *Ibid.*

conditions and a real risk of adverse effects on the health of residents.”⁴⁹

52. In response to § 73 SO, FIDH further asserts that the import of the Local Authority Condensation policy is very serious for residents. It means that extensive damage done to clothing, bedding, and furniture of residents is not subject to compensation. It means that families are routinely moved into damp and mouldy units even though the Local authority knows their condition. And it means that Local Authorities are taking no responsibility to address the issues.

FIDH points to a condition survey of flats in St Teresa’s Gardens in 2013⁵⁰, in which Dublin City Council concluded that:

*Of the 72 dwellings that participated in the survey, 69 (96%) of the dwellings did not have an issue with mould/damp or had mould growth due to condensation (which is a tenants responsibility)⁵¹
In fact 45% of units had mould growth due to condensation. A further 8% had previously had it, but it had been washed off. (Experience shows that it returns.) 3% had damp due to leaks. Dublin City Council concluded that they had only to address this 3%.⁵²*

FIDH draws attention to surveys in both Bluebell Bernard Curtis House and Balgaddy which were carried out by William Scott of Scott and MacNeill architects and found extensive damp and mould conditions. In both cases Scott concluded that the Local Authority in each case (South County Dublin

49 W Scott, ‘Condensation and Mould in 5-Storey Social Housing Buildings in Dublin’, (Dublin, 24th October 2015 page 4.

50 ‘Saint Teresa’s Gardens Mould and Damp Survey’, (Dublin, Dublin City Council Housing Maintenance, 2013).

51 *Ibid.* p. 9.

52 *Ibid.* p. 6.

and Dublin City Council) as the Developers, Owners and Managers of the units are the only agencies that can remedy defects⁵³.

V.2 Allegation that standards applied to local authority housing are not the same as those applied to privately rented properties

53. In response to § 74 – 75 SO, FIDH asserts that the example of private tenants and the operation of the regulatory body with responsibility for Governance of the private rented sector in Ireland (the Private Residential Tenancy Tribunal) is used to illustrate the fact that tenants living in local authority housing do not have access to an independent supervisory body responsible for ensuring accommodation is adequate and of a standards that is compliant with Charter rights.. Furthermore, FIDH asserts that in a European context, the complete absence and State failure to support a national representative local authority tenants association in Ireland undermines the ability of tenants to address the difficulties they are facing in respect of housing and fundamentally weakens their right to meaningful participation.⁵⁴

54. In response to § 76 SO, FIDH rejects outright the Respondents submission and complete failure to engage with the issues raised in the Complaint. There is no suggestion that identical regimes are required, merely an indication of the inadequacy of the position of local authority tenants vis-à-vis private sector tenants in the same country. This illustrates the absence of any effective remedies for violations of Charter rights for local authority State tenants.

53 ‘Report on visits to units at Balgaddy’ (Dublin, Scott and MacNeill architects, 2015); ‘Report on Visit to Bernard Curtis House’ (Dublin, Scott and MacNeill Architects, 2015).

54 Complaint No. 67/2011, *Médecins du Monde – International v. France*, DM, [105]; Complaint No. 51/2008, DM, [93 – 94]; Conclusions 2011, Italy, p. 16.

55. In response to § 77 – 79 SO, FIDH has no comment to make.

56. In response to § 80 SO, FIDH dismisses the Respondents submission. FIDH reasserts that there is no regular examination of housing conditions and standards in local authority housing and as such the State is unable to comply with its obligations to ensure Charter compliance. As set out in section B.2.1 of the Complaint, local authorities carried out thousands of inspections of private rented housing but carried out no such inspections of local authority dwellings. 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. Therefore, the fundamental difficulty facing families and children living in local authority housing is that the body responsible for regulating the condition of their housing is also their landlord. This clear conflict of interest results in a situation where the legal standards for rented housing condition are not applied to local authority tenancies (as they are applied to private rented housing). As set out in the Complaint, the consequence (aside from denying local authority tenants conditions of adequate housing and associated rights) is that there is no statistical information on the housing condition of local authority housing. FIDH asserts that the lack of access to a remedy for families and children living in local authority housing experiencing substandard housing condition violates their right with respect to adequate housing under Article 16⁵⁵ and other Articles of the Charter.

57. In response to § 81 SO, FIDH rejects the Respondent's submission which rests on a vague survey of local authorities that fails to supply relevant statistical

55 Complaint No. 31/2005, *ERRC v Bulgaria*, DM, [52].

information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁵⁶ Indeed, the Regulations and “Guidelines” are not enforceable as housing rights standards for local authority tenants as demonstrated in the Complaint.

58. In response to § 82 SO, FIDH, asserts that the Respondent’s submission does not address the issue raised in the Complaint that there is no justification for families and children living in local authority housing and experiencing substandard housing conditions being denied the right to enforce housing standards and Charter rights.

V.3 Allegation of less effective remedies being open to local authority tenants

59. In response to § 83 SO, FIDH dismisses the Respondent’s submission which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue to remain ineffective.⁵⁷

60. In response to § 84 SO, FIDH again dismisses the Respondent’s submission which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved.

⁵⁶ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

⁵⁷ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁵⁸ Indeed, FIDH could not find any awareness of this procedure among residents or community leaders in the relevant estates. In relation to the Customer Complaints Guidelines for Local Authorities (2005) referred to in the State response, there is no information on how this has been used, the numbers of complaints made, the outcomes, or indeed, any independent evaluation of the impartiality and independence of that approach. Clearly, it does not amount to an independent and impartial system for asserting violations of Charter rights, and indeed, human rights or any other rights are not mentioned in the Guidelines at all. As the Guidelines state on page 8 – they are “like those published by the Ombudsman’s Office, intended to be advisory rather than prescriptive”. Indeed, there is no ultimate appeal to any legal adjudication in the Guidelines. As such it does not offer any remedies, or an impartial independent tribunal for dealing with complaints of human rights violations.

61. In response to § 85 SO, FIDH rejects the Respondent’s submission and reasserts that 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. 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 is not much used as shown and in any case the decisions of the Ombudsman are

⁵⁸ *Ibid.*

not binding on a local authority and have no legal consequences. FIDH rejects the Respondent's submission that tenants of local authorities may take action to enforce standards through the Courts. This option is severely restricted by Court costs, procedure and restrictions on legal aid.⁵⁹ There is almost no entitlement to legal aid in these disputes.⁶⁰ Indeed, the UNCESCR has expressed concern at the overall difficult housing situation facing many families in Ireland. In particular, the Committee has expressed concern at the lack of effective complaint mechanisms for local authority tenants on tenancy-related issues.⁶¹ FIDH reasserts that local authority tenants do not have a formal internal process to review decisions of their landlords and access to independent external accountability is extremely restricted. As shown above, the absence of legal aid and a tenant representative organisation makes it almost impossible for tenants to vindicate their rights through courts or in the development of law and policy on housing.

62. In response to § 86 SO, FIDH wishes to draw attention to the following section in § 86 SO *'The challenges facing a private renter are different to those facing a local authority tenant. For instance, no statutory maintenance and control functions arise for local authorities in the context of private rental accommodation and often the private renter faces more acute difficulties with unscrupulous landlord'*. FIDH points that this statement is incorrect. In the first place, as set out in section B.1.2. of the Complaint, local authorities have a direct statutory maintenance and control function in regulating the condition

59 See M Jordan, Tenlaw National Report Ireland, 2014, pp 109-110.

60 The lack of legal aid has been criticised by the Human Rights Council. See 'Report of the independent expert on the question of human rights and extreme poverty', (United Nations, 2011), para 10.

61 UNCESCR Concluding Observations for Ireland', (UNCESCR, 2015), para 26.

of all rented dwellings within their statutory area. Secondly, FIDH rejects entirely the suggestion that the difficulties facing local authority tenants are somehow less serious than those experienced by private tenants. The Complaint has put forward a range of specific examples which demonstrate the acute housing difficulties which are faced by local authority tenants. In many cases the failure of the State to take legal action but also practical action to give full effect to the rights recognised in the Charter amounts to a failure to implement the Charter and exacerbates the difficulties faced by families and children living in local authority housing.

V.4 Allegations of lack of meaningful statistics on local authority housing conditions and social exclusion in local authority housing

63. In response to § 87 SO, FIDH welcomes the Respondent drawing attention to the fact that the last examination of the condition of local authority housing was carried out in 2002 – over 13 years ago.⁶² This represents both a failure to maintain meaningful statistics on needs, resources and results and also a failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the policies adopted on each of the categories concerned particularly the most vulnerable.

64. In response to § 88 SO, FIDH rejects the submission that neither the most recent Survey of Income and Living Conditions, published over 8 years ago, nor the Census amounts to a comprehensive assessment of housing condition.

FIDH reasserts that there is a clear failure to maintain meaningful statistics on

⁶² D Watson & J Williams, 'Irish National Survey of Housing Quality 2001-2002' (Dublin, Economic and Social Research Institute, 2003), see Appendix 13.

needs, resources and results and also a failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the policies adopted on each of the categories concerned particularly the most vulnerable.

65. In response to § 89 SO, FIDH rejects the submission concerning the Local Government Management Agency as irrelevant for this Complaint, as the managerial measures are not related to rights and make no reference to implementing rights. FIDH asserts that the Respondent's argument fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁶³

66. In response to § 90 SO, FIDH welcomes that in Limerick there is a Framework Plan which is being monitored. However, FIDH points out that this is not the case in most Regeneration areas. Nevertheless, in respect to monitoring of the Framework Plan, FIDH asserts that the plan does not monitor some aspects of the Regeneration that are of most concern to residents. Firstly, there is no monitoring of residents participation in the Regeneration Process. The involvement of residents in key decisions, involving in many cases the decision to demolish their homes to facilitate access to proposed private housing developments, is of concern to residents in Limerick yet it is not monitored by the Regeneration process. There was no

⁶³ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

resident input into the monitoring report itself. Secondly, a key concern of residents is community safety. In fact it was issues relating anti-social behaviour and criminality which triggered the Limerick Regeneration in the first place. In one sample area, Ballinacurra Weston, a series of reports were submitted by residents to the local authority documenting anti social behaviour in the community.⁶⁴ Yet community safety is not monitored in the report. These issues have undermined the extent to which residents enjoy meaningful participation.

V.5 Allegation that the health and well-being of tenants in local authority housing is being affected by poor housing conditions

67. In response to § 91 SO, FIDH rejects the Respondent's submission. The Complaint contains a number of specific instances where the health of families and children living in local authority housing has been affected by substandard housing. The Respondent has failed entirely to engage with this evidence.

68. In response to § 92 SO, FIDH rejects the Respondent's submission. FIDH reiterates that the Respondent has failed entirely to engage with the evidence set out in the Complaint concerning the ill health caused to families and children living in substandard local authority housing.

69. In response to § 93-94 SO, FIDH asserts that the timeline for this project has

⁶⁴ The difficulties facing families living in local authority housing are clearly illustrated by example in a number of residents reports see 'Weston Gardens Resident's Association: report on anti-social and criminal behaviour' (September, 2015); 'Weston Gardens Resident's Association: report on anti-social and criminal behaviour' (April, 2015); Weston Gardens Resident's Association: report on anti-social and criminal behaviour (March, 2015); Weston Gardens Resident's Association: report on anti-social and criminal behaviour (February, 2015); Weston Gardens Resident's Association: report on anti-social and criminal behaviour (January, 2015).

changed considerably since first set. At present best estimates, construction will not begin until Spring 2016 as opposed to the beginning of 2015 as envisaged. Residents have been moved out of the first phase as early as January 2014. This means that some people will be in transition for 4 years at best if the latest timeline holds. Five families remain to enter the transition phase. The implications of this delay are:

- it undermines the Dublin City Council objective of keeping the community together, as the longer people are away, the more likely they will not return
- it means that later phases in the plan will be seriously delayed. Many residents expecting to be in the later phases are in poor living conditions of damp and mould and overcrowding. Because transition moves in the earlier phases will be prioritised to facilitate the Regeneration, these families are less likely to be given habitable accommodation while Regeneration, now significantly delayed, is ongoing
- Most of those in transition are moved to a nearby complex operated by an Approved Housing Body. Most are unhappy there due to persistent drug dealing in and around the complex
- As mentioned earlier, 36 families are overcrowded.

70. In response to § 95-97 SO, FIDH rejects the Respondent's submission and reasserts that the regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing.

71. In response to § 98 – 99 SO, FIDH reiterates that families living in the local authority housing referred experience substandard housing conditions including damp, mould, sewerage problems, fire safety, poor energy efficiency etc. The regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing.
72. In response to § 100 SO, FIDH rejects the Respondent's submission and reassert that the regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing.
73. In response to § 101 – 102 SO, FIDH rejects the Respondent's submission and reasserts that the regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing.
74. In response to § 103 SO, FIDH re-asserts that damp and mould growth is a serious problem for many families and children living in local authority housing. The failure of local authorities to take appropriate measures to realise the right with respect to adequate housing under Article 16 exacerbates the problem. See paragraph 48 above where this is discussed in detail.
75. In response to § 104 – 106 SO, FIDH rejects the Respondent's submission and reasserts that the regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing and indeed in many

instances have made it worse.

V.6 Allegation that local authority tenants are deprived of an effective right to protection against poverty and social exclusion

76. In response to § 107 SO, FIDH has no comment to make.

77. In response to § 108 SO, FIDH rejects the Respondent's assertion that the Complaint does not explain how living in local authority housing in Ireland results in a highly vulnerable lifestyle being forced on families. FIDH reiterates that the rights under Article 16 as they apply to housing are directly linked to the right to protection against poverty and social exclusion under Article 30.

78. In response to § 108 SO, FIDH further draws attention to the repeated failure of the State to incorporate the rights of the Charter in addressing the difficulties facing families and children living in local authority housing. The Complaint repeatedly draws attention to the consistent failure of the State to maintain meaningful statistics on needs, resources and results and also the failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the housing policies adopted on each of the categories concerned particularly the most vulnerable. This creates a gap in the analytical framework underpinning the State's current strategy for ensuring families living in local authority housing are protected from poverty and social exclusion. FIDH points out that there is a failure to ensure meaningful tenant participation in the formation and enforcement of housing policies which directly affect tenants. Across

Europe, the Republic of Ireland is almost unique in the failure of the State to support the development of a national tenants association or use a rights based approach. For instance, in France⁶⁵ Italy⁶⁶ Netherlands,⁶⁷ Sweden⁶⁸ and other European countries, tenant's associations have an important legal status and play a central role in representing the interests of tenants in the development and enforcement of housing policy in matters relating to housing rights, dispute resolution, rent regulation, enforcement of housing standards etc. Meaningful participation by tenants has long been recognised as essential by countries across Europe and indeed best practice has been set out clearly in the International Union of Tenants, Tenants Charter.⁶⁹ In contrast there is no national tenants association in Ireland to represent the interests of tenants and instead families living in local authority housing are fragmented into isolated and unsupported groups who lack the ability to represent their interests in a meaningful way.⁷⁰

79. In response to § 108 SO, FIDH further asserts the State has failed to adequately ensure the right of families living in local authority housing to participate in public decision making. FIDH reiterates that while enormous amounts of expenditure have taken place in relation to tenant participation in estate management schemes and similar approaches over the past 10 years, there is still no rights based participation by tenants. The Committee has held

65 J Hoekstra & F Cornette, Tenlaw National Report France, 2014, p. 152

66 R Bianchi, Tenlaw National Report Italy, 2014, p. 79 (rent negotiation)

67 M Haffner, M Van der Veen & H Bounjouh, Tenlaw National Report the Netherlands, 2014, p. 14.

68 O Bååth, Tenlaw National Report Sweden, 2014, p. 103.

69 'The Tenants Charter – 2nd version' (Birmingham, IUT Congress, 2004), available at <http://www.iut.nu/Tenant%20Charter/TenantsCharterENG2004.pdf>. See in particular Article II on the recognition of tenants' organisations and Article VI on participation in decision making.

70 Conclusions 2011, Italy, p. 16.

that Article 30 requires States parties to put in place control mechanisms involving relevant actors, including civil society and persons affected by exclusion.⁷¹

80. In response to § 108 SO, FIDH dismisses the Respondent's submission that the statutory Assessment of Housing need explains how families living in local authority housing may be at a social disadvantage which is unrelated to their living arrangement. FIDH again wishes to clarify that the social housing assessment is simply an assessment of those persons who have an unmet need for social housing and does not address or explain the problems faced by current local authority tenants. FIDH asserts that the Respondent's submission is founded on a fundamental misconception of the role and function of the social housing assessment and should be dismissed. FIDH instead reiterates, as accepted by the Committee, that the right to protection against poverty and social exclusion under Article 30 is directly linked to the right to housing⁷² under Article 16.

81. In response to § 109 SO, FIDH asserts that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.⁷³ The definition for poverty and social exclusion in National Action Plan for Social Inclusion 2007-2016 does not directly incorporate the Charter rights. Indeed, there are no references to progressively implementing Charter rights.

82. In response to § 110 SO, FIDH points out that the Respondent outlines a range

71 Complaint No. 67/2011, *Médecins du Monde – International v. France*, DM, [105]; Complaint No. 51/2008, DM, [93 – 94]; Conclusions 2011, Italy, p. 16.

72 Conclusions, 2009, Italy, p. 37.

73 Complaint No. 1/1998, *International Commission of Jurists v. Portugal*, DM, [32].

of actions (including various proposals) which do not directly address the difficulties faced by families living in local authority housing at present. FIDH reiterates that the criteria set out in *Autism Europe v France*⁷⁴ for the progressive achievement of objectives which are particularly complex require that measures taken to implement the Charter Articles must meet three criteria: (i) a reasonable timeframe; (ii) a measurable progress; and (iii) a financing consistent with the maximum use of available resources.⁷⁵ FIDH dismisses the general terms of the proposals outlined in these paragraphs which do not set out in specific terms how such measures will meet the three criteria set out in *Autism Europe v France*⁷⁶

83. In response to § 111 SO, FIDH points out that the Respondent's submission fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁷⁷

84. In response to § 112 SO, FIDH rejects the Respondent's submission. FIDH maintains that with respect to Article 30, the position is clear. 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

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

situation of poverty and social exclusion.⁷⁸ FIDH reiterates that the specific issues identified in the Complaint demonstrate that there are significant problems with the Government's approach. In particular with respect to housing there are wide gaps in the analytical framework which underpins the Government's approach. This stems directly from a failure to maintain meaningful statistics on needs, resources and results and also a failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the policies adopted on each of the categories concerned particularly the most vulnerable. This failure is unacceptable given the fundamental and well established relationship between securing adequate housing and the right to protection against poverty and social exclusion under Article 30.⁷⁹

VI. Regeneration

85. In response to § 113 SO, FIDH rejects the Respondent's argument and instead draws attention to the repeated failure of the State to incorporate the rights of the Charter in addressing the difficulties facing families and children living in local authority housing. The Complaint repeatedly draws attention to the consistent failure of the State to maintain meaningful statistics on needs, resources and results and also the failure to undertake regular reviews of the impact of the strategies adopted. The result is a general failure to pay close attention to the impact of the housing policies adopted on each of the categories concerned particularly the most vulnerable. This creates a gap in

⁷⁸ Conclusions 2009, Finland, p. 279.

⁷⁹ Conclusions 2009, Finland, p. 279.

the analytical framework underpinning the State's current strategy for ensuring families living in local authority housing are protected from poverty and social exclusion.

86. In response to § 114 – 116 SO, FIDH rejects the Respondent's assertion that the Complaint is vague in this section. FIDH reiterates that sufficient reasons are set out to satisfy the criteria of Article 4 of the Protocol and have further demonstrated this by engaging with and refuting the issues which the Respondent has selected as part of the SO. FIDH reiterates that the Regeneration process is fundamentally undermined by the failure of the State to develop a rights based approach which directly incorporates Articles 16, 30 and others. FIDH re-asserts that the regeneration programs referred to in the Complaint have failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing and indeed in many instances have made it worse.

VI.1 Housing Conditions

87. In response to § 117 - 118 SO, FIDH dismisses the general terms of the proposals and expenditures outlined in these paragraphs which do not set out in specific terms how such measure will meet the three criteria set out in *Autism Europe v France*⁸⁰. This part of the State response raises some questions on how the State is implementing the Charter in its regeneration commitments, and it is unclear whether the State has considered at all, how it will comply with Charter obligations to tenants in these situations.

⁸⁰ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

88. In response to § 119 SO, FIDH rejects the Respondent's submission which rests on a vague survey of local authorities which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved.
89. In response to § 120 SO, FIDH dismisses the general terms of the proposals outlined in these paragraphs which do not set out in specific terms how such measures will meet the three criteria set out in *Autism Europe v France*⁸¹.
90. In response to § 121 SO, FIDH dismisses the general terms of the proposals outlined in these paragraphs which do not set out in specific terms how such measures will meet the three criteria set out in *Autism Europe v France*⁸².
91. In response to § 122 SO, FIDH dismisses the general terms of the proposals and expenditures outlined in these paragraphs which do not set out in specific terms how such measures will meet the three criteria set out in *Autism Europe v France*⁸³. This part of the State response raises some questions on how the State is implementing the Charter in its regeneration commitments, and it is unclear whether the State has considered at all, how it will comply with Charter obligations to tenants in these situations.

VI.2 Participation

92. In response to § 123 SO, FIDH asserts that the design of Regeneration Boards to include resident participation does take place in some areas.⁸⁴ However, it is not to be found outside of Dublin. Limerick Regeneration for example has

81 *Ibid.*

82 *Ibid.*

83 *Ibid.*

84 'Things Can be Different' (Dublin, Community Action Network, 2006).

very limited or non-existent resident inclusion on its decision making structures. At this moment there is no resident on the Ballinacurra Weston Regeneration Forum or Committee. Nor does the programme in Dundalk include residents in decision making structures. Within Dublin a DCC circular does set out a design for Regeneration Boards to include resident participation but not all regeneration projects have Regeneration Boards. In short the Government affords no right to participation for regeneration programmes.⁸⁵

93. In response to § 124-126 SO, FIDH asserts that to ensure that the views of families living in local authority housing are catered for when family policies are framed, the authorities must consult associations representing families. FIDH reiterates that the Regeneration process is fundamentally undermined by the failure of the State to develop a rights based approach and the failure to support the development of a national tenants association to fulfil this role. Across Europe, the Republic of Ireland is almost unique in the failure of the State to support the development of a national tenants association or use a rights based approach. For instance in France⁸⁶, Italy⁸⁷, the Netherlands⁸⁸, Sweden⁸⁹ and other countries, tenant's associations have an important legal status and play a central role in representing the interests of tenants in the development and enforcement of housing policy in matters relating to housing rights, dispute resolution, rent regulation, enforcement of housing standards

⁸⁵ 'Report of the independent expert on the question of human rights and extreme poverty', (United Nations, 2011), para 88. 'Report of the Special Rapporteur on extreme poverty and human rights, Magdalena SepúlvedaCarmona' (United Nations, 2013), para 39.

⁸⁶ J Hoekstra & F Cornette, Tenlaw National Report France, 2014, p. 152

⁸⁷ R Bianchi, Tenlaw National Report Italy, 2014, p. 79.

⁸⁸ M Haffner, M Van der Veen & H Bounjouh, Tenlaw National Report the Netherlands, 2014, p. 14.

⁸⁹ O Bååth, Tenlaw National Report Sweden, 2014, p. 103.

etc. There is no national tenants association in Ireland to represent the interests of tenants and instead families living in local authority housing are fragmented into isolated and unsupported groups who lack the ability to represent their interests in a meaningful way.⁹⁰ FIDH asserts that the specific difficulties facing families living in local authority housing (set out in C.4 of the Complaint) would be substantially improved by the development of a national tenants association in conjunction with the development of a rights-based approach. To reiterate, FIDH asserts that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. There is no national tenants association in Ireland to represent the interests of tenants and instead families living in local authority housing are fragmented into isolated and unsupported groups who lack the ability to represent their interests in a meaningful way.⁹¹

94. In response to § 127 SO, FIDH asserts that the formal process of consultation referred to by the Respondent does not incorporate a rights based approach nor does it allow for meaningful consultation with associations representing families living in local authority housing. There is no national tenants association in Ireland to represent the interests of tenants and instead families living in local authority housing are fragmented into isolated and unsupported groups who lack the ability to represent their interests in a meaningful way.⁹²

95. In response to § 128 SO, FIDH welcomes attempts to improve tenant participation. However the participation framework does not incorporate a

90 Conclusions 2011, Italy, p. 16.

91 Conclusions 2011, Italy, p. 16.

92 Conclusions 2011, Italy, p. 16.

rights based approach nor does it involve associations representing families living in local authority tenants. Together, both failures undermine the right of the tenants to participate in a meaningful way and reduces their protection from poverty and social exclusion.

96. In response to § 129 SO, FIDH rejects the argument by the Respondent that because the statutory Limerick City Development Plan has the aim of ensuring public participation, meaningful participation with families and children living in local authority housing will result. FIDH reiterates that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.⁹³ There is no national tenants association in Ireland to represent the interests of tenants and instead families living in local authority housing are fragmented into isolated and unsupported groups who lack the ability to represent their interests in a meaningful way.⁹⁴

97. In response to § 130 SO, FIDH rejects the Respondent's assertions. FIDH reiterates that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.⁹⁵ The voluntary process referred to in the Respondent's submission does not fulfil the requirement that authorities must consult with associations representing families.

98. In response to § 131 SO, FIDH rejects the Respondent's assertion and

93 Complaint No. 67/2011, Médecins du Monde – International v. France, DM, [105]; Complaint No. 51/2008, DM, [93 – 94]; Conclusions 2011, Italy, p. 16.

94 Conclusions 2011, Italy, p. 16.

95 Complaint No. 67/2011, Médecins du Monde – International v. France, DM, [105]; Complaint No. 51/2008, DM, [93 – 94]; Conclusions 2011, Italy, p. 16.

reiterates that the approaches referred to do not incorporate a rights based approach nor do authorities consult with associations representing families.

99. In response to § 132 SO, FIDH asserts that the participation framework referred to falls short of the standard required to ensure meaningful participation under the Charter. The process described does not incorporate a rights based approach nor do authorities consult with associations representing families.

VI.3 Funding

100. In response to § 133 SO, FIDH points out that the programme does not incorporate a rights based approach nor is the approach predicated on meaningful tenant participation. FIDH asserts that the Respondent's submission amounts to a general proposal which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁹⁶ FIDH also points out that the SICAP programme has had a detrimental effect on community supports. For example in the Canals Area South Inner City Dublin where a number of Regeneration Programmes are (St Michaels, Dolphin, Fatima) the SICAP initiative has resulted in the Canal Communities Partnership, which had responsibility for an area of approx. 18,000 population, taking on in addition the

⁹⁶ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

Rathmines/Pembroke area bringing its population to approx. 123,000. While some staff were retained from Rathmines/Pembroke, this has meant that, for example, two community workers working in the North Inchicore area will now need to cover a much wider area. FIDH has consulted with representatives of Cox's Demesne Tenants groups of Beechwod Drive, Cedarwood Park, Aisling Park in Dundalk, Louth, Ireland in September 2015. These areas have been highlighted as undergoing regeneration however the experience of families living in these estates illustrates how the failure to take a rights based approach has made the process ineffective and in many cases has made matters worse for the residents. FIDH sets out the residents views that:

- Participative structures do not exist. An estate management group which had been in existence for residents and the Local Authority to discuss issues has not met since February 2014.
- While it was in existence issues of local flooding were raised but no action has been taken.
- The Volunteers Programme mentioned consists of efforts to get local people involved in community activities including cleaning the estate, an activity that is actually the responsibility of the Local Authority.
- The tenants groups regard participation as close to meaningless and the regeneration itself as a failure or piecemeal at best. It is not based on an appraisal of local need.
- The groups noted that the Housing office is now located in Drogheda,

25 miles from Dundalk, making access on housing issues more difficult for families.

101. In response to § 134 SO FIDH asserts that the Respondent's submission amounts to a general proposal which fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁹⁷

VI.4 Framework

102. In response to § 135 SO, FIDH asserts that the framework set out (in the *National Plan for Social Inclusion (2007-2016)*, the *National Development Plan (2007-2013)* and *Towards 2016*) are not specifically addressed to the issue at hand: the failure to ensure families living in local authority housing are protected from poverty and social exclusion. Indeed, FIDH asserts that this general framework does not incorporate a rights based approach and does not ensure meaningful and representative tenant participation. Furthermore, FIDH asserts that it is fundamentally undermined by the gaps in the analytical framework underpinning it. These gaps arise from the failure of the State to maintain meaningful statistics on housing needs, resources and results and also the failure to undertake regular reviews of the impact of the strategies adopted.

⁹⁷ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

103. In response to § 136-139 SO, FIDH dismisses the Respondent's submission as not being addressed to families living in local authority housing. FIDH rejects the Respondent's assertion that a framework exists to fulfil the Charter's objective within a reasonable time, with measurable progress, to an extent consistent with the maximum use of available resources, while being mindful of the impact that choices will have for groups with heightened vulnerabilities. FIDH asserts that the framework put forward rests on a series of vague proposals and general assessments which do not address the specific difficulties faced by families presently living in local authority housing, and are not based on rights. While FIDH welcome future plans for retrofitting work, it does not address the situation at present for families living in the complexes.
104. In response to § 140 SO, FIDH asserts that the Respondent fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks are not carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of the measures taken, the rights at issue remain ineffective.⁹⁸
105. In response to § 141-143 SO, FIDH points out that the programme does not incorporate a rights based approach nor is the approach predicated on meaningful tenant participation.
106. In response to § 144 SO, FIDH rejects the Respondent's submission and reasserts that the regeneration programs referred to in the Complaint have

⁹⁸ Complaint No. 13/2002, *Autism Europe v France*, DM, [53].

failed to address the substandard housing conditions, social exclusion and poverty faced by families living in local authority housing. It further points out that the respondent has failed to demonstrate in its submission how the programmes would have addressed them. FIDH reassert that no adequate consultation has been carried out throughout the process leading to the programmes' adoption and implementation and this lack of meaningful participation has greatly undermined the rights of families living in local authority housing under Articles 11, 16, 17, 30 and E of the Charter.

VII. Conclusion

107. In response to § 144 SO, FIDH rejects outright the Respondent's submission and reasserts that the Government of Ireland has not ensured the satisfactory application of Articles 11, 16, 17, 30 and E of the Revised European Social Charter particularly with regard to local authority housing and the associated rights of several groups of people.

References

- J Hoekstra & F Cornette, Tenlaw National Report France, (Bremen, ZERP, 2014)
- J Hohman, The Right to Housing: Law, Concepts, Possibilities, (London, Hart, 2013)
- K Shine and M Norris, Regenerating Local Authority Housing Estates: Review of Policy and Practice (Dublin, Centre for Housing Research, 2006)
- M Haffner, M Van der Veen & H Bounjoh, Tenlaw National Report the Netherlands, (Bremen, ZERP, 2014)
- M Jordan, Tenlaw National Report Ireland, (Bremen, ZERP, 2014)
- O Bååth, Tenlaw National Report Sweden, (Bremen, ZERP, 2014)
- ‘Quality Housing for Sustainable Communities’, (Dublin, Department of the Environment, 2007)
- P Kenna, ‘Housing Law, Rights and Policy’ (Dublin, Clarus Press, 2011)
- P Kenna & M Jordan, ‘Housing Rights in Europe: The Council of Europe leads the way’ In: *Contemporary Housing Issues in a Globalized World*. (Farnham Surrey: Ashgate, 2014)
- R Bianchi, Tenlaw National Report Italy, (Bremen, ZERP, 2014)
- ‘Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8’, (Dublin, Community Action Network, 2012)
- ‘Report on visit to Bernard Curtis House’ (Dublin, Scott and MacNeill architects, 2015)
- ‘Report of the independent expert on the question of human rights and extreme poverty (UN Human Rights Council, 2011), A/HRC/17/34/Add.2
- ‘Report of the Special Rapporteur on extreme poverty and human rights, Magdalena

Sepúlveda Carmona' (United Nations, 2013), A/HRC/23/36

'Report on visits to units at Balgaddy' (Dublin, Scott and MacNeill architects, 2015)

'Saint Teresa's Gardens Mould and Damp Survey', (Dublin, Dublin City Council Housing Maintenance, 2013)

Scott and MacNeill architects, 'Report on Preliminary Inspection of Tyrone Place Complex for Community action Network' (Dublin, March 2014)

'The Tenants Charter – 2nd version' (Birmingham, IUT Congress, 2004)

'Things Can be Different' (Dublin, Community Action Network, 2006)

'UNCESCR Concluding Observations for Ireland', (UNCESCR, 2015), E/C.12/IRL/CO/3

'Weston Gardens Resident's Association: report on anti-social and criminal behaviour' (January – September, 2015)

'Weston Gardens Resident's Association: report on anti-social and criminal behaviour' (January – September, 2015)

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COUNCIL OF EUROPE
FIDH (International Federation for Human Rights)

v.

Ireland

Collective Complaint No. 110/2014

Response to the Submission of the Government on the Merits

Table of Appendices	
Appendix 1	W Scott Report on Preliminary Inspection of Tyrone Place Complex for Community action Network (Dublin, 11 March 2014)
Appendix 2	W Scott, ‘Condensation and Mould in 5-Storey Social Housing Buildings in Dublin’, (Dublin, 24th October 2015)
Appendix 3	W Scott, ‘Report on visit to flats at Bernard Curtis house Bluebell, Dublin 12’ (Dublin, 26 th May 2015)
Appendix 4	W Scott, ‘Report on visits to units at Balgaddy’ (Dublin, 20 th March 2015)
Appendix 5	‘Saint Teresa’s Gardens Mould and Damp Survey’, (Dublin, Dublin City Council Housing Maintenance, 2013).
Appendix 6	‘Weston Gardens Resident’s Association: report on anti-social and criminal behaviour’ (September, 2015)
Appendix 7	Weston Gardens Resident’s Association: report on anti-social and criminal behaviour (March, 2015);
Appendix 8	Weston Gardens Resident’s Association: report on anti-social and criminal behaviour (February, 2015);
Appendix 9	Weston Gardens Resident’s Association: report on anti-social and criminal behaviour (January, 2015).
Appendix 10	J. Little, ‘The causes of surface condensation and the responsibility of relevant parties to alleviate it’, 24th October 2015
Appendix 11	‘Things Can be Different’ (Dublin, Community Action Network, 2006)
Appendix 12	‘Report on the Third Monitoring of Housing Conditions in Dolphin House estate Rialto Dublin 8’, (Dublin, Community Action Network, 2012)
Appendix 13	D Watson & J Williams, ‘Irish National Survey of Housing Quality 2001-2002’ (Dublin, Economic and Social Research Institute, 2003).
Appendix 14	Housing (Standards for Rented Houses) Regulations 2008 (S.I. No. 534)
Appendix 15	Housing (Standards for Rented Houses) (Amendment) Regulations 2009 (S.I. No. 462).

Paris, 26 November 2015

A handwritten signature in black ink, appearing to read 'K. Lahidji', is centered on a light gray rectangular background.

Karim LAHIDJI

FIDH President