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## **EUROPEAN SOCIAL CHARTER**

Comments by the Community Action Network and Centre for  
Housing Law, Rights and Policy Research, NUI Galway  
on the

17<sup>th</sup> National Report on the implementation of  
the European Social Charter  
submitted by

**THE GOVERNMENT OF IRELAND**

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**CYCLE 2020**

# Comments on Ireland's 17th National Report on the Implementation of the European Social Charter

Submitted by Community Action Network and Centre for  
Housing Law, Rights and Policy Research, NUI Galway

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## Introduction

The government of Ireland submitted its 17th national report on the follow-up given to the decisions of the European Committee of Social Rights ('The Committee'), relating to collective complaints ('the Government report') on 23 December 2019. The government report sets out the state response to the decisions relating to 4 specified collective complaints including *International Human Rights Federation (FIDH) v Ireland*, Complaint No. 110/2014 (*FIDH v Ireland*).<sup>1</sup> According to Rules 21A of the Committee, trade unions, employer's organisations, NGOs and others are allowed to submit comments and other information related to national reports to assist the committee in examining the national report concerned.<sup>2</sup> Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway welcome this opportunity to comment on the Government report.

Community Action Network ('CAN') is a social justice NGO dedicated to working with communities to create a more equal, more just society that has the well-being of citizens at its heart. CAN works with people to assert their rights to participate fully as subjects of their own lives, to have their voices heard and to have their choices respected. CAN works within a human rights framework, and seek to build leadership for positive social change and participative democracy. It strives to create vibrant communities that have the capacity to participate powerfully in society and to challenge the inequitable structures, policies and practices that prevent them from doing so. It actively seeks opportunities to do this work in local, regional, all-island and international contexts.

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<sup>1</sup> The Report to the Ministers of the Council of Europe of 22 June 2017 on the Decision on the Merits of Collective Complaint *International Human Rights Federation (FIDH) v Ireland*, Complaint No. 110/2014, para 105-106.

<sup>2</sup> Council of Europe, Rules of the European Committee of Social Rights, Rules 21A: 'comments and other information relating to national reports submitted by trade unions, employers' organisations, NGOs and others in pursuance of Article 23(1) of the Charter as amended by the Turin Protocol shall be submitted to the Secretariat no later than 30 April of the year during which the Committee examines the national report concerned'.

The Centre for Housing Law, Rights and Policy Research ('CHLRP') is a research centre in National University of Ireland, Galway. It endeavours to create a space for a free and open discussion, combining research, resource development, advocacy and publications on housing law, rights and policy in Ireland, and internationally. It aims to contribute to the development of housing law, rights and policy through conferences, lectures, training, advocacy, publications and specialist research support. Current areas of research include mortgage market regulation and consumer protection, independent living for people with disabilities, housing rights in the EU Charter of Fundamental Rights, regulation of housing systems and implementation deficits in housing law and policy.

The aim of this report is not to comment on all topics covered by the Government report, but rather to present our views in particular on the response to the collective complaint *FIDH v Ireland*,<sup>3</sup> which is our area of expertise, as well as questions in which our organizations believe there is a particular need to complete the Government report on the implementation of Article 16 and 31 of the European Social Charter. This report is divided into two sections – the first section relates to Article 16 and the second relates to Article 31. Each section provides information additional to that provided in the Government report, which may be of assistance to the Committee. In our final remarks we draw attention to the impact of the COVID-19 pandemic on local authority tenants.

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<sup>3</sup> The Report to the Ministers of the Council of Europe of 22 June 2017 on the Decision on the Merits of Collective Complaint *International Human Rights Federation (FIDH) v Ireland*, Complaint No. 110/2014.

## **I. Article 16 – The right of the family to social, legal and economic protection**

*“With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”*

The Committee has reiterated that the right to housing for families is of central importance to the family and the exercising of rights including economic, social and cultural rights.<sup>4</sup> In recognising the right of the family to social, legal and economic protection, Article 16 imposes obligations on States to promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services.<sup>5</sup> States employ different regional and local actors, including local authorities, in promoting the provision of adequate housing for families, but it is the State which bears the ultimate responsibility to ensure that the rights under the RESC are respected.<sup>6</sup>

In July 2014 FIDH lodged the collective complaint (*FIDH v Ireland*) to the Committee and alleged that the situation in Ireland had violated Article 11, 16, 17, 30 either alone, or in conjunction with Article E of the Charter on the grounds that: 1) legal, policy and administrative frameworks for housing in Ireland were insufficient; 2) the adequacy, habitability and suitability of some local authority housing in Ireland were inadequate; 3) regeneration programmes in key local authority estates do not respect rights set out in the

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<sup>4</sup> The Report to the Ministers of the Council of Europe of 22 June 2017 on the Decision on the Merits of Collective Complaint *FIDH v Ireland*, Complaint No. 110/2014, para 105-106.

<sup>5</sup> *Ibid.*, para 106.

<sup>6</sup> *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, paras 56, 74.

Charter. On 17 March 2015, the Committee declared the complaint admissible and in May 2017, the Committee made a decision on the complaint.

The Committee found that a significant number of local authority tenants reside in poor housing conditions amounting to housing that is inadequate in nature. The Committee found that persistent conditions like sewage invasions, contaminated water, dampness and mould go “to the core of what adequate housing means.”<sup>7</sup> Although many local authority estates were earmarked for regeneration in 2002, the Committee found that a significant number of regeneration programmes adopted by the Government for local authority have not been completed. Despite the Committee finding that a large number of people remain living in substandard housing conditions, no complete statistics on the condition of local authority housing have been collected since 2002 by the Irish authorities. Furthermore, the Committee found that no national timetable exists for the refurbishment of local authority housing stock. For these reasons, the Committee found that Ireland has failed to take sufficient and timely measures to ensure the right to housing of an adequate standard for not an insignificant number of families living in local authority housing, and therefore Ireland has violated Article 16.<sup>8</sup>

Ireland, as one of those States which has accepted the collective complaint protocol, is required to report on the follow-up action taken in response to the decisions of the Committee on collective complaints. The Committee of Ministers, in the Resolution on *FIDH v. Ireland* adopted on 31 January 2018,<sup>9</sup> has also clearly expressed that it ‘takes note of the commitment of the Irish Government to bring the situation into conformity with the Charter’ and ‘looks forward to Ireland reporting, at the time of the submission of the next report concerning the

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<sup>7</sup> *FIDH v Ireland*, Complaint No. 110/2014, para 119.

<sup>8</sup> *FIDH v Ireland*, Complaint No. 110/2014, para 106.

<sup>9</sup> Resolution CM/ResChS(2018)1 *International Federation for Human Rights (FIDH) v. Ireland* Collective Complaint No. 110/2014, adopted by the Committee of Ministers on 31 January 2018 at the 1305th meeting of the Ministers Deputies, available at: <https://rm.coe.int/0900001680784fa2>

relevant provisions of the Revised European Social Charter, on any new developments regarding their implementation.’

The 17<sup>th</sup> national report sets out the Government’s response to the decision in *FIDH v Ireland*. The Government report draws attention to various measures in three areas including (1) preventative maintenance, (2) stock improvement works and (3) regeneration. In this report, we respond to these measures in turn and submit that there has been insufficient progress in remedying the situation that led to the violation of Article 16 in *FIDH v Ireland*. After responding, we conclude (4) that the Government report omitted some important information and draw attention to the following specific failures to protect the human right to housing of families in Ireland:

- 4.1 The legal framework for the right to housing for families in Ireland is insufficient;
- 4.2 Local authority housing tenants continue to live with inadequate housing standards, which are often lower than the legally defined standards for rented housing;
- 4.3 The Government report does not provide national statistics on the conditions of local authority housing stock;
- 4.4 There is no national timetable for the refurbishment of local authority housing stock;
- 4.5 The Government has not fulfilled its obligation in providing adequate management and maintenance of local authority housing;
- 4.6 The Government has not fulfilled its obligation in ensuring community safety for local authority housing tenants;
- 4.7 There is no meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programmes and strategies.

Considering these omissions and constraints of the Government report, we submit that there has been insufficient progress in remedying the violation of Article 16 in *FIDH v Ireland* and

respectfully request that the Committee return a finding of non-conformity with Article 16 of the European Social Charter.

## **1. Preventative maintenance**

The Government report outlines certain ‘preventative maintenance’ measures have been taken, or committed to, in response to *FIDH v Ireland*. The Government report begins by explaining that “local authorities are responsible, in the first instance, for the management and maintenance of their own housing stock under the Housing Acts, including responsive and planned maintenance and the identification of housing in need of upgrade, regeneration or adaptation”.<sup>10</sup> We submit that although local authorities have various housing functions, it is the Irish State which bears the ultimate responsibility to ensure that the rights under the RESC are respected.<sup>11</sup> The actions of local authorities are important, but we suggest the Government report places undue prominence on the actions of some local authorities and thus fails to reflect the overall situation within the State. It is important to point out that, as regards the responsibility for adequate housing, it is for the State to undertake general supervision at national level to ensure in a consistent manner that all local authority dwellings across Ireland are of adequate quality.<sup>12</sup>

### **1.1.Failure to complete nationwide stock condition surveys**

The Government report indicates that “increasing numbers of local authorities have undertaken stock condition surveys”.<sup>13</sup> We are concerned that the report omits important information and places undue prominence on the actions of individual local authorities while failing to adopt a consistent approach across Ireland. The report does not state how many local authorities have

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<sup>10</sup> 17<sup>th</sup> National Report on the implementation of the European Social Charter (Government of Ireland, 2020) p. 13.

<sup>11</sup> *FEANTSA v. France*, Complaint No. 39/2006, para 56, 79.

<sup>12</sup> *Ibid* para 79.

<sup>13</sup> 17<sup>th</sup> National Report on the implementation of the European Social Charter (Government of Ireland, 2020) p. 13.

undertaken such surveys. Nor does the report explain why some local authorities appear not to have undertaken stock condition surveys.<sup>14</sup> It is important to point out that, in response to the Committee of Ministers Resolution on *FIDH v Ireland*, the Irish Government recognised “that the position re stock condition surveys across all local authorities is not up to date” and committed “as a first step” that “all local authorities who have not already done so, are to undertake a stock condition survey in respect of their social housing stock.”<sup>15</sup> Furthermore, the Government committed to completing this nationwide survey “between Q4 2017 and Q4 2018.”<sup>16</sup>

The Government report does not explain whether the commitment to complete a nationwide stock condition survey between Q4 2017 and Q4 2018 has been delivered. Indeed, the report makes no reference to the commitment, nor to the specified time frame. This is despite the fact that in 2017, the National Oversight and Audit Committee found that only 15 local authorities (out of 31 local authorities) reported that they had ever conducted stock conditions surveys and of these 15 only 5 conducted these surveys at regular intervals.<sup>17</sup> These findings are consistent with the Collective Complaint monitoring survey 2020 carried out by CAN.<sup>18</sup> In 2020, CAN undertook a survey of local authority tenants across Ireland which received over 400 responses. The response to the question: ‘Has the overall condition of your housing been assessed by your

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<sup>14</sup> National Oversight and Audit Commission, ‘A Review of the Management and Maintenance of Local Authority Housing’, NOAC Report No. 12 – May 2017, Section 6.11, available at: <http://noac.ie/wp-content/uploads/2017/05/NOAC-Management-and-Maintenance.pdf>; also see Michelle Norris and Aideen Hayden, *The Future of Council Housing: An analysis of the financial sustainability of local authority provided social housing* (2018) p. 67.

<sup>15</sup> Council of Europe, Appendix to the Resolution CM/ ResChs (2018)1 *FIDH v. Ireland*, address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of November 2017. *FIDH v. Ireland*, Collective Complaint No. 110/2014, paras 4, 8, 11.

<sup>16</sup> Council of Europe, Appendix to the Resolution CM/ ResChs (2018)1 *FIDH v. Ireland*, address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of November 2017. *FIDH v. Ireland*, Collective Complaint No. 110/2014, paras 4, 8, 11.

<sup>17</sup> National Oversight and Audit Commission, ‘A Review of the Management and Maintenance of Local Authority Housing’, NOAC Report No. 12 – May 2017, Section 6.11, available at: <http://noac.ie/wp-content/uploads/2017/05/NOAC-Management-and-Maintenance.pdf>; also see Michelle Norris and Aideen Hayden, *The Future of Council Housing: An analysis of the financial sustainability of local authority provided social housing* (2018) p. 67.

<sup>18</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

local authority in the last 5 years' was: 67% said it had not been, 22% said it had and 11% said they did not know.<sup>19</sup>

It is unclear that, even in the Dublin City Council (DCC) area, effective housing condition surveys have been carried out on social housing outside of the flats' complexes. In December 2018, letters which were photocopied in black and white and hand-delivered caused concern among tenants that they were fake and being used by unauthorised persons to gain entry to homes. The letters indicated a 15-minute survey would be carried out by a contractor.<sup>20</sup> The unprofessional manner of the communication and the short period being allowed for a condition survey suggest that this initiative is not a serious attempt to meet the requirements of a stock condition survey.

### **1.2. Inadequate commitment to a “preventative maintenance approach”**

The Government report outlines that “Ireland’s national plan, Rebuilding Ireland, committed all local authorities to adopt a preventative maintenance approach to housing stock management, including consistent standards and the adoption of a common national re-letting performance standard”. In the response to the Committee Resolution on *FIDH v Ireland*, the Government explained the “first step” of meeting this commitment was the carrying out of a nationwide stock condition survey of social housing. The Government explained that this survey would form “the basis for the adoption of preventative maintenance approaches to housing stock management”.<sup>21</sup> However, as explained above, the failure to conduct this survey within the specified time frame, means that the subsequent commitment to “a preventative

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<sup>19</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

<sup>20</sup> See Catherine Devine, New Irish News, ‘Council forced to clarify after letter asking people to allow contractors into homes sparks ‘frenzy’’, available at: <https://www.independent.ie/irish-news/council-forced-to-clarify-after-letter-asking-people-to-allow-contractors-into-homes-sparks-frenzy-37593848.html>

<sup>21</sup> Council of Europe, Appendix to the Resolution CM/ ResChs (2018)1 *FIDH v. Ireland*, address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of November 2017. *FIDH v Ireland*, Collective Complaint No. 110/2014, para 11.

maintenance approach” cannot be regarded as concrete and effective.<sup>22</sup> Furthermore, there is evidence that the commitment to preventative maintenance is at odds with the current practices of many local authorities. In a leading report published in 2018, Professor Michelle Norris and Dr Aideen Hayden surveyed local authorities in Ireland and found that the maintenance staff employed by local authorities devote nearly all their time to response maintenance i.e. responding to tenants’ repair requests.<sup>23</sup> Despite the focus of resources on responsive maintenance, we are concerned at the way maintenance and repairs are carried out. The CAN Collective Complaint monitoring survey 2020 revealed that:

- 71% of respondents report that maintenance and repairs are not carried out in reasonable timely manner according to their level of urgency
- 71% report that when maintenance and repairs are of poor quality when they are carried out
- 29% report that they have not made a complaint about their housing standards because they don’t believe anything will be done.<sup>24</sup>

We submit that despite the commitments on this point in the Government report, there are inadequate resources committed to ‘preventative maintenance’ i.e. planned maintenance (repairs and upgrading).

### **1.3. Inadequate housing standards for local authority housing tenants**

The Government report outlines how a new Regulation, S.I. No. 137 of 2019, which came into effect on 1 May 2019, has updated the minimum standards for rental accommodation that local authorities are required to adhere to in respect of social housing. This Regulation has been

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<sup>22</sup> *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, para 32).

<sup>23</sup> Michelle Norris and Aideen Hayden, *The Future of Council Housing: An analysis of the financial sustainability of local authority provided social housing* (2018) p. 67.

<sup>24</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

identified as part of the “preventative management approach” that forms part of the Government response to the violation in *FIDH v Ireland*. We submit that the Regulation does not adequately protect the right to adequate housing of families living in local authority dwelling nor does it address the specific longstanding problems, relating to damp, condensation and persistent mould, that were at the centre of *FIDH v Ireland*. In particular, we submit that this Regulation creates a lower standard for local authority tenants than other tenants. Furthermore, unlike private renters who have access to low cost dispute resolution mechanisms,<sup>25</sup> local authority tenants do not have any legally enforceable rights to ensure the enforcement of these standards. This creates a major gap in the legal framework and means that local authority tenants face lower housing standards while also being denied effective legal remedies. In *FIDH v Ireland* the Committee drew particular attention to the sewage invasions, contaminated water, dampness, persistent mould etc. experienced by many local authority households..<sup>26</sup> Despite the Committee decision in *FIDH v Ireland*, a significant number of local authority households continue to reside in poor housing conditions. Direct evidence of tenants but also evidence from architects and engineers indicate problems with mould, dampness, sewage invasions indicates that for many housing conditions continue to be unsafe and unhealthy.<sup>27</sup> This is apparent in the CAN Collective Complaint monitoring survey 2020 which revealed that:

- 73% of respondents report mould growth in their homes
- 36% report that they have been told that mould and damp is their fault or responsibility
- 44% report sewage problems

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<sup>25</sup> Under Residential Tenancies Act 2004, s. 3(2) local authority tenancies are excluded from the dispute resolution services of the Residential Tenancies Board.

<sup>26</sup> *FIDH v Ireland*, Complaint No. 110/2014, para 119.

<sup>27</sup> See also Joseph Little BLC, *The causes of surface condensation and the responsibility of relevant parties to alleviate it* (24 October 2015); William Scott, *Condensation & Mould in Local Authority Apartments* (December 2016).

- 22% report water ingress (coming into the home)
- 36% report pest infestations e.g. rats
- 31% report that a medical practitioner has told them that damp, mould or sewage in their home contributes to ill health in your family
- 39% report fire safety concerns e.g. windows that do not open or similar issues
- 21% report unsafe structures e.g. stairs or balconies that should not be used
- 67% report drafts or poor insulation e.g. difficulty keeping home warm
- 38% report overcrowding (more people living there than space is suitable for)
- 68% report problems with crime and anti-social behaviour<sup>28</sup>

In order to demonstrate how regulation, S.I. No. 137 of 2019 fails to address some of these issues, we will elaborate on the matter of “condensation and mould” which was central to the decision in *FIDH v Ireland*.

### ***1.3.1. Condensation and mould***

Local authorities in Ireland generally hold an official policy that the tenant has sole responsibility for damage arising from condensation and mould. For example, Dublin City Council Housing and Residential Services Tenant Handbook states that tenants are responsible for carrying out repairs due to condensation’.<sup>29</sup> However, condensation and mould causes damage, not only to property, such as clothing and furniture, but also serious damage to health. This is further underlined by evidence from the CAN Collective Complaint monitoring survey 2020 which revealed that:

- 73% of respondents report mould growth in their homes

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<sup>28</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

<sup>29</sup> Dublin City Council, Housing and Residential Services Tenant Handbook, Page 22, available at: <http://www.dublincity.ie/tenant-handbook>

- 31% report that a medical practitioner has told them that damp, mould or sewage in their home contributes to ill health in your family<sup>30</sup>

It is entirely unreasonable to hold tenants solely responsible for this, as building design and property management and standards should be of a standard that allows occupants to enjoy a modern standard of living.<sup>31</sup> However, to claim that local authority tenants are responsible for condensation is to ignore the obligations on local authorities as landlord. Clearly, there are insufficient or inadequate ventilation systems in these homes.

Statutory Instrument No. 137/2019 - Housing (Standards for Rented Houses) Regulations 2019, setting out the legally binding standards for rented housing, came into operation on 1 May 2019. The standards are clear.

Regulation 8 states:

8. (1) Every room used, or intended for use, by the tenant of the house as a habitable room shall have adequate ventilation.
- (2) All means of ventilation shall be maintained in good repair and working order.
- (3) Adequate ventilation shall be provided for the removal of water vapour from every kitchen and bathroom.

BUT, in relation to laundry and facilities for drying clothes, Regulation 7 generally and 7(h) in particular, creates a lower standard for local authority tenants than other tenants. In fact, in apartment blocks, there is no obligation **AT ALL** on local authorities to provide a dryer or any facilities for the drying of clothes. This is clearly unfair, and forces local authority tenants to

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<sup>30</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

<sup>31</sup> See Joseph Little BLC, *The causes of surface condensation and the responsibility of relevant parties to alleviate it* (24 October 2015); William Scott, *Condensation & Mould in Local Authority Apartments* (December 2016).

spend more on drying facilities, where there is no garden or communal space, as is the case in many Dublin City apartment blocks. The exception made for local authority tenants in this legislation shows the second class citizenship which is bestowed on these tenants. No representative organisation of such tenants was consulted at all in the passing of this legislation, as no national association of local authority tenants in Ireland has been supported by the State.

#### *Food Preparation and Storage and Laundry*

7. (1) Notwithstanding paragraph (4), paragraphs (2) and (3) shall not apply where the house is let or available for letting –

(i) by a housing authority under the Housing Acts 1966 to 2014,

(ii) by a housing body approved under Section 6 of the Housing (Miscellaneous Provisions) Act 1992 , or

(iii) for a minimum lease period of 10 years under a tenancy agreement.

(2) Subject to paragraph (1), there shall be provided, within the same habitable area of the house, for the exclusive use of the house:

.... (h) Where the house does not contain a garden or yard for the exclusive use of that house, a dryer (vented or recirculation type) or access to a communal dryer facility.

(3) All facilities under Regulation 7(2) shall be maintained in a safe condition and in good working order and good repair.

In Ireland, without a garden or yard to dry washed clothes or the use of a dryer, or a communal dryer, households are forced to dry clothes in their homes. This is statutory provision effectively forces local authority tenants to dry their washed clothes in their homes, a situation which contributes to condensation. It is the poor standards of housing amenities provided by the State

bodies which is at the base of many of these issues. This information is provided to show that the provision of inadequate housing for local authority tenants is institutionalised within the State system in Ireland, constituting a continuing violation of Article 16 for a section of the population.

In June 2017, a motion by councillors in Dublin City Council at the behest of CAN that this sole responsibility for condensation on the tenant should be dropped, was unanimously accepted. The unjust nature of the sole responsibility policy has been publicly accepted by officials on a number of occasions recently. At the Strategic Policy Committee on Housing on 7th March 2019, officials presenting a report of the work of the Condensation Committee acknowledged that the policy was ‘unfair’. Yet the sole responsibility policy on tenants remains in tenant handbooks and on public notices in Dublin City Council, despite the fact that the handbooks were reprinted since the policy was changed.<sup>32</sup> Also, the policy has not, to our knowledge, been addressed in other Councils around Ireland. Indeed, the CAN Collective Complaint monitoring survey in 2020 found that 36% of respondents report that they have been told that mould and damp is their fault or responsibility.<sup>33</sup>

In Dublin, ventilators and mould reducing products are being trialled in flat/apartment complexes around the city, and this is welcome. However, the CAN Collective Complaint monitoring survey 2020 revealed that extensive condensation and mould creates extremely difficult living conditions for many tenants. In focus groups held as part of the CAN 2020 monitoring, it was stated that a number of residents expressed levels of dissatisfaction with the lack of progress. They report that ventilators were too noisy to use or were generating cold air

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<sup>32</sup> Dublin City Council, Housing and Residential Services Tenant Handbook, Page 20, available at: <http://www.dublincity.ie/tenant-handbook>

<sup>33</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

in the rooms. They also did not understand that this initiative was a trial. They had not been told that they would be asked for feedback on how the products were performing.

## **2. Stock improvement works**

The Government report outlines a number of measures, under the title of ‘stock improvement works’, as part of the response to *FIDH v Ireland*. These measures comprise State expenditure on maintenance of social housing, actions taken by some individual local authorities to address poor housing conditions, an Energy Retrofitting Programme. We submit that this section of the report omits important information. Furthermore, we submit these measures do not adequately protect the human right to housing of households living in local authority housing and that there has been insufficient progress in remedying the poor housing conditions at the heart of the violation of Article 16 in *FIDH v Ireland*.

### **2.1. Local Authority Housing Rent received relative to Maintenance and Improvement Expenditure**

The Government report draws attention to the expenditure of local authorities and the Irish Government to maintain and improve the social housing stock. We submit that this section of the report omits important contextual information that demonstrates that adequate finance is available to carry out management and maintenance, and yet substandard housing is provided by local authorities. The National Oversight and Audit Commission (NOAC) is a State funded and appointed body which oversees certain aspects of the local government sector, since 2014.<sup>34</sup> It provides valuable information in its monitoring reports, particularly in its report in 2017 on this issue of expenditure by local authorities on management and maintenance of its housing stock.<sup>35</sup> This shows that local authorities made a surplus from local authority rents,

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<sup>34</sup> The National Oversight & Audit Commission is a statutory body established by Ministerial order under section 126B of the Local Government Act 2001, to oversee the local government sector. See <http://noac.ie/>

<sup>35</sup> National Oversight and Audit Commission, ‘A Review of the Management and Maintenance of Local Authority Housing’, NOAC Report No. 12 – May 2017, Section 2.3, available at: <http://noac.ie/wp-content/uploads/2017/05/NOAC-Management-and-Maintenance.pdf>.

despite the poor quality housing provided in many cases. According to the statistics in Table 1 (from the NOAC Report), the average rent received per dwelling was 159% of the average expenditure on maintaining and improving dwellings in 2014. For 12 local authorities rent received in 2014 was more than twice the expenditure on maintenance and improvement, and in one case, it was almost three times the expenditure. Dublin City and Leitrim local authorities most closely matched rental income to expenditure at 116% and 117% respectively.<sup>36</sup>

Table 1: Local Authority Housing Rent received relative to Maintenance and Improvement Expenditure 2014<sup>37</sup>

Local Authority	Dwellings	Maintenance/Improvement of LA Housing	Maintenance Cost per Unit	Rent received 2014	Rent per Unit	Rent as % of Maintenance Cost
Carlow	1533	1,871,674	1,220.92	5,134,202	3,349	274%
Cavan	1989	1,956,572	983.70	4,694,732	2,360	240%
Clare	2301	3,215,928	1,397.62	5,989,228	2,603	186%
Cork City	8830	15,698,077	1,777.81	19,326,449	2,189	123%
Cork County	7169	10,393,861	1,449.83	16,214,496	2,262	156%
Donegal	4825	4,712,742	976.73	10,948,697	2,269	232%
Dublin City	25404	61,049,759	2,403.16	71,077,232	2,798	116%
Dún Laoghaire-Rathdown	4421	8,721,468	1,972.74	12,870,522	2,911	148%
Fingal	4532	10,417,201	2,298.59	17,900,684	3,950	172%
South Dublin	9008	14,495,753	1,609.21	21,430,247	2,379	148%
Galway City	2232	6,072,238	2,720.54	7,354,930	3,295	121%
Galway County	2394	3,882,597	1,621.80	6,511,035	2,720	168%
Kerry	4038	5,786,624	1,433.04	10,725,419	2,656	185%
Kildare	3639	6,416,582	1,763.28	9,471,409	2,603	148%
Kilkenny	2160	3,204,627	1,483.62	6,915,884	3,202	216%
Laois	2023	2,879,441	1,423.35	5,308,408	2,624	184%
Leitrim	932	1,597,148	1,713.68	1,873,515	2,010	117%
Limerick	5189	7,290,250	1,404.94	13,747,486	2,649	189%
Longford	1913	2,017,502	1,054.63	4,929,761	2,577	244%
Louth	3934	6,397,352	1,626.17	9,312,774	2,367	146%
Mayo	2040	2,779,851	1,362.67	5,732,093	2,810	206%
Meath	3100	5,395,796	1,740.58	8,493,755	2,740	157%
Monaghan	1392	2,061,910	1,481.26	3,729,063	2,679	181%
Offaly	1792	2,097,789	1,170.64	4,933,842	2,753	235%
Roscommon	1323	1,767,653	1,336.09	3,968,719	3,000	225%
Sligo	2112	2,741,868	1,298.23	4,652,873	2,203	170%
Tipperary	4710	6,156,146	1,307.04	12,520,209	2,658	203%
Waterford	5008	6,215,981	1,241.21	11,378,362	2,272	183%
Westmeath	1788	1,861,112	1,040.89	5,543,287	3,100	298%
Wexford	4212	5,164,152	1,226.06	13,612,360	3,232	264%
Wicklow	4660	5,020,922	1,077.45	11,721,111	2,515	233%
<b>Totals</b>	<b>130,603</b>	<b>219,340,576</b>	<b>1,679.45</b>	<b>48,022,784</b>	<b>2,665</b>	<b>159%</b>

The key point about this data is that it shows that significant financial resources are available to carry out management and maintenance, and yet substandard housing is provided by local

<sup>36</sup> Ibid., Section 3.8.

<sup>37</sup> Ibid., Appendix J.

authorities. It would appear that many local authorities are using their tenants' rents to subsidise their other activities for the general population.

## **2.2. Energy Efficiency**

The Government report outlines a number of measures to improve the energy efficiency of social housing stock. In particular, the report draws attention to the Energy Retrofitting programme but we suggest that it omits important information. The Report does not provide any targets, a clear time line or any action plan against which progress can be measured. The Government report does not detail how the Energy Retrofitting programme will address damp, condensation and persistent mould, and thus this cannot be regarded as a concrete and effective measure<sup>38</sup> that will address the poor housing conditions at the centre of *FIDH v Ireland*.

## **2.3. Ineffective measures taken by Dublin City Council**

The Government report draws particular attention to measures, and commitments, adopted by Dublin City Council to address poor housing conditions. The report outlines how DCC is “to examine options to address issues arising with older apartment complexes (those over 40 years old, of which there are over 6,000 apartments)”. The report also explains how DCC is “seeking to deliver housing-led area renewal”. We are concerned about the implementation of these commitments in practice. We submit that these commitments do not provide any targets, action plan, or clear time-line against which progress can be measured. Thus, they do not outline in concrete and effective terms how the specific poor housing conditions faced by local authority households will be addressed.

The Government report identifies that DCC adheres to the Housing (Standards for Rented Houses) Regulations 2019. The report outlines that DCC “has been carrying out condition surveys on their properties since May 2018” which have played a key role in directing further

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<sup>38</sup> *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, para 32).

measures. As noted earlier, we submit that the regulation does not adequately protect the right to adequate housing of families living in local authority dwelling nor does it address the specific longstanding problems, relating to condensation and mould, that were at the centre of *FIDH v Ireland*.

We welcome the commitment by DCC to conduct a survey of housing conditions but we submit that important information is omitted from the Government report. In particular, the report does not, for instance, outline:

- the number and proportion of DCC housing that has been surveyed,
- the number and proportion of DCC housing that was found to be substandard,
- the main reasons why housing falls below the statutory minimum standard,
- whether there had been any consultation with tenants etc.

As such, the Government report does not provide a clear action plan or time line against which progress can be measured.

The Government report also omits important information about actions taken, or committed to, by DCC. In March 2018, shortly after the Committee decision in *FIDH v Ireland*, DCC set up an estate renewal team to plan a survey of all complexes, the development of plans for each based on prioritising the worst cases, and the development of individual plans for each complex. In January 2019, Darach O Connor, the team leader updated the Housing Special Policy Committee on progress. The team leader reported that a lot of surveying had been completed and the data collected would be publicly displayed and the plans developed in consultation with elected members. However, local community organisations and representatives have not heard anything since then about that process. Furthermore, there were no plans made to involve local authority tenants in any of the redevelopment processes for

housing complexes.<sup>39</sup> The Government report does not outline in concrete and effective terms how the poor housing conditions faced by local authority households will be addressed. Furthermore, there is evidence that many households living in local authority housing are either unaware, or partially aware, of any plan to improve living conditions. The CAN Collective Complaint monitoring survey 2020 revealed that:

- 43% of respondents reported that there was no plan or timeline outlined by the local authority to improve living conditions
- 17% reported that there was a plan in place to improve living conditions but that they did not know any details about what will happen and where

We submit that despite the evidence of inadequate housing conditions, the State has not taken timely and effective action to address these poor conditions.

The Government report outlines that DCC have undertaken a programme of “Condensation Works” since 2018, “to provide improved ventilation, alleviate dampness and condensation issues and reduce relative humidity in social homes”. The report outlines that “Works to 600 social homes were completed in 2018, while over 400 have been completed to date in 2019”.

We suggest that this report omits important information about the “Condensation Works Programme”. The report does not, for instance, detail:

- How DCC identified relevant properties?
- How DCC communicated with tenants?
- What specific works are being carried out?
- What are the waiting times for works?
- What is the timeline for completion of the Condensation Works programme?

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<sup>39</sup> Dublin City Council, *Report on Renewal and Redevelopment proposals for Dublin City Council Apartment Complexes* (DCC, 2018).

As noted above, we are aware that in Dublin, ventilators and mould reducing products are being trialled in flat/apartment complexes around the city, and this is welcome. However, a number of residents expressed levels of dissatisfaction with the project. They report that ventilators were too noisy to use or were generating cold air in the rooms. They also did not understand that this initiative was a trial. They had not been told that they would be asked for feedback on how the products were performing. Furthermore, DCC's policies do little to address the insufficient or inadequate ventilation systems in local authority dwellings. It remains the case that DCC continue to outline in official documents that the tenant has sole responsibility for damage arising from condensation and mould. DCC officials have acknowledged that the policy was 'unfair', yet the sole responsibility policy on tenants remains in tenant handbooks and on public notices in Dublin City Council, despite the fact that the handbooks were reprinted since the policy was changed.<sup>40</sup>

### **3. Regeneration programmes**

The Government report outlines a number of measures, under the title of 'regeneration programmes', as part of the response to *FIDH v Ireland*. These include a number of commitments made under the National Regeneration Programme. The report references a number of "large scale regeneration projects" and outlines that these programme will "seek to also address causes of disadvantage in these communities through support for a programme of physical, social and economic regeneration". The report also outlines how "a regeneration project requires the re-building of a community and a strengthening of community bonds, which is where social regeneration projects and community groups have a role to play".<sup>41</sup> We submit that the Government report omits important information and we are concerned about

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<sup>40</sup> Dublin City Council, Housing and Residential Services Tenant Handbook, Page 20, available at: <http://www.dublincity.ie/tenant-handbook>

<sup>41</sup> 17<sup>th</sup> National Report on the implementation of the European Social Charter (Government of Ireland, 2020) pp 15-16.

the implementation of these commitments in practice. We reiterate that the rights recognised in the Social Charter must take a concrete and effective, rather than purely theoretical, form.<sup>42</sup> In order to ensure the satisfactory application of the right to family housing under Article 16 of the Charter, State Parties should, amongst other things, maintain meaningful statistics on needs, resources and results, undertake regular reviews of the impact of the strategies adopted and establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage.<sup>43</sup> We submit that despite the findings in this collective complaint and the evidence of inadequate conditions, the State has not taken timely and effective action to address inadequate housing conditions. Furthermore, stock improvements are also not subject to any strict timetable. We submit that the failure to detail concrete and effective measures means that there has been insufficient progress in remedying the violation of Article 16 in *FIDH v Ireland*.

We have previously drawn attention to how many of the local authority estates were earmarked for regeneration in 2002, amounting to Government recognition that they were in poor condition.<sup>44</sup> However, as a result of the economic crisis in Ireland, the original regeneration programmes were delayed or halted, with a deterioration of conditions in some cases. The Regeneration projects dating back to before the economic collapse (e.g. Fatima, St Michaels, St Teresas, Dolphin, Charlemont, O Devanney, Croke villas) are now all deemed to be finished or in wind-up phases – despite the serious concerns of many residents. The poor housing conditions experienced by local authority tenants living in these estate were at the centre of *FIDH v Ireland*. From this pre-2008 period, Fatma Herberton estate is the only one that finished up anything close to the original plan. In the majority of cases, and in particular in St Teresas, Charlemont, O Devanney, St Michaels, the regeneration projects were all completed with only

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<sup>42</sup> *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, para 32.

<sup>43</sup> *FEANTSA v. France*, Complaint No. 39/2006, para 56.

<sup>44</sup> Community Action Network and Centre for Housing Law, Rights and Policy Research, *Comments on Ireland's 16th National Report on the Implementation of the European Social Charter* (April 2019) pp. 13-19

a fraction of the original replacement homes completed. The remaining land was used, or is planned to be used, for private or affordable homes (with the “affordability” being questioned by many) and few social housing units. Furthermore, the original communities are all dispersed and all of the the projects were severely delayed. These projects have in effect only benefitted a fraction of those they were intended to benefit. As we have noted above, Dolphin House, the last remaining substantial regeneration project, is much delayed with only phase one completed, and a substantial realtering of the planned agreed through extensive consultation will delay further work even more leaving large numbers of families still living in the poor conditions that were at the heart of *FIDH v Ireland*. We submit that many more complexes require regeneration in Dublin, but the estate renewal scheme, has not been implemented. We submit that there is no national plan for regeneration and no national tenant participation mechanism. In addition, the noise of regeneration work also affects the families who live in local authority housing negatively. As a result, a significant number of local authority tenants remain living in substandard housing conditions.

Since the Committee decision in *FIDH v Ireland*, little progress has been made by the Government, and there are still a large number of families living in substandard local authority housing conditions. In Balgaddy in the South Dublin Council area for example, where there are many homes constructed to a very poor standard during the economic boom, consideration has only been given earlier this year to moving families from the flats ‘suffering from exceptional maintenance issues’ to the ‘next available suitable property’.<sup>45</sup> This comes well over a year after the decision on the Collective Complaint *FIDH v. Ireland*. Further, families affected are unclear as to where they will be temporarily rehoused. A new build close to the

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<sup>45</sup> Circular from South Dublin County Council to Area Committee Members in February 2019.

site will not be ready for at least two years. No consultation on this plan has been made with residents affected.

The Government report draws attention to works in respect of Dolphin House. We submit that it omits important information. A master plan for Dolphin House Regeneration was agreed in 2013 and a collaborative regeneration process with residents was set up to oversee the process. The Dolphin Decides consultation which approved the masterplan had over 80% resident participation. However, DCC have now informed the Regeneration Board that the 2013 masterplan has to be substantially changed in line with new policy developments. They wish to embark on a new and very different plan for the estate. A number of serious concerns have been expressed by the community representatives about the direction DCC are proposing for the next phase of regeneration. These include:

- a move away from the 2013 masterplan and instead initiating a new planning process
- changes to promises made to residents about where they could expect to move to within the estate
- change to sequencing of phases, the block layouts, height density, use of lands, sale of lands, building the community centre, traffic management and road layout and alternative forms of tenure.
- the need for an updated timeline with agreed milestones was also deemed essential.

The proposed changes have created a significant amount of fear and confusion in the local population, especially among those residents that have lived in very poor housing conditions for decades.

#### **4. Conclusions**

The 17<sup>th</sup> national report sets out the Government's response to the decision in *FIDH v Ireland*.

The Government report draws attention to measures in three areas including (1) preventative

maintenance, (2) stock improvement works and (3) regeneration. We have responded to these measures in turn in order to demonstrate that these measures are inadequate and that important information has been omitted. We submit that there has been insufficient progress in bringing the situation into conformity with the Charter following *FIDH v Ireland*. In the following section we summarise our submissions, and respectfully request that the Committee return a finding of non-conformity with Article 16 of the European Social Charter.

#### **4.1. The legal framework for the right to housing for families in Ireland is insufficient;**

We have drawn attention to specific failings of the legal framework to protect the human right to housing for families in Ireland. This is particularly apparent in the new regulation, S.I. No. 137 of 2019, which is referred to in the Government report as part of the response to *FIDH v Ireland*. As we have explained, the Regulation follows the previous approach and creates a lower standard for local authority tenants than other tenants. Given the centrality of poor housing conditions relating to damp and persistent mould to the violation in *FIDH v Ireland*, it is important to reiterate how this Regulation fails to address these conditions. As noted earlier, in apartment blocks, there is no obligation **AT ALL** on local authorities to provide a dryer or any facilities for the drying of clothes. This is clearly unfair, and forces local authority tenants to spend more on drying facilities, where there is no garden or communal space, as is the case in many Dublin City apartment blocks. The exception made for local authority tenants in this legislation shows the second class citizenship which is bestowed on these tenants. No representative organisation of such tenants was consulted at all in the passing of this legislation, as there is no national association of local authority tenants in Ireland.

We submit that this specific failure is symptomatic of the wider insufficiency of the legal framework for the right to housing for families in Ireland. As we have noted in our comments on the 16<sup>th</sup> report, there is no enforceable right to adequate housing for families in Irish law.

There is no remedy for a family denied such housing against a local authority or State body. Currently, there is no sufficient legal framework to grant the right to housing for families in Ireland. Indeed, the UN Committee on Economic Social and Cultural Rights in UN Doc. E/C.12/IRL/CO/3 Concluding observations on the third periodic report of Ireland (2015) stated that:

The Committee is concerned at the overall difficult housing situation in the State party, which includes the:

- (a) Continuing gaps between availability and demand for social housing, which result in a long waiting list for social housing;
- (b) Increased costs of rental housing and reduced family incomes;
- (c) Ineffective social support programmes, such as the Rent Supplements and the Housing Assistance Payment, which do not reflect rent increases;
- (d) Increasing number of long-term mortgage arrears;
- (e) Growing number of families and children that are homeless or are at risk of being homeless as a result of the lack of social housing and the inadequate levels of rent supplement;
- (f) Lack of effective complaint mechanisms for local authority tenants on tenancy-related issues

The Committee is also concerned at the lack of culturally appropriate accommodation provided to Travellers and Roma and of adequate legal protection of Traveller families at risk of eviction (art.11). The Committee draws the State party's attention to its general comments No.4 (1991) on the right to adequate housing and No.7 (1997) on the right to adequate housing: forced evictions and recommends that the State party:

- (a) Review policies with a view to making them more effective in responding to the real needs of the population, especially disadvantaged and marginalized individuals and groups;
- (b) Step up its efforts to increase the number of social housing units so as to satisfy the high demand and to reduce the long waiting list;
- (c) Consider introducing legislation on private rent and increasing rent supplement levels;
- (d) Consider introducing banking regulations in order to strengthen protection for mortgage borrowers in arrears, including through the provision of an independent appeal system to assist such borrowers in negotiating, with legal and financial advice, an equitable arrangement with their lenders to address their arrears situations;
- (e) Take all the measures necessary to meet the critical needs of those who are homeless or who are at risk of being homeless;
- (f) Establish effective complaint mechanisms for local authority tenants on housing issues.....<sup>46</sup>

All these issues remain pertinent to the Committee in its examination of Ireland.

As we have previously explained, aside from the weakness in regulating the property/housing system resulting in rising rents and unaffordable house prices for families on low to middle incomes, there is a general failure to implement legislation or provide sufficient resources to manage and maintain local authority housing to an adequate standard.

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<sup>46</sup> UN Doc. E/C.12/IRL/CO/3 Concluding observations on the third periodic report of Ireland.

#### **4.2. Local authority housing tenants continue to live with inadequate housing standards;**

In this report we have repeatedly drawn attention to the fact that despite the Committee finding in *FIDH v Ireland*, a significant number of local authority households continue to live with poor housing conditions. This is particularly apparent in the results of the CAN Collective Complaint monitoring survey 2020, which are outlined above. The evidence gathered by CAN is consistent with recent research that shows how a number of the local housing estates have become some of the most deprived urban areas in Ireland.<sup>47</sup> The Department of Employment Affairs and Social Protection's Social Inclusion Monitor for 2017 shows the consistent poverty rate for local authority tenants was 16.6 percent in that year.<sup>48</sup> In a 2018 study on discrimination and inequality in housing published by the ESRI (Economic and Social Research Institute) and IHREC (Irish Human Rights and Equality Commission), it was found that 38 percent of those living in local authority housing experience housing deprivation (this means one or more of: leaking roof, damp walls, floor or foundation, rot in windows frames or floor; dark rooms; no central heating; and no double glazing).<sup>49</sup> Furthermore, the study found that 28 percent of local authority dwellings are overcrowded, and local authority tenants are 5.6 times more likely than owner-occupiers to live in overcrowded accommodation.<sup>50</sup>

#### **4.3. The Government report does not provide national statistics on the conditions of local authority housing stock;**

The data we have referred to in this report and in *FIDH v Ireland* give an indication of the poor housing conditions faced by households living in a significant number of local authority dwellings. While this data makes clear the failure to protect the human right to housing of

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<sup>47</sup> See Rory Hearne and Padraic Kenna, Using the human rights based approach to tackle housing deprivation in an Irish urban housing estate (2014) 6 Journal of Human Rights Practice 1, p. 2; IHREC/ESRI, Discrimination and Inequality in Housing in Ireland (June 2018) p. 49.

<sup>48</sup> Department of Employment Affairs and Social Protection, Social Inclusion Monitor 2017 (May 2019) p. 59

<sup>49</sup> IHREC/ESRI, Discrimination and Inequality in Housing in Ireland (June 2018) pp. 42-43.

<sup>50</sup> *Ibid* 52, 54.

families, we reiterate that there is a general absence of meaningful national statistics on housing conditions in Ireland. We raise the following concerns regarding stock taking and condition assessments:

- That the State has not followed through on its commitment under its own Rebuilding Ireland policy, and in line with the findings of *FIDH v. Ireland* to initiate a condition survey of local authority housing in every area by Q4 2018.
- The State shows no intention of initiating routine stock condition surveys for local authority housing.
- It is to be welcomed that Dublin City Council has initiated a serious programme to assess housing conditions and provide remedies. However, it is unclear how this has been progressed or how much this will be supported by the Central Government. It is also unclear how serious the commitment is to stock condition surveys outside of flats complexes in Dublin.
- There is no evidence that Ireland is considering a policy of facilitating meaningful tenant participation in addressing the problems for families in local authority housing. In Dublin, where the need for participation is most urgent given the estate renewal programme underway for flat/apartment complexes, there are no plans to facilitate tenant participation, notwithstanding the widespread concerns of tenants about the future of their homes. The COVID-19 pandemic has highlighted the lack of a national voice for local authority tenants. Many local authority tenants have faced lockdown in poor housing conditions but there has been no way for them to collectivise their experience.

We submit that the failure to follow up on this key commitment means that there has been insufficient progress in remedying the violation of Article 16 in *FIDH v Ireland*.

#### **4.4. There is no national timetable for the refurbishment of local authority housing stock;**

We have outlined that the Government report does not contain a national timetable for the a housing stock condition survey or for refurbishment of the poor quality local authority housing stock. Despite the various measures referred to in the Government report, it is important to reiterate that the Government have previously made clear the “first step” of addressing poor housing conditions was the carrying out of a nationwide stock condition survey of social housing. Indeed, the Government explained that this survey would form “the basis for the adoption of preventative maintenance approaches to housing stock management”.<sup>51</sup> We have explained that the Government report does not explain whether this commitment has been realised and indeed makes no reference to it. We submit that the absence of meaningful data on house conditions means that measures outlined to address substandard housing conditions in the Government report cannot be regarded as concrete and effective. This is particularly apparent with respect to the ‘preventative maintenance approach’ which the Government report refers to. We have explained that, in reality, the maintenance staff employed by local authorities devote nearly all their time to response maintenance i.e. responding to tenants’ repair requests.<sup>52</sup> We submit that there are inadequate resources committed to ‘preventative maintenance’ i.e. planned maintenance (repairs and upgrading).

We have made a similar point in response to the ‘regeneration programmes’ detailed in the Government report. Although in recent years new regeneration programmes have subsequently been developed, not all of these have been completed, and there is no national plan for

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<sup>51</sup> Council of Europe, Appendix to the Resolution CM/ ResChs (2018)1 *FIDH v. Ireland*, address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of November 2017. *FIDH v Ireland*, Collective Complaint No. 110/2014, para 11.

<sup>52</sup> Michelle Norris and Aideen Hayden, *The Future of Council Housing: An analysis of the financial sustainability of local authority provided social housing* (2018) p. 67.

regeneration and no national tenant participation mechanism. The Government report does not provide any targets, a clear time line or any action plan against which progress can be measured.

#### **4.5.The Government has not fulfilled its obligation in providing adequate management and maintenance of local authority housing**

The right to adequate housing for families living in local authority housing, requires the government to take seriously their responsibilities for management and maintenance and make the relevant cost reasonable and transparent, and the relevant information accessible. The Irish government has not fulfilled its obligation in several respects. This is apparent in the unsatisfactory management and maintenance issues for tenants. We have explained that there are considerable shortcomings to the ‘preventative maintenance’ measures detailed in the Government report. This is supported by evidence gathered by CAN survey which found that 71% of local authority tenants reported that management and maintenance the work carried out on their homes was of poor quality.<sup>53</sup> Poor responses to maintenance issues is also a consistent issue for local authority tenants. Tenants report having to wait for long periods for basic repairs including repairs to electrics, boilers, broken windows and doors. Tenants often give up on the landlord attending to issues, and pay out for repairs from their own resources. One issue that is particularly frustrating for tenants is the absence of any suitable appointment system for attending to repairs. The Council staff person will not make a definite appointment and then drop in a card saying they missed the tenant. After long waits of weeks or even months for service, the tenant must then face another long wait. We have previously drawn attention to how in Glenshane in South Dublin Council, tenants who had repairs categorised as level 5 – the most serious level, were told that they could not be put on the lists for repairs as they were

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<sup>53</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

in arrears.<sup>54</sup> Assessments of housing stock and some remedial work begun following resident actions in 2017 in Glenshane were not completed. It is important to reiterate that local authorities made a surplus from local authority rents, despite the poor quality housing provided in many cases.<sup>55</sup> Clearly, there are insufficient resources dedicated to maintenance and refurbishment.

#### **4.6. The Government has not fulfilled its obligation in ensuring community safety for local authority housing tenants**

Article 16 guarantees adequate housing for families and this means a dwelling which is safe from a sanitary and health point of view.<sup>56</sup> A key aspect of safety is security at home but this also extends to feeling safe in one's community. The CAN Collective Complaint monitoring survey in 2020 found that 68% of respondents reported problems with crime and anti-social behaviour and just 19% reported that they home/area had a safe place for kids to play.<sup>57</sup> This indicates that the Government has not fulfilled its obligation in ensuring community safety for local authority housing tenants.

#### **4.7. There is no meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programmes and strategies**

In our response to the Government report, we repeatedly drew attention to the lack of meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programmes and strategies. This is particularly apparent in the CAN

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<sup>54</sup> See for example, Dominic McGrath, 'An 11-year wait for windows: How Dublin tenants are left waiting years for repairs', available at: <https://www.thejournal.ie/dublin-city-council-residents-delays-houses-4248136-Sep2018/>.

<sup>55</sup> National Oversight and Audit Commission, 'A Review of the Management and Maintenance of Local Authority Housing', NOAC Report No. 12 – May 2017, Section 2.3, available at: <http://noac.ie/wp-content/uploads/2017/05/NOAC-Management-and-Maintenance.pdf>.

<sup>56</sup> *FEANTSA v. France*, Complaint No. 39/2006, para 76.

<sup>57</sup> The CAN Collective Complaint monitoring survey was conducted in the first 6 months of 2020. The findings of the survey have not been published as a report at time of writing.

Collective Complaint monitoring survey in 2020. The response to the question: ‘If there is a plan for improvements has the community been part of the process?’ was:

- 9% said that the community is very involved
- 16% said that the community is somewhat involved
- 28% said that the community is not involved and
- 47% said they didn’t know

This is consistent with a recurring theme within Irish housing policy of inefficient top-down decision-making that reinforces patterns of social exclusion and creates housing that is ill-suited to peoples’ needs, commonly in remote locations and often left abandoned.<sup>58</sup> The lack of meaningful participation goes to the core of the various failures to protect the human right to housing under Article 16 of the RESC that were laid bare in *FIDH v Ireland*. This central importance of meaningful participation has been made clear by the Special Rapporteur on the right to adequate housing, Ms. Leilani Farha, who has provided guidelines which outline key elements needed for the effective implementation of the right to housing. These guidelines are based on existing human rights standards and recommendations the Special Rapporteur submitted over the last years to Member States in her official reports. Guideline No 3. makes clear that States must ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions.<sup>59</sup> Yet, in the Government report there is little recognition of the need for meaningful participation of households living in local authority housing in the design, implementation and monitoring of housing policies, programmes and strategies. There is a clear need for a rights-based participation supported by all levels of government transforms residents into active citizens and engaged community members,

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<sup>58</sup> Special Rapporteur on adequate housing, *Guidelines for the Implementation of the Right to Adequate Housing* (UN A/HRC/43/43, 2019) para 22.

<sup>59</sup> *Ibid* para 20 to 24.

making housing programmes more affordable and effective and creating vibrant, more sustainable communities.<sup>60</sup>

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<sup>60</sup> *Ibid* para 24.

## **II. Article 31-The right to housing**

1. “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to promote access to housing of an adequate standard;”

2. “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to prevent and reduce homelessness with a view to its gradual elimination;”

3. “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to make the price of housing accessible to those without adequate resources

In respect of Article 31 which generally protected the right to housing, the Government report did not update relevant information, as Ireland has not accepted Article 31. However, according to the reporting system of the European Social Charter, the Committee examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification, aiming to achieve full acceptance of all the social rights embodied in the Charter.<sup>61</sup>

Irish Government was invited by the Committee to submit reports concerning non-accepted provisions in 2005, 2010 and 2015 respectively, but no information was provided by the Irish Government. Irish Government has not fulfilled its reporting obligation under the European Social Charter.<sup>62</sup>

The next examination of the provisions not accepted by Ireland will take place in 2020, and we respectfully recommend the Committee to urge Irish Government to submit its report on non-acceptance provisions and consider to accept Article 31 eventually.

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<sup>61</sup> Decision of the Committee of Ministers, ‘Implementation of Article 22 of the Social Charter (non-accepted provisions) (CM(2002)184)’, adopted on 11 December 2002 at the 821st meeting of the Ministers' deputies.

<sup>62</sup> European Committee of Social Rights, ‘Third Report on Non-accepted Provisions of the European Social Charter, Ireland’, 6 May 2016.

## **COVID-19 and inadequate housing conditions experienced by local authority tenants**

Leilani Farha, UN Special Rapporteur on the right to adequate housing, has explained that housing is “the front line defence against the COVID-19 outbreak”.<sup>63</sup> We submit that significant numbers of Local Authority tenants are particularly vulnerable to COVID-19 because –

- The conditions impact especially on respiratory systems as a result of high concentrations of aspergillus fumigatus spores which arises from structurally caused mould and condensation-moisture .
- Overcrowding makes social distancing especially challenging. In some cases, residents with underlying illnesses live in overcrowded homes. Even without being technically “overcrowded”, homes are very often very small and claustrophobic and with children off school and public amenities closed, the restrictions of social distancing can be very impactful on mental health.
- Access to safe outside areas for exercise and play is often limited. This is because many homes, flats-complexes in particular, have no access to outdoor private space and public areas are often small and/or unsafe. Many parents are unwilling to let their children out due to anti-social behaviour in the public areas, often associated with the drug-trade.
- Certain sections of Local Authority communities are especially hard to reach. One project we initiated to intervene with young adults drawn into public drug dealing networks reports that many of the young people they know had no knowledge of the

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<sup>63</sup> Office of the High Commissioner for Human Rights, “Housing, the front line defence against the COVID-19 outbreak,” says UN expert (18 March 2020) see <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

risks posed by COVID-19. Community networks are now working under severe restrictions with centres and other amenities closed and staff working from home.

- Many of these communities suffered the brunt of a previous epidemic – the heroin epidemic of the 1980s and 1990s. They remain with the legacy of problematic drug-use and a persistent drug-trade. One consequence is that those who had been supporting habits had done so by pilfering in local shops, mostly clothes shops and selling stolen items. As these are all now closed, stealing within families and consequent conflicts is now much more common. The interruption of the drug trade through greater police presence, the damping down of on-street dealing and the ability to safely move drugs across borders is leading to an increased call-in of drug debts and pressure on young dealers to sell from their homes.
- Many of the residents of these communities are poor and live with the stress of coping with low income all the time. Stress levels and poor mental health are evident and this in turn affects immunity from illness. Many residents work in low-paid employment or are on zero-hours contracts. They are particularly vulnerable to economic shocks.