THE IRISH COMMUNITY DEVELOPMENT LAW JOURNAL

The Irish Community Development Law is an online journal, published twice a year by the Northside Community Law & Mediation Centre, in Coolock, Dublin. The journal seeks to offer a platform for interaction that encourages greater scholarly and academic collaboration in the areas of social policy, law and community development, promoting the practice of Community Economic Development (CED) law and policy in Ireland and learn about these initiatives in other countries.

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# THE IRISH COMMUNITY DEVELOPMENT LAW JOURNAL

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Stephen Kirwan, Roslyn Palmer and Ben Mitchell

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EDITORIAL

Stephen Kirwan and Roslyn Palmer  
Editors at Northside Community Law & Mediation Centre.  
Email: editor@nclc.ie

Ben Mitchell  
Co-Editor at Northside Community Law & Mediation Centre.

We are delighted to welcome you to this issue of NCLC’s peer-reviewed journal, now rebranded as the Irish Community Development Law Journal. This name change will hopefully facilitate an expanded influence for the journal and, more importantly, thereby draw greater attention to the pressing issues documented and analysed within its pages. In keeping with previous issues, a central theme has been adopted; this issue sees ‘Housing’ occupy the thoughts of two contributors. The diversity and depth of their analysis will familiarise the reader with many facets of this subject, which is of crucial importance to so many people in Ireland and abroad.

The issue opens with an article by Padraic Kenna examining the concept of ‘addressing need,’ the justification for much of the welfare state. The aim of addressing housing need is central to social housing provision, yet it is a concept and term that receives scant theoretical analysis. Kenna’s article seeks to remedy this lacuna. Housing need is often crudely equated with homelessness, something this article seeks to challenge by advocating a wider meaning that allows for a more progressive understanding of social housing.

In the next article, Donna Shiel reflects upon the damaging impact of funding cuts on housing provision for the most vulnerable, a problem that has escalated since the global financial crisis. In particular, regeneration projects have suffered, leaving many projects incomplete. The article examines the potential for a human rights-based approach to be used to restart these stalled projects, looking at the Dolphin House regeneration project in detail.

In this issue’s third article, Roisin Costello diversifies the subject matter with a transnational examination of the Hellenic Republic Asset Development Fund to test its compatibility with the goals of Community Economic Development theory. Costello argues that this body, charged with the sale of Greek State assets, could have served a core CED principle of promoting economic markets that provide publically desirable goods as well as revenue. Instead, the article demonstrates how the fund’s operations are exacerbating inequalities and concentrating wealth in small sectors of the population.

The next article continues the innovation in our last issue of a section dedicated to publishing reports, interviews and case studies from CED organisations. Christopher Campbell provides a case study on the Limerick Community Law and Mediation Centre’s first year of operation. The article charts the establishment of the centre and outlines its projects, explaining how the activities are structured to meet essential community needs. Campbell also sets out the Centre’s encouraging plans to introduce Community Mediation in coming months.

Finally, Shauna Stanley reviews Politics, Participation and Power, published this year by Glasnevin Publishing. This edited collection of essays provides a critique of contemporary Irish society from the perspective of three core themes: e-participation, power inequalities and protest as participation. Stanley’s review incisively takes the reader through each essay, setting out clearly that this book would fascinate both experts and lay enthusiasts alike.
WHAT IS HOUSING NEED?

Dr Padraic Kenna
Lecturer in law at NUI Galway and author of Housing Law, Rights and Policy (Dublin, Clarus Press, 2011)
Email: Padraic.kenna@nuigalway.ie

Abstract:
The principle of addressing need is central to modern social welfare systems and social housing provision. The objective of meeting need is widely cited as the justification for State action in key areas of social welfare, health and housing law and policy. Yet, this seemingly common term is rarely examined, except by conservative theorists and other commentators, on grounds of being emotive and overstated in modern Ireland. In relation to housing, there is a somewhat rudimentary equation of need with homelessness and the need for shelter. But housing need is both an individual and socially constructed concept. Various studies have refined these definition, but significantly, the Irish State has altered the concept of housing need in legislation in 2009. There are parallels between need and minimum core obligations on States under the UN human rights instruments, although the standards derived from these can be variable. This commonly used, but often contested term, merits some examination.

Keywords:
Housing Need, National Economic and Social Council, Housing Provision, Human Rights, AHURI Report,
1. Housing Need

The concept of need assumes a pre-eminent position where rationing decisions have to be made in attempts to ensure equitable distribution of limited State resources. Judgments are made about who is most deserving, based on the definitions and structures for assessing such need. As such, enormous power lies with the ultimate definers and arbiters of need, whether by public administrators, courts or political parties. This raises important questions about how housing need should be conceptualised, assessed and quantified. Can housing need be analysed conceptually in a distinct and different way to housing demand, based as it is on market terms such as wants and desires?

Housing need can be measured as the absence of a core element of the means of survival, inhabiting accommodation regarded as below community housing norms, or as a residual need for housing which markets have failed to satisfy. It encompasses a very different conceptual framework to housing demand. Yet, the influence of market perspectives has pervaded the language of Irish State reports and legislation, with demand for housing being the primary term used, even in relation to requests for social housing.

The market-based conception of housing as a commodity can conflict with the perspective of housing as a human need. Housing requirements, whether expressed as a need or a demand are, of course, determined by household size, living space, facilities and many other factors. People-centered perspectives on housing as a home, and as a base for the development of people and children within the family and community, are not significant factors within the market debate, except when used for advertising purposes.

The State in social democratic and socialist societies often encourages the market to meet identified housing “needs” through tax incentives, provision of development land, assistance to those on low incomes to attain the position of purchasers, provision of infrastructural development to facilitate greater output, etc. Here, the concepts of “demand” and housing “need” can become intertwined and it is important to distinguish these terms:

*The concept of demand is one taken from economics and refers to the ability and willingness of the individual consumer to pay for housing, and the concept of need, is a socially accepted aspiration describing that standard of adequacy which society as a whole adopts as an expression of collective interest.*

A Report by the Australian Housing and Urban Research Institute (AHURI) (2008) points out that “orthodox (neo-liberal) economic theory holds that markets are paramount, and that suppliers are essentially responding to consumer demands as choices and preferences. It does not examine the distinctions between needs and wants”.

I would suggest that there are three congruent approaches to defining need as it applies to housing.

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The Universalist or Basic Needs Approach

The basic human need, or universalist approach, places housing need as a core element of human survival and development. This approach measures housing against a more fixed set of criteria. Doyal and Gough claim that at their most base point, there are certain services or outcomes that are held in common, and this makes them qualitatively distinct from wants or desires. Needs refer us to the essentials, to what is indispensable rather than to what we would merely like to have. To impute a need, therefore, is to imply that it ought to be met, that we are dealing not with what is optional, but with what there is an obligation to provide.

The absolute or universalist concept of need incorporates Maslow’s theories with an idea of basic needs, sometimes referred to as "categorical needs". These needs, "which a human cannot do without, are overriding and include health, nutrition and shelter. These are overriding because they are inherent to the need itself and our nature as human beings.”

Housing needs can be discussed and analysed at the level of community or at the level of the individual. These needs can be viewed as a social constructed reality—as an objectification of subjective phenomena. Fordham et al. differentiate between "housing need" which often refers to local assessments and households, and the "the need for housing" which refers to local assessments of requirements for dwellings. Need should refer either to individual household circumstances, or to the aggregate requirement for new (social and market) housing.

A separate but parallel debate concerning the cultural basis for needs is highlighted in the AHURI Report in relation to indigenous people, and this has implications for the assessment of need for other groups, such as members of the Traveller Community:

"Indigenous people may place cultural values on the dimensions of housing needs that are different from those placed on them by others. Housing need is culturally and socially constructed. For example, an Indigenous family in a remote area may not define overcrowding in the same way as a non-Indigenous family in an urban area, or even in the same way as an Indigenous family in an urban area."

At a basic level the concept of housing need and home is widely viewed as a critical element of the basic physiological needs of food, clothing and shelter established by Maslow, and in contemporary societies often relating to the safety, love/belonging, esteem and self-actualisation needs. The AHURI Report points out that:

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Housing is often discussed as though the shelter attributes of housing—which correlate with the lower two stages of Maslow’s framework—are the most important features for housing interests. However, Maslow’s need framework can be interpreted much more broadly in terms of what else housing provides as a base for emotional development, social participation, personal status and ontological security, where notions of place and home, neighborhood and community, capacity and opportunity, all correlate with the higher aspects of basic need. Aspects of housing can thus be seen in each of the stages and across all of them.9

The approach of Amartya Sen is broader, in that the satisfaction of such needs as housing are required to achieve basic human capabilities in every society.10

The Relativist or Normative Approach

Relativist concepts of need assessment require the establishment of housing norms against which need can be measured, but at a higher level of satisfaction than the basic human need level. In the relativist perspective, the test is a comparison with general community or average conditions, and unmet needs correspond to the extent of housing situations below social standards and norms. Thus, in modern societies the absence of central heating, amenities, modern equipment, and access to housing-related facilities which are the norm, could be expressed as housing need.

The Residual Approach

Residual need approaches arise where market based responses are seen as first order solutions, and an inability of persons to have their housing needs met through the market becomes a filter for conceptualising and measuring need. The residual approach views housing need within the liberal market economy approach to housing systems, where social housing provision is residualised, i.e. reserved for those who are inactive in the labour market and comprising concentrations of people on welfare benefits. This perspective only views people as having housing needs if they cannot afford their current housing, or their current housing is not appropriate and adequate and they cannot afford to rent appropriate and adequate housing. Equally, despite being able to afford it, they cannot obtain appropriate and adequate housing due to environmental conditions such as discrimination or lack of suitable accommodation. Indeed, people are not considered to have housing needs if they can afford appropriate and adequate housing, but choose to live in an inadequate dwelling, or choose not to spend a large amount on housing.11 The residual approach to need correlates most closely with that set out in Irish housing legislation, particularly, the definition of, and eligibility criteria for, ‘social housing support’ within the Housing (Miscellaneous Provisions) Act 2009.

10 See Sen, A, Development as Freedom. (Oxford, OUP, 1999). A more holistic approach is also put forward by Fineman in the vulnerability approach where she argues that vulnerability is universal and constant and inherent in the human condition. As a result of this the “vulnerable subject” should be the focus of State policy rather than the liberal legalist autonomous independent subject. See Fineman, MA, “The Vulnerable Subject: Anchoring Equality in the Human Condition”, 20 Yale Journal of Law and Feminism, 3 2008-2009, 1–17.
11 AHURI Positioning Paper No. 110. Australian Housing and Urban Research Institute, p 59.
**Who Decides on Needs?**

While Irish legislation defines housing need as relating to those whose housing requirements (in a physical sense) are outside the range of housing market solutions. A key issue, therefore, is who decides on the definition of need. In some cases the measurement of need by those charged with meeting that need, such as State agencies, can lead to claims of bias and lack of objectivity. In some instances, individual feelings of housing need may not be reflected in the narrow criteria used. One major contributor — Bradshaw, identified four main areas or categories within which need is identified.

- **Felt need** — these are needs which people feel (although commonly described as concerning ‘wants’ and ‘desires’, it is more subtle than that. While subjective, felt need is about a psychological situation of personal perception and recognition of one’s own need). Felt needs exist regardless of whether they are expressed or normatively acknowledged.
- **Expressed need** — needs which people then do something about (i.e. they seek assistance). These are normally associated with Felt Needs, but do not have to be based on them (i.e. it is theoretically possible to ‘demand’ assistance but not feel as if there is a need for that).
- **Normative need** — these are typically identified according to a standard or norm usually determined bureaucratically or by ‘experts’. Normative needs are often intended to be ‘objective’, although they are usually also associated with rationing and targeting (of assistance), and so their immediate claim to impartiality is disputed. Their articulation can be found in eligibility criteria for housing and social programs as well as assessments and studies which seek to enumerate need.
- **Comparative need** — needs examined with respect to others in similar or differing circumstances. This can be used to assess relativities between groups, and rates or hierarchies of need.  

While this matrix provides a valuable form of analysis of how need is interpreted, it is subject to the qualification that where needs are not felt, expressed or measured by any agency or person, there may still be housing need present.

**2. Irish Research on Defining Housing Needs**

The ESRI Report – An Analysis of Social Housing Need by Fahey and Watson (1995) marked the first detailed examination of housing needs definition and assessment in Ireland. This Report pointed out that point-of-entry assessments of applicants carries the entire brunt of determining life-time eligibility for local authority in Ireland. Once individuals/households obtain local authority housing, their eligibility is never re-assessed, irrespective of changes in their income situation. It also suggested that the concept of housing need in Ireland had been narrowed and contracted in a number of ways, due to the effects of practical aspects of social housing policy and provision. The Report pointed out that need is the guiding principle of non-market allocation of housing. This view of housing assumes that one can identify an objective and universal minimum standard of housing to which all households are entitled. At its simplest, “households can be considered in housing need when their circumstances fall below the minimum standard and when as a result they are exposed to certain kinds of damage or harm.”

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The ESRI Report endorsed an "objective" type of needs assessment with a number of adjustments, albeit including the term "consumer" for those who requested social housing.\(^\text{16}\)

*In needs-based allocation of housing, consumer well-being is pursued by reference to an external determination of what the consumer objectively needs, rather than by the consumer’s own interpretation of what he or she wants. In principle, an external authority—usually an ‘expert’ based in an agency responsible for meeting the need in question—is required to make this determination.*

Various devices can be used to ensure that the agency takes account of consumer preferences, creating general mechanisms of democratic accountability, lobbying by consumers, creating mechanisms for dialogue between experts and consumers. However, to ensure the objectivity of the determination of need, these devices can only have a secondary effect...

*The consumer’s self representation can and often is taken as evidence of what the objective situation is, but on its own it usually is not enough and is verified in the light of other evidence. It is part of the essential nature of need as a basis for non-market allocation that, in the interests of fairness, it has this degree of objectivity and distance from consumer’s wants and preferences, even while it may take those wants and preferences into account.*\(^\text{17}\)

### Housing Needs associated with Care and Support

Beyond the market and consumer oriented paradigm of housing as a physical entity, and the concurrent approach to housing need, a new terrain develops, where traditional liberal market rational economic approaches are not very useful. For example, where any form of social or personal support are required, associated with housing, assessments of housing need quickly deem such overall need to be part of the remit of the Health Service Executive (HSE) or voluntary groups.

The provision of care and support as part of housing provision challenges the housing policies of many State agencies. Care and support have been defined in Irish social policy as taking place within the context of unpaid (or poorly paid) domestic and personal services, provided through the social relations of marriage and kinship. Care and support have long been seen as a woman-specific concept.\(^\text{18}\) As a consequence of this, there is little development of the provision of care as part of State housing services, except through nursing and charitable befriending support. All care services, except nursing services, which are commodified, are expected to be undertaken by family or spouses.\(^\text{19}\) However, the Independent Living Movement has advanced the social model of disability and the need for support and care as part of a holistic housing service.

---

\(^{16}\) It is significant that the consumer approach is not used in the effective delivery of social housing services in Ireland.


\(^{19}\) For a discussion of the political issues around love, care and solidarity see Lynch, K., Baker, J, Cantillon, S, & Walsh, J, (2nd ed.) *Equality From Theory to Action*, (Basingstoke, Palgrave Macmillan, 2009), pp 220–228.
NESC and Housing Need

The National Economic and Social Council (NESC) Report Housing in Ireland — Performance and Policy (2004) applied the terminology of housing ‘demand’ to housing provided outside the market, such as social and affordable housing, thus, adopting the market residual approach to housing need.\(^{20}\) NESC describes the “demand” for State-supported housing as fuelled by the growing number of households which cannot meet their housing requirements from their own resources. It identifies three key developments which have contributed to this growth—First, the increase in the overall population and the related growth in household formation; secondly, the ‘pricing out’ of a greater proportion of households from the private housing market due to the dramatic growth in house prices and market rents; and, finally, a contraction in the relative share of housing available outside of the private housing market.

The NESC Report associates housing need/demand with the eligibility criteria for social and affordable housing.\(^{21}\) In this context ‘demand’ for social housing is most commonly expressed in the form of local authority housing waiting lists, although the NESC Report states that the waiting lists may underestimate the true scale of need/demand.

Dr Eoin O’ Sullivan

Leading Irish writer on homelessness and housing need, Dr Eoin O’ Sullivan has highlighted that considerable confusion exists concerning the numbers on the housing waiting list and how housing need is conceptualised and measured in Ireland, with four separate categories being taken into account currently:

1. Households who apply to local authorities to have their housing need met and are deemed to require local authority housing—or the ‘net’ housing need;
2. Households who apply for local authority housing, but are deemed best suited for other social housing measures. These are households who have met the entry criteria for local authority housing, but whose needs are deemed to be better met by other social housing providers, by the SWA rent supplement system, or measures in lieu of social housing. In addition, households included in more than one local authority assessment are listed. These households, along with those in (1) above are often referred to as the ‘gross’ housing waiting list;
3. Households who are in the private rented sector in receipt of a rent allowance under the Supplementary Welfare Allowance scheme, but not registered with housing authorities.
4. Households that are homeless, but not registered with housing authorities. In addition to the assessment of housing need, a simultaneous assessment of the extent of homelessness is conducted by housing authorities. Those enumerated in this assessment should include those homeless households registered with local authorities and those who, for various reasons, are not.\(^{22}\)


\(^{21}\) NESC. Housing in Ireland: Performance and Policy. No. 112. November 2004. Dublin: NESC. Background analysis 6. The Provision of Social and Affordable Housing, 6.3. An important distinction is drawn between social and “affordable housing.” The NESC Report points out that “…It is important to note that the term ‘affordable’ housing is used in two ways in current Irish housing policy—referring first to the policy objective of ensuring general affordability across all tenures (targeting those households that are expending more than 35 percent of disposable income on housing—either mortgages or rent), and secondly to Affordable Housing programmes—which refer specifically to the provision of discounted houses for sale to eligible households. For the purposes of the report, the use of lower case (affordable housing) refers to the former context, whereas the use of upper case (Affordable Housing) refers to the latter.”

3. The Statutory Definitions

The legislative criteria for housing need as defined in relation to eligibility for State housing assistance is set out in a number of statutes, although the Housing (Miscellaneous Provisions) Act 2009 has created a new approach. The provisions of the Housing Act 1966 (as amended by ss 8 and 9 of the Housing Act 1988) provided the basis of the Irish State’s assessment of housing need until s 20 of the Housing (Miscellaneous Provisions) Act 2009 established a new system.

However, it is worth considering the former system to illustrate difficulties in establishing accurate assessments of need, the narrowing focus of housing need, and the change in approach adopted by the Irish State in recent past years.

The Housing Act 1988 established a comprehensive system of assessing housing need with tri-annual assessments carried by housing authorities. Section 9 of the Act of 1988 established a range of categories of housing need, which are still used today. Persons in need of accommodation were defined as those:

(a) whom the authority have reason to believe require, or are likely to require, accommodation from the authority, and
(b) who, in the opinion of the authority, are in need of such accommodation and are unable to provide it from their own resources.

(2) Without prejudice to the generality of subsection (1), a housing authority in making an assessment under this section shall have regard to the need for housing of persons who—
(a) are homeless
(b) are persons to whom section 13 applies,
(c) are living in accommodation that is unfit for human habitation or is materially unsuitable for their adequate housing,
(d) are living in overcrowded accommodation,
(e) are sharing accommodation with another person or persons and who, in the opinion of the housing authority, have a reasonable requirement for separate accommodation,
(f) are young persons leaving institutional care or without family accommodation,
(g) are in need of accommodation for medical or compassionate reasons,
(h) are elderly,
(i) are disabled or handicapped, or
(j) are, in the opinion of the housing authority, not reasonably able to meet the cost of the accommodation which they are occupying or to obtain suitable alternative accommodation.

The tri-annual assessments of housing need by local authorities following the 1988 Act shows how the extent and nature of housing need, as assessed by housing authorities, has developed.

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23 This has been repealed by s 7 of the Housing (Miscellaneous Provisions) Act 2009, but is included for illustrative purposes.
### Table 1. Local Authority Assessments of Housing Need and Homelessness

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<td>68</td>
<td>66</td>
<td>67</td>
<td>82</td>
<td>262</td>
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<td>19,376</td>
<td>23,242</td>
<td>28,624</td>
<td>27,427</td>
<td>39,176</td>
<td>48,413</td>
<td>43,684</td>
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</table>

*This category only covers homeless on waiting lists for Local Authority housing.*

Some observations from this summary of assessments are relevant. There are consistent increases among the numbers unable to afford accommodation, but this includes those who are receiving State support for rental costs in private rented accommodation (some recently built and of a high standard). Significantly, however, the number of Travellers on the assessments of need is increasing. Those involuntary sharing have increased, as well as those leaving care, those in housing need for medical or compassionate reasons and person with disabilities. This latter group are clearly undercounted when compared to the data from the HRB statistics on Intellectual Disability and Physical and Sensory Disability.\(^{25}\) Remarkably, older people assessed in housing need remains constant despite increasing numbers of older people in the population.

\(^{24}\) The Department of Environment has altered the definitions of needs on some assessments, but the general trend is indicative.

\(^{25}\) This may be addressed when Ireland ratifies the UN Convention on the Rights of Persons with Disabilities.
Shifting Legislative Approaches to the Concept of Need

Section 20 of the Housing (Miscellaneous Provisions) Act 2009 creates a new approach to housing need assessment, gearing the objective of the assessment to the determination of eligibility for "social housing support". This represented a conceptual shift from the notion of "in need of such accommodation" of the 1988 Housing Act, thus defining housing need within a new and narrower focus. There is no attempt to address a universalist approach to housing need, but assessments will be determined on whether the applicants are eligible to avail of the rental (including local authority and housing association lettings), and purchase schemes provided by the State, or indeed, the private sector providers becoming involved in the provision, facilitation and management of social housing support.

The criteria has shifted from the notion of housing need in the universalist or basic needs sense, to the newer eligibility for "social housing support", which is determined by the suitability of the applicant for the range of housing options being presented by State and State sponsored agencies.

Homelessness

The Housing Act 1988 created the first legislative definition of homelessness or severe housing need in Ireland. However, the determination as to whether a person is homeless is made not by the applicant themselves, or any independent assessor, but by the local housing authority officials.

"2.—A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—
(a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or
(b) he is living in a hospital, county home, night shelter or other such institution,26 and is so living because he has no accommodation of the kind referred to in paragraph (a), and he is, in the opinion of the authority, unable to provide accommodation from his own resources".

It is significant that the determination of housing need relies on the “opinion” of the authority, which in reality amounts to the opinion of the housing or local authority officer dealing with the application for housing or the assessment of need. A Report in 2005 found that there was no commonly agreed definition of what constitutes homelessness across local authorities or in Homeless Persons Units and voluntary organizations:

"The way the [1988] Act defines homelessness leaves considerable ambiguity, allowing agencies to widen or narrow the definition of homelessness dependent on their perspective and/or the individual that presents".27

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26 The Health Act 1953 placed a duty on health authorities “to give to every person in their functional area who is eligible for institutional assistance such institutional assistance as appears to them to be necessary or proper in each particular case.” Section 54(2) of the Act of 1953 stated that a person who is unable to provide shelter and maintenance for himself or his dependants shall, for the purposes of this section, be eligible for institutional assistance. Many homeless people live within institutions established or funded under this legislation.

The European Typology on Homelessness and Housing Exclusion (ETHOS) was developed by Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri (FEANTSA) as a means of improving understanding and measurement of homelessness in Europe, and to provide a common "language" for transnational exchanges on homelessness. In order to define homelessness in an operational way, the FEANTSA approach identifies three domains which constitute a home, the absence of which can be taken to delineate homelessness. Having a home can be understood as: having a decent dwelling (or space) adequate to meet the needs of the person and his or her family (physical domain); being able to maintain privacy and enjoy social relations (social domain) and having exclusive possession, security of occupation and legal title (legal domain).
### Table 2. The European Typology of Homelessness and Housing Exclusion (ETHOS)

<table>
<thead>
<tr>
<th>Conceptual Category</th>
<th>Operational Category</th>
<th>Living Situation</th>
</tr>
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</table>
| **Roofless**        | 1. People living rough  
                      | 2. People in emergency accommodation | 1.1. Public space or external space  
                      | 2. Night shelter |
| **Houseless**       | 3. People in accommodation for the homeless  
                      | 4. People in Women’s Shelter  
                      | 5. People in accommodation for immigrants  
                      | 6. People due to be released from institutions  
                      | 7. People receiving longer term support (due to homelessness) | 3.1. Homeless hostel  
                      | 3.2. Temporary accommodation  
                      | 3.3. Transitional supported accommodation  
                      | 4.1. Women’s shelter accommodation  
                      | 5.1. Temporary accommodation/reception centres  
                      | 5.2. Migrant workers accommodation  
                      | 6.1. Penal institutions  
                      | 6.2. Medical institutions  
                      | 6.3. Children’s institutions/homes  
                      | 7.1. Residential care for older homeless people  
                      | 7.2. Supported accommodation for formerly homeless people |
| **Insecure**        | 8. People living in insecure accommodation  
                      | 9. People living under threat of eviction  
                      | 10. People living under threat of eviction | 8.1. Temporarily with family/friends  
                      | 8.2. No legal (sub)tenancy  
                      | 8.3. Illegal occupation of land  
                      | 9.1. Legal orders enforced (rented)  
                      | 9.2. Re-possessions orders (owned)  
                      | 10.1. Police recorded incidents |
| **Inadequate**      | 11. People living in temporary/ nonconventional structures  
                      | 12. People in unfit housing  
                      | 13. People living in extreme overcrowding | 11.1. Mobile homes  
                      | 11.2. Non-conventional building  
                      | 11.3. Temporary structure  
                      | 12.1. Occupied dwellings unfit for habitation  
                      | 13.1. Highest national norm of overcrowding |
4. Needs and Rights

The universalist, normative and residual approaches to housing needs are accepted within UN approaches to housing rights. Indeed, all three are inherent in housing rights jurisprudence and monitoring systems, which actually offer a distinct approach to need. Needs are separate from rights, although once clearly established, needs may lead to claims about rights. In a similar way to needs, rights may act as a means of prioritisation of allocation of scarce resources, with a priority of rights holders over non-rights holders, and prioritisation between rights holders becoming the essence of administrative, budgetary and legal decisions. Particular groups whose needs have been formally recognised as rights may also be in a position to use the courts to assert their primacy in the administrative decision making process.

Minimum core obligations

The parallel between the universalist approach to needs based on a fixed and measurable criteria and the obligations of immediate effect or minimum core obligations of States, as set out in the UN International Covenant on Economic, Social and Cultural Rights is striking. The rights-based approach adds a significant element to this needs/allocation paradigm, in that it creates an obligation on all States to meet the minimum level of housing needs for all, including refugees and internally displaced persons, without discrimination, regardless of the resources available to the individual State. In the event that national resources are insufficient States must call upon the international community for help.

Indeed, generally, this minimum core obligation corresponds to a level of distributive justice assessing the evenness of the distribution of socially guaranteed minimal levels of certain goods and benefits among individual groups within a country. This concept has been developed in some cases to provide determinacy and justifiability to housing and other socio-economic rights, providing minimum legal obligations, which are easily understood by courts and regulatory bodies.

UN General Comment 4 The Human Right to Adequate Housing (1991), of the UN Committee on Economic, Social and Cultural Rights (UNCESCR) sets out the essential elements of the internationally recognised housing rights as comprising legal security of tenure, availability of services, materials and infrastructure, affordability, habitability, accessibility, housing is a suitable location and culturally adequacy. General Comment 4 states that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services. Personal or household costs associated

32 Many of the South African cases housing rights cases involve these types of decisions, where the courts are asked to set the relative priorities of different sections of rights holders to scarce State allocated resources. See for example Government of South Africa and others v Grootboom and others CCT11/00 2001 (1) SA 46 (CC), 4 October 2000, 2000 (11) BCLR 1169 (CC); Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) (19 February 2008).
with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Adequate housing must be habitable. In other words, it must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must also be guaranteed. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other vulnerable groups should be ensured some degree of priority consideration in the housing sphere. Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centres and other social facilities. Housing should not be built on polluted sites, nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants. The way housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed.

At the European level, following the European Social Charter (1961) and the Revised Social Charter (1996) of the Council of Europe, minimum housing rights-based standards of housing provision for homeless people were set out by the European Committee of Social Rights (ECSR) in the Collective Complaint FEANTSA v France. The Committee recalls that Article 31§2 obliges Parties to gradually reduce homelessness with a view to its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness (see Conclusions 2003, Italy)...”

The ECSR has considered it crucial that States target their housing measures to guarantee housing for the disadvantaged and vulnerable groups of people:

The Committee considers that the parties must prevent categories of vulnerable people from becoming homeless. This requires states to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing.

36 See UN Fact Sheet No. 21. The Human Right to Adequate Housing. Available at: http://www.ohchr.org/Documents/Publications/FactSheet21en.pdf
Progressive Realization of Rights

The second limb of UN human rights implementation involves the concept of progressive realization of rights. Essentially, this means that as the resources of the State increase or permit, a higher standard of rights realization than the minimum core obligations is required. Progressive realization of rights involves a cumulative increase in housing rights over time through housing policies, public spending, legislation, regulation and other means, with no regression of these rights. This correlates with increasing normative standards, widely interpreted within housing systems as arising from increased standards and cumulative development, but which can also be incorporated into political and consumerist norms.39

Indeed, in many contemporary societies there has been a shift in housing law and policy away from meeting basic housing needs, such as those outlined by Maslow. This can apply to modern societies where almost all enjoy adequate housing. There is a recognition of more complex motivational forces driving the definition of housing needs or demands in contemporary societies, sometimes based on “taste” and lifestyle choices.40 States largely leave the satisfaction of these more elaborate housing allocations to the market, where consumers can choose to pay more or less for their housing, often building in a potential for asset value growth. Of course, the unregulated market will not address all needs and will often create segregation, discrimination and exclusion on personal grounds. International housing rights require that markets are regulated so that such discrimination, denial of access for particular groups and lack of affordability denying access to housing are overcome. Thus in some ways the principle of progressive realisation of rights can incorporate normative analyses of housing needs.

Significantly, however, in Ireland, today, there are many whose housing rights have not yet reached what would be regarded as satisfying the minimum core obligations of the State. There are others where the State does not adopt the progressive realization approach to their housing rights by securing normative standards as part of rights realisation.


5. Conclusion

There are at least three approaches to housing need based on particular approaches to the role and nature of housing systems. At the universalist or basic need for shelter approach, Eoin O’Sullivan has pointed out that Irish research on homelessness largely involves enumerating the homeless, identifying their needs and proposing remedies to alleviate their distress, under a dominant "social reformist" paradigm.\(^{41}\) Equally, many State agencies approach the notion of housing need in absolutist terms, associated only with lack of shelter and destitution.

How people deemed to be in need are viewed matters, not just in an individual sense, but also socially, in terms of the effects of targeting, stigmatisation and residualisation. Human rights advocates, policy practitioners, analysts and service providers might all speak of ‘housing need’, but they may not speak the same language. Housing rights advocates are constantly seeking to develop coherent, robust and transparent approaches to responding to housing need, but seemingly in an atheoretical way.\(^{42}\) Could we speak of those living in undeserved and "low demand" social housing estates? Why is housing need interpreted only in terms of eligibility for access to subsidized housing?

Ultimately, there are significant conceptual and political boundaries to be crossed in defining housing need, particularly when some notion of support is inherent in the term. Is it merely financial assistance or loans to assist people to get on the individualist non-political home ownership ladder or housing pathway. Or is it a more holistic concept where housing (even homeownership) is seen as part of a range of social supports to people and communities, along the lines of health care, education, social assistance etc. The latter returns to the political question of what level of support to people - financial, social, medical or otherwise, which the State is willing to accept as its responsibility and consequently its definition of need. Yet, States have given undertakings at international level to uphold international housing rights instruments, with minimum core obligations and progressive realisation of rights.

Ultimately, there is a major flaw in the housing law and policy of a modern industrialized country which defines housing need only as residual need, compared to that which defines housing need as that which is below the contemporary normative standard. The State adopts the former approach while people today, with an expectation of welfare state supports adopt the second. Perhaps, one day, the law, and human rights advocates, will adopt the approaches to housing need outlined here.


\(^{42}\) AHURI Positioning Paper No. 110. Australian Housing and Urban Research Institute, p 58.
The Irish Community Development Law Journal Vol.2 (2) [2013]

Donna Shiel - Dolphin House- The Emergence of a Human Rights Based Approach to Regeneration

Abstract:
In Ireland, social housing law typically encompasses many public law measures and law relating to the assessment of need, development, allocation and management of social housing. Social housing or local authority housing has attracted various definitions but ultimately the local authority or housing authority is delegated the power to provide such rented accommodation for low income families, lone parents and society’s most vulnerable. It is a means of ensuring that the most vulnerable in society are provided with adequate shelter and a means of securing an adequate standard of living. Problems however have arisen since the start of the global financial crisis particularly with the lack of funding for a number of reintegration projects leaving many regeneration projects lacking completion. This article seeks to examine how a human rights based approach to the Dolphin House regeneration project, inspired by the principles of Community Economic Development, offers a new socially beneficial mechanism for communities to effectively attempt to restart any regeneration plans that have been left unfinished due to the economic crisis.

Keywords:
Dolphin House, European Social Charter, Committee on Economic, Social and Cultural Rights, Rialto Rights In Action Group Campaign,

DOLPHIN HOUSE - THE EMERGENCE OF A HUMAN RIGHTS BASED APPROACH TO REGENERATION

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Introduction

Local authority housing is an important aspect of any society and its provision should be administered adequately, effectively and efficiently especially in the modern day with the availability of a vast amount of resources and facilities that a state possesses. In Ireland, social housing law typically encompasses ‘many public law measures and law relating to the assessment of need, development, allocation and management of social housing’. Social housing or local authority housing has attracted various definitions but ultimately the local authority or housing authority is delegated the power to provide such rented accommodation for low income families, single/lone parents and society’s most vulnerable. It is a means of ensuring that the most vulnerable in society are provided with adequate shelter and a means of securing an adequate standard of living. Undeniably, local authorities have made significant contributions to the population’s well-being through the ‘expansion of housing provision and the raising of minimum housing standards amongst the less well off’. As housing has been one of the most controversial and popular topics of discussion in Ireland in the past few decades between the property and economic boom, it has frequently dominated the media. The peculiarity lies in the lack of media attention given to those living in deplorable conditions namely those in local authority housing who seem to have been forgotten in the boom years and in the preceding years due to the economic crisis.

Dolphin House

It is undeniable that regeneration is an important and necessary process to address the growing problems of poverty, segregation and unemployment experience by many of those communities in local authority estates. However, investment is key to this process as it can ‘contribute to the addressing the current economic and social crisis by addressing housing needs, reducing inequality…and provide economic stimulus through local employment’. Dolphin House is one such estate that experienced and is still experiencing such problems of inequality, segregation and inadequate housing conditions. Dolphin House is the second largest social housing flat complex in Dublin comprising of over 436 units, built in 1957 and located in the Rialto area just off South Circular Road close to the city centre. The estate is comprised of 436 units with a senior citizen section known as Dolphin Park consisting of 44 units and 392 local authority resident units. The senior citizens units in Dolphin Park are one bedroom flats with poor physical fabric thus the units fall below the minimum standards required. It is not only the size of the units that are affecting residents with many residents suffering severe problems of dampness, mould, sewerage problems as well as unsuitable community facilities and overcrowding in many circumstances.

5 ibid 7.
6 ibid 7.
7 ibid 7.
Problems experienced on the Dolphin House estate

There has been a well-documented history of social, physical and maintenance problems on the estate as evidence has illustrated that a number of the flats are substandard in size, inadequate facilities for children, the one entry and one exit design is deeply flawed as there is a lot of wasted space that could be utilised.\(^8\) Despite the apparent physical problems with regards the stock, serious maintenance issues have persisted over the preceding decades including ‘foul waste water smell and waste coming back up into the sink and baths in some flats’.\(^9\) This is a serious issue as it violates basic human rights and leaves adults and children living in inadequate and deplorable living conditions as many of the basic and vital sanitary facilities are unusable for hours or days as they await maintenance.\(^10\) It is fair to say that many of the public housing estates have suffered severe neglect from their social landlord and the state even during the Celtic Tiger despite the stock dating over fifty years ago. Their neglect also arises from the social exclusion these communities have endured due to poor physical design of the estate segregating them from the outer Rialto community. This isolation and high unemployment rates have plunged the estates into an almost recession of its own with wider communities labelling the estate as dangerous, with issues of drug related problems and community safety frequently arising.

It was quite clear that the community of Dolphin estate was in despair as Dolphin House Community Development Association (DHCDA) was set up at the beginning of the millennium where it began as a programme of work.\(^11\) This ‘initiative was designed to secure structures and mechanism to deliver change’\(^12\); undoubtedly, Dolphin House needed improvements and it soon emerged that it ‘might benefit from an enlightened redevelopment or regeneration programme’.\(^13\) This proposed idea which originated from local leadership prompted DCC to enter discussions with DHCDA about the prospects of regenerating the complex rather than refurbishment and this regeneration project would be delivered through the Public Private Partnership (PPP) model.\(^14\) These discussions which were initiated by DCC were a mirror image of other social housing estates across Dublin city as regeneration plans were occurring across the worst affected estates in the city. For example, Ballymun and Fatima Mansions were just two estates under regeneration at the time and appeared to be operating smoothly under the PPP models. The state and DCC began to realise that regeneration was necessary for the survival of these communities and in order to fulfil their service provider role with the provision of social housing under local government law.

Subsequently, a Joint Redevelopment Board between DCC and the community was established in November 2007 with residents participating in the Dolphin Decides initiative and the report.\(^15\) It provided ‘a space for the community to work with DCC to ensure day to day issues are addressed… ensured improved accountability of service provision and estate management by DCC’.\(^16\) Despite the high level of positivity surrounding this development including the prospects of the complete regeneration of the whole flat complex, maintenance issues were somewhat ignored.

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\(^8\) Pauline Faughan ‘Telling it as it is- A human rights based approach to housing’ (November 2010) Community Action Network 5.
\(^9\) ibid 5.
\(^10\) Dolphin Decides (n 4) 7.
\(^11\) ibid 7.
\(^12\) ibid 7.
\(^13\) ibid 7.
\(^15\) ibid 1.
\(^16\) ibid 8.
as some 'of the physical and social issues of the estate worsened'.\footnote{17} In May 2008, DCC negotiated with the DHCDA through the Joint Redevelopment Board the resources to design and implement a truly ground breaking programme of consultation, research and communications.\footnote{18} The Dolphin Decides report illustrated the struggles of DHCDA to find a permanent regeneration co-ordinator with DCC supporting the principle; Barnardos provided funding for a full regeneration co-ordinator until March 2011, with Dr Rory Hearne fulfilling this position.\footnote{19} The duties of the regeneration co-ordinator include, providing his or her expertise, ‘organising a community planning group... and in coordinating tender management processes.\footnote{20} The presence of a regeneration co-ordinator allowed for the involvement of the residents in the plans for the overall regeneration of their community and provided an outlet for residents to communicate their concerns, ideas etc.

The Collapse of Regeneration Plans for Dolphin House

However, the economic crisis brought with it the collapse of the PPP model, despite this it appeared that Dolphin House was still “in the queue” as ‘funding would now only be available for refurbishment’.\footnote{21} Even though prospects of refurbishment remained, it remained unclear what scale or timeframe the refurbishment would take. DCC acknowledged the economic crisis as in June 2009 and it wrote to all its tenants informing them that it was no longer carrying out repairs as this was now to be the responsibility of the tenants.\footnote{22} Similarly, DCC were informed of the serious evidence of sewerage problems arising in many of the apartments by the DHCDA therefore it was a ‘violation of national environment and safety regulations’.\footnote{23} The problems were rapidly increasing in Dolphin House with statistics of DCC’s highlighting that almost one thousand maintenance repair requests were lodged for Dolphin House in 2009.\footnote{24} The collapse of the plans left the community devastated as prospects of the complete removal of their problems of sewerage waste, dampness, mould and the health problems suffered by residents as a direct consequence of the problems with the flats had evaporated. The regeneration plans for Dolphin appeared to be in a somewhat limbo as the country plunged into recession leaving little or no funding for such plans and leaving residents in inadequate and appalling conditions. This was compounded by the introduction of Community Action Network (CAN) onto the estate in order to work with residents of Dolphin House in an attempt to address problems of sewerage and dampness in May 2009.\footnote{25}

17 ibid 8.
18 ibid 11.
19 ibid 11.
20 ibid 11.
21 Boyd (n 14) 1.
22 Redmond & Hearne (n 3) 7.
23 ibid 7.
24 ibid 7.
25 ibid 9.
The Introduction of a new approach

CAN brought a sense of participation and ownership as it attempted to introduce a human rights based approach (HRBA) on the estate; a new mechanism utilised in Belfast previously by local authority residents. The inspiration behind this approach was from the Participation and the Practice of Rights Project (PPR) established in Belfast and their success “in securing improvements to local authority housing using a HRBA.” The Rialto Rights in Action Group (RRIAG) was established in May 2009 comprising of a ‘group of local, tenant, community workers (including the regeneration co-ordinator) from the Dolphin Community Development Project and CAN’. CAN was a major factor in the beginning and throughout this project as it provided training to the tenants, helped to organise the human rights hearings, helped facilitate the RRIAG meetings etc as well as facilitating in the initial stage a number of meetings between RRIAG and the PPR in Belfast.

This project was revolutionary as the RRIAG attempted to mirror that of the PPR in Belfast and utilise a HRBA, the first time it was even ‘in the Republic of Ireland within the housing and local community sector’. This HRBA entailed the use of the language of human rights and identifying the issues of the community and identifying any relevant provisions or articles contained within the human rights instruments and applying them to the situation at hand. The RRIAG began to use the language of human rights with tenants “rights holders” asserting their rights to adequate housing and regeneration against “duty holders” (the Housing Minister, DoELG, DCC).

This revolutionary approach is reflected in Kenna & Hearne’s declaration that “housing rights are now part of economic, social and cultural rights within the UN, European human rights instruments”.

The intertwining of housing rights and human rights

In the preceding decades, an emergence of human rights law and regulations had been highlighted by academics as being applicable to housing rights. It is clear even in the Irish state that not only acts take prevalence with regards to housing rights of the citizens with regulations surfacing and now human rights entailing articles that may be utilised in order to acquire adequate housing. Kenna demonstrates the effect of the EU Charter of Fundamental Rights and the ECHR which Ireland legislated for in 2003 in the form of the ECHR Act 2003. However, ‘the most developed universal approach to housing rights comes through the UN and other international human rights instruments’, in the form of the International Covenant of Economic, Social and Cultural Rights (ICESCR). The noteworthy aspect of the ICESCR is that all EU countries have committed themselves to the advancement of housing rights and the rights contained in the ICESCR, European Social Charter and Revised Charter (RESC), EU Charter of Fundamental Rights etc.
One important aspect bestowed on states upon ratification is that identification is key, if the right is not already in place, measures should be done in order to rectify this and implement the right. It can easily be said that housing rights originate and have grown rapidly within the realm of international human rights as they are also ‘specifically included in most UN human rights instruments and are seen as an integral part of economic and social rights’. The earliest recognition of housing rights in international human rights law dates to the UN General Assembly in 1948 with the introduction of the United Nations Declaration of Human Rights (UNDHR) with article 25 entailing the provision for an adequate standard of living: ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing, medical care and necessary social services...’ The explicit use of the word housing in this article dating over sixty years ago indicated the great importance placed upon the shelter and the appropriate standard of housing for a state’s population. It also encapsulates the responsibility of a state that has ratified or signed up to this human rights agreement to act accordingly by it and meet the expectations as set out in the human rights instrument. The issue with regards these human rights instruments lies in the type of state a country is; a dualist state entails the introduction of specific national legislation in order to incorporate all international agreements that have been ratified by that state contained in Article 15 and 29 of the Irish constitution. These articles ‘prevent any laws being created except through the Oireachtas regardless of whether the state has accepted these at international level’. The struggles associated with international human rights instruments/ treaties ‘include the concept of minimum core obligations and progressive realisation of the right according to available resources’. The difficulty with human rights instruments is the actual enforceability of such instruments at domestic level as it ‘depends of the legal and constitutional arrangements for transposing international treaties into national law’. This is just one article which has been recognised by the RRIAG in their implementation of a HRBA. It is not only international instruments that entail provisions regarding housing rights with European rights instruments playing a fundamental role in establishing human rights for its citizens. It is fair to say that ‘housing rights are now firmly accepted by all states at international level through international treaties and agreements many of which are already enforced at individual level’. It can be seen in Europe that housing rights are in fact developing within the EU and the Council of Europe (which comprises of 47 states and introduced the RESC and ECHR). Subsequently, housing rights are being advanced in Europe through various EU treaties, regulations and directives in ‘indirect ways but EU law is directly applicable across the EU at national and indeed local level’. The importance of this can be seen at local level as local authorities have to abide by EU law as Ireland legislated domestically to enforce the ECHR in the form of the ECHR Act 2003.

35 Kenna (n 32) S18
36 Kenna (n 34) 1
37 United Nations Declaration of Human Rights (adopted 10 December 1948 RES 217 A (III) (UDHR) Article 25(1)
38 Kenna (n 32)547.
39 ibid 547.
40 ibid 534.
41 ibid 547.
42 Padraic Kenna, ‘A rights based approach to housing’ (Winter 2013) 3 Housing Ireland: A Chartered Institute of Housing Publication 10, 10.
43 ibid 10.
44 ibid 10.
The influence of Europe on the rights campaign

The Council of Europe established in 1949 is Europe’s oldest political organisation which was established to ‘defend human rights, particularly democracy and rule of law’.\(^\text{45}\) It introduced the European Social Charter in 1961 setting out a number of rights and freedoms and it established this somewhat ‘supervisory mechanism guaranteeing their respect by the states parties’.\(^\text{46}\) The Revised European Social Charter (RESC) came into effect in 1999 and one important aspect contained in Part V of Article E of the Charter that states who adopt it must ensure that it is the aim of their policies to effectively realise the right and principle within the charter without discrimination and this must be done so by all appropriate means.\(^\text{47}\) The European Committee of Social Rights monitors state’s compliance of the rights and principles contained in the charter; this is developed through a process of ‘regular reports from states and the collective complaints system whereby ESCR approved NGO’s can lodge complaints against the state for violations’.

Ireland has ratified most of the articles of the charter except for Article 31- specific right to housing. This article of the RESC was a new right as it illustrated that the state party must undertake to take measures designed to: to promote access to housing of an adequate standard, attempt to prevent homelessness and make housing prices more accessible.\(^\text{49}\) In this article, equal treatment is explicitly referred to ensuring that there is a right of access to housing which must enable all groups in society to access it.\(^\text{50}\)

It seems peculiar that a state that was financially stable at the time of ratification refused to accept an article with regards to adequate standard of housing and that would ‘oblige them to take certain actions in order to ensure the effective exercise of the right to housing’.\(^\text{51}\) It appears somewhat tactical and cost saving measure to the state to evade such obligations as delivered by the Council of Europe with academics pondering over the state’s reasoning. This could possibly be an effective argument to be made before the state and DCC as residents of communities whose regeneration plans have been left in upheaval could question the authority and reasoning of the state to evade such an obligation with regards to housing. It appears in essence to be a reasonable right with no excessive obligations on a state only mere minimum core obligations entailing adequate housing and fair and accessible prices for housing. It would be an interesting argument to test as if it had been ratified perhaps it could have been utilised by RRIAG in their fight for the recognition by the state that they have violated their human rights obligations. It is fair to say that the right to adequate housing is contained in other human rights instruments and if this article had been ratified by Ireland a stronger case could be made by Dolphin residents with explicit reference to adequate housing in international human rights instruments and also in a European context. Article 11 of the charter – the right to protection of health intend for the state parties to ‘remove as far as possible the cause of ill health’.\(^\text{52}\) This provision illustrates that a state must do everything it can within reason to prevent ill health i.e. Dolphin House. However, Kenna illustrates that despite the importance of the charter ‘it remains at a level of international treaty and it is not individually enforceable in a court in Ireland’.\(^\text{53}\)

\(^{45}\) Kenna (n 34) 1.  
\(^{46}\) ibid 1.  
\(^{47}\) Kenna (n 32) 505.  
\(^{48}\) Kenna (n 42)11.  
\(^{49}\) Kenna (n 34)7.  
\(^{50}\) ibid 8.  
\(^{51}\) ibid 5.  
\(^{52}\) European Social Charter (Revised) (adopted 1 July 1999) (RESC) Article 11.  
\(^{53}\) Kenna (n 42) 11.
The residents of Dolphin House together with RRIAG were seeking relevant articles from various human rights instruments in order to facilitate their human rights based approach which would be applicable to their situations. Another agreement which was considered was the European Convention of Human Rights (ECHR), the ‘first international human rights instrument to aspire to protect a broad range of civil and political rights’ as it takes the form of a ‘treaty legally binding on its high contracting parties and by establishing a system of supervision over the implementation of rights at domestic level’. The convention contains articles whereby the European court of human rights will only deal with a matter if all other domestic remedies have been exhausted. However, there are other articles within the convention which could be utilised by RRIAG as article 3 declares that nobody shall be subjected to inhumane or degrading treatment and the state should protect and prevent any such treatment from occurring. This could be applicable with regards Dolphin House as the residents have been left in a devastation after the collapse of regeneration plans. It could also be applied with regards to maintenance and repair requests as requests were frequently unprocessed and in cases where they were processed they were not done so in a timely manner. It could also be said that DCC’s dismissal of many of the sewerage and dampness problems and their indicating that it was the resident’s fault that these problems were occurring highlighting a degrading and somewhat inhumane treatment. Another article which could be used in contribution with article 3 is article 8 whereby it entails a right of respect for privacy family life and home. It is apparent from examination of the articles that the ECHR has no explicit reference to housing right but it has ‘developed jurisprudence...in an oblique way by treating housing rights issues with its expanded protection of life, liberty and property approach’. Ireland has integrated the convention in the ECHR Act 2003, it does not grant explicit right to housing but the act may require a state to provide such adequate housing especially in cases where it would prevent a breach of its obligations under ECHR.

**The use of the International Covenant on Economic, Social and Cultural Rights**

However, one human rights instrument proved more valuable than the rest as the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been utilised and applied to the issues in Dolphin House by RRIAG. This international human rights instrument has proven most effective in the construction of a HRBA as it contains explicit articles concerning health and housing, two of the core issues affecting Dolphin’s residents. ICESCR was introduced in 1966 by the UN General Assembly which has been ratified by almost 150 states and was ratified by Ireland in 1989, contains explicitly a right to adequate housing contained in article 11 illustrating the great importance placed on adequate housing by the UN General Assembly. These articles contained in the UNDHR and the ICESCR illustrate the obligations placed upon state parties to the international agreements ‘to meet a minimum core obligation immediately... and progressively realise the full implementation of the prescribed rights to the maximum of the state’s available resources’.

54 Kenna (n 34) 14.
55 ibid 14.
56 European Convention on Human Rights (3 September 1953) Article 35.
57 ibid Article 3
58 Kenna (n 32) 561.
59 Kenna (n 42) 11.
60 ibid 10.
Article 11(1) of the ICESCR states:

‘The states parties to the present covenant recognise the right of everyone to an adequate standard of living for himself and his family including adequate food, adequate standard of living for himself and his family including adequate food, clothing and housing and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realisation of this right recognising to this effect the essential importance of international co-operation based on free consent’.

This article 11 highlights the need for states to ensure that housing issues are addressed as measures implemented in the state’s development of objectives.61 Kenna illustrates that this could easily be done with ‘a national strategy aimed at progressively realising the right of housing for all’.62 This article should also compel states to make actual and genuine attempts in determining if this right is in place or not and therefore ‘target housing policies and laws towards attaining this right for everyone in the shortest possible time’.63 Despite the year of this agreement, unfavourable living conditions were prevalent in Dublin’s inner city since the 1980’s onwards illustrating a clear lack of regard for these human rights instruments and society’s most vulnerable. The responsibility of the state upon ratification of one of the covenants is great as the state must ‘ensure the compatibility of their national laws with their international duties in a spirit of good faith’.64 It is through ratification of international human rights instruments, covenants or treaties that ‘states become accountable to the international community, other states which have ratified the same texts and to their own citizens etc’.65 These obligations have been seen to be a requirement of minimum core obligations and with regards housing it would entail that everyone had a ‘right to adequate shelter and a minimum level of housing services without discrimination’.66

It could easily be argued in the case of Dolphin House that a minimum level of housing services have not been delivered as maintenance requests were often left unanswered or in cases where repair occurred, it was not done so in a timely manner. The aspect of discrimination could be raised by Dolphin’s residents as the state’s lack of regard for the provision of minimum housing services could be seen as discriminatory. However, this discriminatory element was not furthered by the RRIAG as concentration lay heavily on the issues of adequate housing and health violations under the ICESCR. In 1991, the Committee on Economic, Social and Cultural Rights (CESCR) published interpretations entailing the right to adequate housing as contained in article 11. The committee acknowledged the explicit reference to an adequate standard of housing and living, however, in spite of its ratification the situation in many parts of the world does not reflect the standards that states have accepted and agreed to.67

61 Kenna (n 34) 2.
62 ibid 2.
63 ibid 2.
65 ibid 2.
66 Kenna (n 34) 3.
The committee in this publication also addressed the concept of adequacy as it seems to be the core aspect of the article 11. It can be difficult to ascertain how it should be determined including social, economic and cultural, however, the committee furthers this notion by including legal security of tenure, facilities and infrastructure affordability, location etc.68 With regards to Dolphin House, this notion of adequacy appears to have almost disappeared in the preceding decades as regeneration was the solution to many of these problems and would quite possibly have addressed the adequacy issue. Another acknowledgement by the CESCR was the concept of the right of participation of the residents in the decision making process describing it as 'indispensable if the right to adequate housing is to be realised and maintained by all groups in society'.69 The committee also reiterates the obligations of the state parties under the covenant declaring that it must continue to be delivered in 'times of economic contraction'.70 The committee also highlights the need for adequate housing especially in times of economic hardship as it is probably more necessary than ever. It acknowledges that the advancement of such adequacy of housing for the population will vary from state to state but the 'covenant clearly requires that each state party take whatever steps are necessary for that purpose'.71

**The Right to Health and Dolphin House**

The ICESCR also contains an article on the right to the highest attainable standard of health contained in article 12 whereby 'state parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.72 Consequently, article 12(2) declared that a number of 'steps to be taken by states parties...to achieve full realisation of this right'.73 The combination of article 11 and 12 (housing and health) were a necessary component for RRIAG in identifying relevant issues applying them to relevant human rights articles and setting indicators for progress for the group in order to successfully implement this rights based approach. The link to health problems arising out of the physical problems of the stock were very worrying as the first monitoring report of Dolphin House in 2010 highlighted the severity of the physical problems. Nonetheless, health problems amongst tenants were increasing upon completion of the second monitoring report in March 2011. The statistics indicated that 45% reported respiratory issues for adults of the sixty flats that had been surveyed previously.74 The findings of the second monitoring report illustrated that there was a presence of aspergillus fumigatus which was known to cause various pulmonary diseases in humans.75 These staggering figures highlighted the severity of the situation as violations of articles 11 and 12 were clearly present on the Dolphin House estate. The state, DCC and the relevant ministers clearly failed in their duties to the citizens at a domestic level but so too at an international level as the highest attainable standard of health had evaporated with the physical fabric of the stock causing serious health concerns that could lead to lifelong illnesses.

68 ibid.
69 ibid.
70 ibid.
71 ibid.
75 ibid 7.
The effect of the ICESCR on the RRIAG campaign

The ICESCR highlighted to Dolphin House residents that something else could be done in a positive manner mirroring the continuing work and progress of the PPR in Belfast as training and educating residents from May-December 2009 illustrated a sense of hope with regards regeneration through human rights based approach. A survey of approximately seventy units in the Dolphin House flat complex was conducted between January-April 2010 with residents gathering evidence upon the identification of the issues affecting the estate in the previous months. The group set eight indicators and combined the evidence that they gathered ‘to set a baseline against those indicators’. These eight indicators were ‘time measures to progress towards the human rights standard as defined by UN Convention of Economic, Social and Cultural Rights in line with the principle of progressive realisation’. This concept of progressive realisation entails that a state must ensure a remedy in a time measured and effective process whilst also recognising that a state may not be immediately be able to rectify a violation as it is not always in a position to do so. The initial survey conducted included door to door survey as an initiative with the intention to highlight the severity of the problems on the estate and provide an accurate and good sample to DCC rather than a representative snap shot of the whole complex. A comprehensive survey of the seventy flats was conducted with ‘testing of the waste water and the spores from the mould and dampness’.

The indicators developed by the RRIAG and residents included the number of residents reporting dampness, mould, sewerage invasions or smells, reporting dissatisfaction with responses to issues of sewerage or damp, number of residents reporting no information given on how these issues were to be addressed, number of residents concerned about health because of sewerage or damp, number of residents reporting being given no information or explanation why problems occur and the number of those reporting being not included in the decisions affecting them with regards sewerage and dampness. These indicators were to be utilised to ‘measure the compliance of the state with its obligations under the convention of the Economic, Social and Cultural rights’. The indicators were realistic reflecting the real and reoccurring issues in the complex and these were the problems that were affecting the residents most frequently. These indicators contained a human rights standard to coincide with statistics with the utilisation of the CESCR General Comment 4 on the right to housing as General Comment 4 Paragraph 8(d) was frequently cited throughout the monitoring reports. The importance of this paragraph is illustrated in its wording as it is most applicable to the situations in Dolphin house. The evidence collected and compiled was subsequently linked to the human right standard as ‘adequate housing must provide inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors’. This comment explicitly highlights that adequate housing should not contain any of these hazards yet they are somewhat a mirror image of the daily occurrences in Dolphin House with 72% reporting dampness in the third monitoring report of 2012 and 63% reporting mould.

76 Boyd (n 14) 3.
77 The Rialto Rights in Action Group, ‘Report on the third monitoring of housing conditions in Dolphin House, Rialto Dublin 8’ (June 5 2012) 3.
78 ibid 3.
79 Boyd (n 14) 4.
80 The Advocacy Institute (n 26) 69.
81 RRIAG (n 77) 3.
82 ibid 5.
83 Committee on Economic, Social and Cultural Rights General Comment 4 (n 67).
84 RRIAG (n 77) 4.
Another indicator identified by RRIAG was the number of residents reporting sewerage invasions or smells and this was linked to human right standard as contained in General Comment 4 paragraph 8(b) which declared ‘an adequate house must contain certain facilities essential for health, security, comfort and nutrition...safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services’. As of June 2012, there was 57% of the seventy five flats previously surveyed reporting such inadequacies despite mere sanitation facilities as being a basic right. Despite DCC’s housing maintenance policy stating that ‘maintenance department were responsible for managing, repairing and controlling of city council rented housing... and are supposed to carry out structural repair’. The reference to health within General Comment 4 Paragraph 8 (b) highlights the importance of the protection of one’s health which has been so idly forgotten about in Dolphin as the long term exposure to such mould and sewerage invasions and smells have ultimately led to a deteriorating state of health for many of the residents. This consequently contravenes human right standards and a state’s obligation under article 12 of the ICESCR to the highest attainable standard of health.

Another indicator developed by RRIAG was in relation to the number of residents reporting dissatisfaction with response to issues of sewerage and damp. This was linked to the human rights standard illuminating that administrative remedies will be adequate in many circumstances rather than a judicial remedy as such remedies should be affordable, accessible and timely and effective. The issue of health concerns was also illustrated and documented in the third monitoring report with 57% of adults and children reporting illness related to grave damp/mould/and sewerage and 52% suffering respiratory disorders. A comprehensive survey undertaken by city council between June-December 2011 highlighted the severity of the conditions and mirrored the findings of the monitoring reports conducted by RRIAG. The survey discovered that over half of all the flats were ‘affected by some level of dampness with 114 flats rated high dampness level “red”’. These findings ultimately illuminated to DCC that the problems were arising from ‘structural problems such as cold walls, insufficient ventilation and insulation and overcrowding’. This was a groundbreaking acknowledgement by DCC as prior to this tenants were continuously being told by DCC employees and officials that many of the problems that were occurring were the fault of the residents; claiming that tenants were not ventilating the flats properly and that drying clothes indoors without proper ventilation was a cause of the problems.

The Public Human Rights Hearing

All of these benchmarks and indicators were firstly presented upon the first monitoring report and the first Public Human Rights Hearing of Dolphin House. The human rights’ hearing was a means of pursuing a HRBA to restart regeneration plans and by attempting to highlight the violations of the state of the right to adequate standard. The focus for the public human rights hearing was identified with the ‘housing issue and specifically sewerage and

85 Committee on Economic, Social and Cultural Rights General Comment 4 (n 67) Paragraph 8(b).
86 Faughan (n 8) 32
88 RRIAG (n 77) 8.
89 RRIAG (n 77)10.
90 ibid 10.
dampness” as the core issues to be highlighted, addressed and discussed. The organisation of the hearing was methodical with special arrangements in place for the media during the hearing in order to facilitate interviews with residents as well as visits to the worst affected flats in order to capture visually the deplorable conditions. The desired effect was for the state to accept responsibility that it had failed to comply with their human rights obligations through the hearing and with the media conveying the message that conditions were unacceptable and that the state had been denying their responsibility under human rights instruments. The hearing took place in St. Andrew’s Community Centre in Rialto on May 25th with four components consisting of the lived experience of the residents, commentary from human rights experts including Dr Maurice Manning and Dr Padraic Kenna amongst others, analysis of housing policy and issues and the official launch of indicators of progress towards the human rights standard. The input from the high profile human rights experts illustrating their extreme support for this cause and their validation of the HRBA and that there was in fact the presence of violations due to the current conditions in the complex. It was quite clear that the state was not in compliance with their obligations under the ICESCR, namely articles 11 and 12 with regards housing and health and the interpretations of these in General Comment 4. The presence of Joe Duffy overseeing the panel debate also contributed to the success of the hearing and it also identified the responsible parties i.e. Dail Eireann, Minister for Environment and Local Government, Minister for Housing, DCC, and Assistant City Manager for Housing and the Housing Maintenance Department. The presence of Dr. Maurice Manning at the public hearing, as the president of the Irish Human Rights Commission, had great importance for the campaign as he advocated the measures that the government should be undertaking in order to comply with human rights obligations. Dr. Manning’s declarations included that to satisfy both essential minimum levels with regards to the right to adequate housing, to take steps to “achieve progressively full realisation of the rights” as well as using the maximum available resources. Dr. Manning advocated that the right to adequate standard of housing is clearly spelt out, however, problems could arise as he described that the state could have “two get out of jail cards” to use—subject to resources available and progressive realisation. Despite this Dr Manning illustrates that resources were there during the Celtic Tiger years but the persistent problems were disregarded and the human right standard under the ICESCR had been in place for over two decades and yet no progress had been made.

Undeniably, it has to be recognised that the language used in policy and the proposed acts to be carried out are not always out into practice therefore the use of the term “progressive realisation” is so powerful as it means a responsibility is placed upon states or ministers to ensure progress is actually made and seen on the ground. One of the so called “get out of jail cards” with regards to resources is contained within the ICESCR in article 2(1) indicating that states must “take steps individually and through international measures...especially economic and technical to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the present covenant...”

92 ibid 7.
93 ibid 10.
94 Boyd (n 14) 4.
95 Faughan (n 8) 20.
96 Human rights notes manning 40.
97 Faughan (n 8) 17.
98 ibid 17.
99 ibid 21.
100 International Covenant on Economic, Social and Cultural Rights Article 2(1).
It is well accepted that the ‘full implementation of all human rights does require positive action taken by the state...and will necessitate an allocation of resources’. This article is further strengthened by the CESCR General Comment 3 whereby it illustrates that even in times of resources constraints it may actually be more important and necessary than ever to ensure human rights are complied with especially for societies most vulnerable. It indicates that regeneration plans should still be in place to a certain extent or maintenance issues should be tackled quickly as it is necessary to comply under the ICESCR. It specifies that a lack of resources is not a valid reason for evading human rights obligations therefore regeneration plans should not have been completely scrapped and a policy should be put in place in order to determine what the maximum resources that are available from DCC and/the state in order to facilitate necessary refurbishment or smaller scale regeneration plans. The problems experienced in Dolphin house including mould, dampness and unsanitary conditions are a clear violation of the right to adequate housing but also General Comment 3 as the state should utilise the maximum resources available to it in order to abide by domestic legislation under the Housing Acts 1966-2009 as a social landlord and under international human rights law. The hearing highlighted the vast efforts of the human rights campaign with the implementation of the HRBA entailing a series of queries questioning the content of the right, questioning who are the rights holders and duty bearers, can the right be fulfilled by the duty bearers etc. Ultimately HRBA ‘uses human rights language as the basis on which to develop policy, deliver service and campaign for change’. It is ultimately a method of experiment to those people or groups in society to find a necessary confidence and develop skills to utilise their right and hold the duty bearer accountable.

The overall significance of the utilisation of the HRBA was the realisation by tenants that the disregard for their living conditions by DCC and the state was a breach of the state’s obligation under international human rights agreements. In January 2011 RRIAG met and consulted with the UN Independent Expert on Extreme Poverty and Human Rights, Ms Sepulveda, whom indicated extreme support for the work of RRIAG and also ‘stressed the importance of protecting human rights in time of economic adversity’. The HRBA was beginning to appear successful with the success of the rights hearing, monitoring reports highlighting the serious conditions of Dolphin House as RRIAG commissioned an independent engineering report which highlighted that ‘no cavity or insulation within the walls...and current vents were inadequate’. This ultimately illustrated that the problems were not the fault of the tenants as previously had been declared by DCC. The submission to the Universal Periodic Review in 2011 illustrated these issues and the concept that it would be much more costly to the state with the increasing frequency of health problems rather than if the problems were addressed not. The shock tactics also compelled the Assistant City Manager of DCC to undertake that the problems of sewerage invasions and smells and dampness would be addressed and regeneration plans were still on going for Dolphin House but DCC’s reduced budget made it difficult to ascertain the timing and

102 Committee on Economic, Social and Cultural Rights General Comment 3 supra n15 @ paragraph 12.
104 ibid 12.
105 ibid 12.
106 Kenna & Hearne(n 27) 10.
107 Boyd (n 14)5.
108 ibid 5.
109 ibid 6.
the scale the project would ultimately take. DCC also agreed that consultation with residents would be undertaken ‘through a maintenance group of a sub-committee of the JRB’.

Hearne indicated the progress of the HRBA as ‘RRIAG contributed to realising housing rights for the social housing tenants suffering inadequate conditions in Dolphin House’ in quite a short space of time. This new approach unquestionably put the necessary pressure upon the state to recognise the substandard housing of the flat complex and that the state was in violation of its human rights obligations after years of denying any responsibility.

Subsequent to the public hearing and the monitoring reports the campaign ultimately compelled officials of DCC to meet with RRIAG and residents regularly as DCC ‘accepted its responsibility in addressing the serious problems of substandard housing conditions’. The indicators developed for Dolphin House effected the addressing of the right to adequate standards of housing and health as this approach sought to ‘empower the rights holders to advocate for their rights based on indicators and benchmarks that measure compliance’

**RRIAG’s success**

This recognition by DCC materialised in DCC’s acceptance of the specifications set out by independent architect commissioned by RRIAG in all of the flats as DCC ‘undertook a programme of refurbishment, to a new standard, forty of the worst effected units’. This undertaking by DCC demonstrated the effectiveness of the HRBA implemented by RRIAG as the worst effected units were to be refurbished and it was an acknowledgement and an acceptance by DCC of the inadequacies with regards the housing stock. This new approach ‘provided legitimacy to the tenant’s claims’ as the public hearing received great media attention which further pressurised the state to act. The publication of the report of an independent report on the question of human rights and extreme poverty by Ms Sepulveda in 2011 addressed the issue of poverty whilst acknowledging the economic crisis in Ireland. The independent expert demonstrated that ‘adequate accommodation is an obligation with which Ireland must comply without delay giving priority to vulnerable groups’. Sepulveda indicated that Ireland must ‘take measures to solve long term housing needs in the country from a rights based approach’.

110 Faughan (n 8) 26.
111 ibid 26.
113 ibid 3.
114 The Advocacy Institute (n 26)70.
115 Hearne (n 29) 177.
116 ibid 11.
117 ibid 12.
119 ibid 20.
The significance of the independent expert’s declarations is clear as she validates the approach taken by RRIAG in order to effectively realise their human rights. This validation is very significant as it endorses the HRBA campaign utilised in attempting to restart abandoned regeneration plans for the estate as approach is now internationally recognised and validated by the human rights experts, the UN independent expert on poverty and human rights in the report with regards Ireland in 2011. It can easily be seen from the successes and progress in Dolphin House that this new approach is effective as it compels states to actually acknowledge their human rights obligations and that ratified agreements inflict a responsibility for states to act accordingly and within their maximum available resources for the provision of such human rights. The independent expert also demonstrates that Ireland as a state party to the ICESCR ‘has an immediate minimum core obligation to ensure the satisfaction of at the very least minimum essential levels of economic, social and cultural rights’. The independent expert’s report is a great recognition by the UN General Assembly 17th Session of the Human Rights Council illustrates that Ireland has obligations which it must abide by and it reiterates that economic adversity is not a valid excuse to deny responsibility or deny the provision of minimum services; it indicates that the maximum amount of resources available must be utilised to the best of the state’s ability.

The independent expert also highlighted that the state should not ‘take retrogressive measures in the protection of economic, social and cultural rights’ as it would impact upon the most vulnerable in society. One of the last recommendations included the strengthening of social protection, social services and infrastructure for the groups in society that need it most. This report was significant to the HRBA as it acknowledged the lack of regard that the state and its organs had given to the Dolphin House estate and its persistent problems in the past few decades. The report also illustrated that Ireland as a state party to the ICESCR had not been complying with its obligations under the rights instrument as clear violations were present. It validated and contributed to the HRBA by RRIAG by instilling confidence in the residents and their work highlighting that their campaign is factual, successful and that its progress is on-going.

The Future for Dolphin House

The HRBA may be ‘a conceptual structure used to promote and protect human rights’ but its utilisation of this structure into practice makes it an effective process as it encompasses the residents advocating their rights against the state illustrating the process of participation as epitomised within the ICESCR. This approach involves setting benchmarks, indicators and a timeline of plans, programmes and testing the overall progress with effective monitoring and enforcement. This approach assisted those marginalised residents ‘to gain access to the public sphere and helped conceptualise and articulate demands in a publicly acceptable and coherent way’. The efforts of RRIAG in their lobbying politicians and DCC officials and the attempted negotiations with senior government and DCC officials in order to compel those who had the power to use the resources available to them to rectify the situation in Dolphin House.

120 ibid 7.
121 ibid 8.
122 ibid 22.
123 ibid 22.
124 Kenna (n 32) 571.
125 ibid 572.
126 Kenna & Hearne (n 27) 12.
There was an emergence of individual litigation subsequent to the public hearing with most cases being settled outside of court, however, this was completely independent of the RRIAG.\textsuperscript{127}

One such Dolphin resident took a case that reached the court in 2011 with the circuit court awarding the ‘disabled tenant €15,000 damages against DCC’\textsuperscript{128} as the judge ruled that the flat in question was ‘unfit for human habitation and in breach of council’s contractual duty of care under the Housing Acts’.\textsuperscript{129} It could easily be said that the HRBA in contrast to litigation proved a far better and effective remedy as it strengthened relations between DCC and its residents. The process itself compelled the state and DCC to acknowledge the campaign of the community something individual litigation would not have achieved. It is unknown the exact number of individual cases taken by Dolphin House residents as DCC refused to comment when contacted in July 2013 claiming proceedings were on-going and a statistic could not be provided. The ultimate difference between the individual litigation and the HRBA lay in the community action which occurred whereby the RRIAG, residents and regeneration co-ordinator ‘asserted their rights collectively and they set the standards, rather than layers, state officials, court or UN institutions’.\textsuperscript{130}

As prior to the third monitoring report, the Minister of State, Jan O’Sullivan in March 2012 declared the commitment of the government to the regeneration of estates in the most disadvantaged areas highlighting the need for such plans to reflect minimum housing standards.\textsuperscript{131} This commitment by the minister indicated that progress was occurring through the HRBA combined with the declaration that DCC were to refurbish forty of the worst effected units on the estate. Consequently, from June 2012 the community engaged with DCC in the construction of a master plan for regeneration as a timetable was provided for regeneration to ‘commence within two years based on comprehensive refurbishment that would address the physical housing conditions…to be fully funded by the state’.\textsuperscript{132} The progress of the HRBA is quite staggering as four years of hard work, setting standards, setting indicators has led the group to the positive situation it is in in 2013; whereby the proposed forty units for refurbishment have been removed and relocated to refurbished units whereby the list was agreed upon by the council and RRIAG.\textsuperscript{133} Indisputably, there are still outstanding issues especially the dampness possibly due to the age of the existing stock and the lack of necessary maintenance.

**The “new” Regeneration**

The concept of regeneration has been updated and changed to a certain extent as a whole with new indicators, length of time it takes to deliver. It also now includes the question of whether it does develop education, employment, levels of illiteracy and community benefit clauses in order to train and employ residents of the community in an attempt to reduce unemployment in the area.\textsuperscript{134} It includes a physical and social regeneration whereby the sustainability of the community is vital to the overall regeneration plans.
This is a ground-breaking measure as Dolphin House regeneration plans had initially evaporated and due to the campaign, regeneration master plan has been developed not only for the physical regeneration of the flat complex but the social regeneration in order to construct a sustainable community. These concepts can now be considered as the previous pressures arising out of the land values of the grounds of the estate were the pivotal aspect of the regeneration plans as the higher the values the more the developers would engage with the project; however, funding is to be fully provided by the state. It is quite clear that who the HRBA that this would not have materialised as the pressure exerted on the state and DCC by RRIAG had a positive impact as DCC have become quicker to respond to maintenance requests as they have acknowledged these responsibility as a local authority and social landlord to act accordingly to their international human rights obligations under the ICESCR and other instruments.

The reasoning behind the regeneration master plan lay in the cost of the refurbishment process that it appeared too costly in comparison to complete regeneration, however, the worst effected units needed to be addressed therefore regeneration plans were deemed to be the positive solution. It appears the council has initiated a new means of regeneration for the estate instead of complete demolition; there will be a ‘combination of demolition and new building, along with reconfiguration and refurbishment of flats’. In this new type of regeneration, planning permission has been sought with the prospects that the project could entail four phases which could take up to 10-15 years to complete with the last units for regeneration could be waiting a long time.

The master plan includes details of the first phase with the delivery of approximately one hundred “new” houses as ‘some 72 existing flats will be reconfigured to make 63 larger apartments and 37 additional houses and apartments will be constructed’. The plan addresses the sewerage problems experienced by the estate for decades with the replacement of all the systems and drains. The plan also entails the possible construction of new blocks to create enclosed internal courtyards which would undoubtedly reduce anti-social behaviour and increase the security for the estate.

It can easily be said that the role of the HRBA is obvious and enormous as the empowerment of the tenants to further this campaign in the pursuit of their basic human rights generated a campaign that attained the necessary allocation and action from the state, DCC and Minister for Environment and Local Government and Minister for Housing. The acknowledgement of the success of the human rights campaign is clear from various academics, media and the state, it must be duly noted that “it was a complex process that required considerable resources, publicity, access to expertise and active and engaged tenants”. Undoubtedly there is a mountain of human rights law internationally and it can be difficult to ascertain what an article really means and entail as conflicting agreements may alter a definition or an interpretation of an article. However, the manner in which the RRIAG firstly identified their issues of inadequate housing and health concerns and then discovered international human rights articles ratified by Ireland and utilised this from their inspiration from the PPR in Belfast ultimately worked effectively and efficiently.

135 ibid.
136 ibid.
138 As discussed with Dr Rory Hearne, Regeneration Coordinator in Dolphin House on 2 July 2013.
139 Kelly (n137).
140 ibid.
141 Kenna & Hearne (n 27) 13.
The right to adequate housing with interpretations by CESCR in General Comment 4 covers measures included that to ‘prevent homelessness... address discrimination, focus on the most vulnerable and marginalised group... and guarantee that everyone’s housing in adequate’.\textsuperscript{142} Kenna & Hearne highlights that the utilisation of HRBA as seen in the case of Dolphin House ‘contribute in the process of holding state or organs of the state accountable at local level for their international human rights obligations’.\textsuperscript{143} The legitimate argument made through this approach compelled the state, DCC and relevant ministers to accept for their international human rights obligations. The campaign illustrated that housing rights are not simply those conveyed in domestic statute but also are human rights issues as ignorance of international human rights obligations have propelled housing rights into a human rights forum.

The effectiveness of the campaign was due to a combination of factors including the influence and introduction of CAN into the campaign with their expertise, support and resources providing adequate and effective human rights training to the residents in order to establish RRIAG. The introduction of community development work and RRIAG and residents raising the issues and the applicability of these issues to the human rights standard as contained in the relevant human rights instruments. A key component to the success achieved by RRIAG and HRBA was the hard work of Dr Rory Hearne, the regeneration co-ordinator for almost six years in Dolphin House. The endorsement by the human rights expert at the public hearing, the compilation of the monitoring reports and RRIAG organisation of the hearings have been immense in the overall campaign which have ultimately forced the state into recognition of the political human rights campaign and accept responsibility and rectify the persistent problems of Dolphin House. It is clear that great progress has been made in Dolphin House as the regeneration plans have been sent forward for planning permission. The proposal for four phases of reconfiguration and refurbishment highlights the effectiveness of the campaign as it paves the way for the possibility of other communities utilising this approach in an attempt to have their maintenance problems addressed and the basic right to adequate housing addressed. The community of Dolphin remains strong and close knit community who have regular human rights meetings with presence of CAN and the regeneration co-ordinator and various community workers from the complex itself.


\textsuperscript{143} Kenna & Hearne (n 27) 14.
The Success of the HRBA

Hearne highlight the possibility of using human rights as it ‘provide a motivation for doing things difficulty and better by doing it we are fulfilling our international obligations which is something positive to aim for’.\footnote{144} This is exactly what has occurred in the political human rights campaign of Dolphin House as by implementing a HRBA, the community has in essence developed a new means to achieving regeneration. The positive aspect of this rights based approach to regeneration is that the number of social housing units in the complex remains as with previous plans social housing units were reduced in order to maximise land values for the developer to construct private units in order to make a profit. This human rights based approach to regeneration is a new mechanism for communities to effectively utilise in order to attempt to restart any regeneration plans that have been left unfinished due to the economic crisis. It is highlighted in the case of Dolphin House and the RRIAG how this approach can effectively and efficiently operate as it deals with the responsibility and the acceptance by the state and any of the relevant organs of the state of their international human rights obligations. Ultimately the human rights campaign is about ‘building awareness of human rights obligations within civil and political service’.\footnote{145}

Ultimately this toolkit can be altered or redefined to ‘empower social movements and practitioners to adopt these approaches and promote their application within national and local regeneration programmes’.\footnote{146} Undoubtedly the challenge of such an approach is ensuring such obligations are met and complied with as states, such as Ireland frequently attempt to evade their international human rights obligation and regeneration plans with the claim of a lack of resources due to economic constraints. This rights based approach illustrates that regeneration can restart and operate especially on estates whose on-going problems have been left unsolved and whose housing conditions are in violation of international human rights instruments. It is quite clear that rights based approach may be the ultimate desired option for regeneration plans for social housing estates in the future as the provision of funding from the state ensures the number of social housing units remain therefore the sustainability of the community remains intact. However, the success of RRIAG and their implementation of the human rights based approach has enabled regeneration for the Dolphin House estate in Rialto and has set a standard for other community groups attempting to acquire adequate conditions to utilise this method to compel the state to accept responsibility and act.

\footnote{144}{Hearne (n 91) 2.}
\footnote{145}{ibid 2.}
\footnote{146}{Hearne (n 29) 183.}
Abstract:
This article will examine the structure and functions of the body charged with the sale of Greek state assets, known as the Hellenic Republic Asset Development Fund, and to speculate as to the impact of its operation and transactions on economic and community development in Greece. It will be contended in this article that the operation of the fund is contrary to the goal of core CED principles which seeks to operate as a countervailing movement against contemporary theories of neo-liberalist capitalism by promoting the operation of efficient economic markets that provide publicly desirable goods as well as revenues. Further this article attempts to argue that while in principle, the Greek decision to sell significant state assets in an effort to alleviate sovereign debt could be viewed as a paradigm opportunity to develop a sustainable model of CED in practice. However the model adopted by the fund to date, through its exclusion of sustainable development and social concerns, has contributed to a culture in which the society which emerges from the financial crisis has the potential to be characterized by exacerbated inequality and concentrations of wealth among discrete sectors of the population at the expense of ordinary citizens dispossessed of basic economic resources and community services.

Keywords:
TAIPED, Greece, Privatization, European Commission, Fuel Poverty Access.
Introduction

The objectives a government may seek to achieve through the privatisation or sale of state assets are largely predicated on improved efficiency and debt reduction. The goal of Community and Economic Development Law\(^1\) is more defined by ends than by means. Primarily CED seeks to promote the operation of efficient economic markets that provide publicly desirable goods as well as revenues. CED may also be viewed as a countervailing movement against contemporary theories of neo-liberalist capitalism as described by Harvey which through privatisation, financialisation, management and manipulation of crises and state redistributions result in a centralisation of wealth and power with concentrated elite at the expense of the general public.\(^2\)

In principle, the Greek decision to sell significant state assets in an effort to alleviate sovereign debt\(^3\) could be seen as an attempt to achieve a public good- through reducing the burden placed on ordinary citizens to contribute directly to recovery. Indeed, had the system adopted espoused a culture of; value-maximising allocation,\(^4\) transparent selection and procedure or long term sustainability the Greek government might well have become a leading light of CED practice in Europe. The reality of the privatisation scheme adopted however is far from this ideal.

Both the socialisation of Greek sovereign debt and the creation of Hellenic Republic Asset Development Fund, the body charged with the sale of state assets in the wake of Greece’s bailout have sought aim which seem prima facie opposed- through socialisation of debt the Greek government in effect made private debt a public burden shouldered by the taxpayer while simultaneously seeking to sell key state assets which are, in its contended, both socially profitable and economically integral to the Greek citizenry, notably those on its margins. In an examination of the manner in which assets for sale have been identified and redistributed it is, in fact, challenging to discern, a long term benefit to the Greek population the balance favoring, rather, the private bodies now purchasing various state holdings for competitive prices.

This article will examine the structure and functions of the body charged with the sale of Greek state assets- The Hellenic Republic Asset Development Funds\(^5\) and speculate as to the impact of its operation and transactions on economic and community development in Greece.

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1 Henceforth CED.


3 For the purposes of this piece Greek sovereign debt includes all Greek public debt held, including debt held by private creditors which is projected to be completely socialised (i.e. borne by the taxpayer) by 2014. see Nouriel Roubini “Greece’s Private creditors are the Lucky Ones” The Financial Times 7th March 2012


5 Henceforth the TAIPED.
The Emergence of TAIPED

Pursuant to Law 3986/2011 the Greek state has transferred a significant quantity of its most valuable property holdings to the Hellenic Republic Asset Development Fund (TAIPED). The fund has been delegated by government to oversee the sell-off, development, privatisation or liquidation of state assets and public infrastructure including public utility companies, public transport, airport terminals, ports and marinas. Greece alone among EU member states has established such a fund to mitigate its national debt. Debate surrounding the creation of the TAIPED was largely absent, most probably due to its proposal as Greece fought off the mounting panic as it sought to negotiate its second bailout package in as many years as well as political upheaval in the wake of unpopular government reductions to national pension systems and widespread austerity measures. Indeed it is ventured that the subsequent unpopularity of the fund indicate that it is largely due to this atmosphere of divided attention that the law was passed with so little opposition- and why similar legislation has not passed in other jurisdictions.

Function and Powers of the Hellenic Republic Asset Development Funds

The fund operates under private law while its board enjoys final approval of all decisions. An examination of the TAIPED’s articles of association reveals a body largely independent from State influence and oversight whose powers rest exclusively with the fund’s five board members - comprised of Greek and Troika officials, two of whom, the Chairman and CEO, are approved by a parliamentary committee for a term of five years. The remaining three members are appointed by the General Shareholders and include one observer each appointed by the Eurozone and the European Commission. There is little formal requirement for nomination or appointment to the board though the current serving members are largely former managers of Greek enterprises or banks.

9 Ibid.
12 See complaints by organisations such as The Marangopolous Foundation for Human Rights which has made submissions to both the Council of Europe as well as the UN on the objectionable nature of the funds operation. See https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC3QCaseDoc1_en.pdf (accessed 15/11/13) and http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&ved=0CDIQFjAB&url=http%3A%2F%2Fwww.mhrm.gr%2FArchive%2FUNHRC_OualStatement_TAIPED_2013.doc&ei=RziGUsGeC4rO0QWbioGQAg&usg=AFQjCNHEid7dvgNFp3W6hO6TeMrIQw (accessed 14/11/13).
14 Seehttp://www.hradf.com/en/the-fund/core-team In the Greek context the troika refers to the triptych of officials from the International Monetary Fund, European Central Bank, and European Commission who represented the European Unions financial interests in seeking to resolve or ameliorate the Greek crisis.
15 See http://www.hradf.com/en/the-fund
16 As the fund is a societal anonyme of which the Hellenic Republic is the sole shareholder such a measure amounts to indirect appointment by the government of Greece. See http://www.hradf.com/en/the-fund/core-team and http://www.hradf.com/en/the-fund
However, the reality appears to be that the composition and operation of the board offer a politically expedient means for the government of allocating responsibility to an apparently autonomous third party for unpopular sales, decisions and the consequences arising therefrom.

**Governance and Transparency**

Although the fund has the tacit support of the European Commission and Troika through their participation in its operation\(^\text{19}\) it has been the subject of considerable controversy in recent months. “The Troika is interested in collecting immediate revenue and nothing else” stated Anna Zoirou, was dropped abruptly from the TAIPED’s board of directors in April, 2013.\(^\text{20}\) Following her removal Zoirou publicly protested against the fund’s willingness to say “yes to everything,” the leadership’s refusal to tape-record meetings (which are held in English), the absence of transparency in its proceedings and its lack of concern for the long term economic interests of the country.\(^\text{21}\)

Zoirou’s comments followed the resignation of TAIPED director Takis Athanasopoulos amid ongoing controversy surrounding the perceived lack of transparency and poor financial outcomes achieved by the fund and its board of directors\(^\text{22}\) and immediately after reports the Hellenic Football Prognostics Organization\(^\text{23}\) (among the most significant assets on TAIPED's books) was threatened with a lawsuit for “non-transparent procedures” by two potential buyers.\(^\text{24}\)

Athanasopoulos’ successor in leading the fund Stelios Stavridis was forced to resign himself only months after taking office over “ethical” concerns. This followed upon his use of a private jet, belonging to a Greek oil magnate, and successful purchaser of a 33% stake in Opap, the state gambling company just hours after the €652m ($872m) deal for its privatisation was signed.\(^\text{25}\) Indeed, following his resignation significant concerns were raised over how, as a former businessman, he might have been expected to maintain the independence necessary to advocate on behalf of the state for the most favorable prices with former colleagues.\(^\text{26}\) Such concerns ally with the potential theoretical critique of TAIPED noted at the outset of this piece under which the funds privatisation and redistribution sit uneasily with conceptions of CED and more easily with the neoliberal capitalist policies of privatisation and redistribution described by Harvey.\(^\text{27}\)

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\(^{21}\) Ibid.

\(^{22}\) Athanasopoulos resigned citing “personal dignity” following being named in a felony lawsuit against the former board of directors of Greece’s Public Power Corporation (DEH), in which he has been charged with negligence for his part in the 2007 commissioning of a power plant that allegedly resulted in losses exceeding 100 million euros for the Corporation. His successor Stelios Stavridis was forced to resign on August 18th following further allegations of inappropriate relationships with businessmen. See [http://greece.greekreporter.com/2013/08/18/stournaras-wants-taiped-chief-stavridis-out/](http://greece.greekreporter.com/2013/08/18/stournaras-wants-taiped-chief-stavridis-out/) (accessed 19/8/13).

\(^{23}\) OPAP.

\(^{24}\) Greece edges closer to privatisation target with state lottery deal Kerin Hope July 30 2013 [http://www.ft.com/cms/s/0/2e56939e-f934-11e2-a6ef-00144feabdc0.html#axzz2bCevVRd4](http://www.ft.com/cms/s/0/2e56939e-f934-11e2-a6ef-00144feabdc0.html#axzz2bCevVRd4)

\(^{25}\) “Greek Privatisation: an Already floundering agency loses its boss, again” The Economist August 24th 2013, print edition.


\(^{27}\) Harvey ibid.
Concerns are also growing following a statement during parliamentary questions by opposition leader Alexis Tsipras who attacked TAIPED’s value estimates claiming the fund had devalued Greek assets from 285 billion euro pre-crisis, to 9.5 billion and called on the Greek government to cease TAIPED’s “illegal” and “unconstitutional” operations. Indeed, TAIPED has closed only one sizeable deal during 2013 - the €400m sale of Desfa (the natural gas grid operator) to Socar, the state gas operator of Azerbaijan. The fifty billion euro revenue target set by international creditors for 2016 has previously been cut to fifteen billion- to date only 5 billion has been raised. The much hyped sale of the state’s gas utility, Depa, which had been expected to raise close to one billion euro, failed to materialize when Gazprom, the only shortlisted bidder, withdrew amid concerns voiced by the European Commission regarding competition issues.

Such cut-price sell offs have been decried in other jurisdictions, notably in relation to the sale and privatisation of the UK government’s 60% share in the Royal Mail in October 2013. Analysts at Cancord Genuity had suggested that the Mail is worth as much as 80% more than the price tag assigned to it by the government, fears that were confirmed when the share price soared 38% on the first day of trading. The UK government claimed privatisation would allow greater access to private capital, which the state cannot provide and will, in turn, enable the mail to adapt to changing customer demands and provide a more efficient service. In contrast research suggests that in reality publicly listed companies focus on short term rather than long-term concerns and returns implying the mail may continue to face significant challenges in the future. Such concerns are resonant in the Greek case in which short-term benefits have been traded off against suspect long term rewards for citizens, of greater concern in the case of TAIPED is the integral character as well as the breadth of the state assets involved.

**Impact of TAIPED Actions on Communities in Greece**

In light of the present economic climate in Greece the sale of state property and assets to alleviate national debt is hardly surprising. However, the operations of the TAIPED warrant examination due to the potentially negative impacts they harbor for community and economic development in that jurisdiction. The specific properties where a sale may precipitate such negative impact include; items essential for the defense of Greece's national sovereignty such as ports, airports, and consulates, as well as public-benefit enterprises such as communication services.

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28 For example TAIPED estimates the value of OPAP as not exceeding 800 million euro despite revenues of 258 million euro in the first quarter of 2012. Greece edges closer to privatisation target with state lottery deal Kerin Hope July 30 2013 [http://www.ft.com/cms/s/0/2e56399e-f934-11e2-a6e6-00144feabdc0.html#axzz2bCevVRd4](http://www.ft.com/cms/s/0/2e56399e-f934-11e2-a6e6-00144feabdc0.html).


30 “Greek Privatisation” ibid.


provision of water and electricity and public transport. Indeed, in the United Kingdom the privatisation of gas and electricity both caused spikes in costs.

Alternative sustainable development models involving public-private partnerships or indeed a process of poverty proofing through the use of a value-maximising allocation model which sought to engage in social impact assessments as part of the sale process. The incorporation of such measures into the sale process used by TAIPED may have gone some way towards assuring a more sustainable model of development of those services and assets that have now been privatised.

The new head of TAIPED remarked in September 2012 that Greece had the potential to become “an El Dorado for investors” as it moved forward with the sale of infrastructural assets. It seeking such treasure the practicalities of the Greek people’s long term economic and community development must not be forgotten and should form the central policy imperative of government.

In Greece 21.4% of the population are viewed as being at risk of poverty with one of the highest rates of income inequality in the European Union in 2011. In addition the rural population of Greece accounted for some 39% of national population in 2010 and is heavily dependent on traditional primary sector activities such as subsistence farming and fishing as well as a significant reliance on tourism. In such communities the most immediately appreciable impact of the sale of certain of the assets currently with TAIPED is the potential for the creation of greater employment in their development and use and an associated increase in foreign investment in the jurisdiction.
Certainly the sales of certain smaller ports, airports and TRAINOSE as well as substantial lands for development appear to realistically offer such opportunities. Additionally, in completing though employment may be created, the nature and standard of such employment must be considered and certain minimum wage and employment conditions ensured by the government. In particular, the need for engagement with youth unemployment in Greece is exceptionally pressing with Greece currently experiencing the highest rate of unemployment for citizens under 25 of any European member state.

Source: Eurostat

The peripheral location of Greece within the European Union as well as the geographically fragmented and isolated location of many rural areas within the country itself mean that accessible, affordable and available public transport and transport infrastructure are of central importance if Greek communities are to develop in a manner which allows them contribute to the economic vitality of Greece. The sale of TRAINOSE⁴⁸ as well as several local and regional airports and marinas and the development rights for national roads projects are of significant concern. Greece is a geographically fragmented and largely rural jurisdiction. At a national level the provision of public services or access to them and ensuring high participation in the labour market necessitates that basic transport from remote locations is available, efficient and affordable.

In addition, the sales of national infrastructure such as the public gas corporation and Thessaloniki Water Supply and Sewerage Company has the potential to create increase household utility costs. This is of particular concern given Greece’s high percentage of citizens who despite being employed remain at risk of poverty. Greece by privatising services and facilities which are generally provided at a low or subsidised rate to the population by the state has placed this class of working poor in the unenviable position of potential increases in cost for basic public services at a time when there is no corollary increase in salary or indeed there exists the potential for or reality of unemployment, under employment and salary reductions.

One of the most immediately appreciable areas in which such a development is likely to occur is energy where “fuel poverty” which occurs when a household is unable to afford basic levels of energy sufficient to heat, cook in and light the home. Consequences of fuel poverty may include restricted heating and damp or unhealthy living conditions, debt incurred through utility bills and an associated reduction of household spending on other items. Traditionally conceptualised, as a British and Irish phenomenon fuel poverty is increasingly visible across EU member states.⁴⁹

⁴⁸ The Greek national railway company. see http://www.railwaypro.com/wp/?p=13516
⁴⁹ See http://fuelpoverty.eu
Conclusion

Community Economic Development seeks, as responsible governments should, to hold policy and law to a higher standard by ensuring that public policies and public-private partnerships strive to build resilient, sustainable communities, industries, and markets by using local resources and national services in a manner that optimises economic opportunity while improving social conditions. While such objectives are ambitious for any government, and more so one already struggling under significant debt and international pressure, the marginalisation of such objectives is not without repercussions.

Fuel Poverty Across the European Union:

% of households unable to afford to keep their home adequately warm
Source: EU SILC 2011
The unappealing reality that Greece faces is that its superficially appealing solution to its debts embodied in TAIPED may leave it struggling in the long-term with, inter alia:

- Expensive infrastructure where quality regulation is largely removed from state control and is run by private companies who may choose to locate large percentages of the manufacture and administration of their service or product outside the jurisdiction thus failing to generate significant employment or tax revenue within Greece.
- Increasingly marginalised rural communities who suffer from declining economic participation due to lack of public services and infrastructure.
- A disenfranchised national community who, due to the removal of government and public offices, institutions and employment experience reduced levels of participation in or contact with public services and local government.

The poor governance and lack of transparency evidenced in the operation of the TAIPED to date and the potentially damaging repercussions of its privatisations on Greek communities has not been offset by financial gains sufficient to warrant its current mode of operation, seemingly without regard to the consequences for the future of Greece. While it is difficult at this remove to divine a means for Greece to escape its current economic free-fall a fire sale of assets in an information vacuum with concerns as to the proper governance of the vendor is hardly the appropriate response.

In disposing so speedily and with so little parliamentary or citizen involvement or scrutiny of large quantities of state assets the Greek state risks alienating a citizenry who already feel they have little control over their country’s future and exacerbating the increasingly polarised political and social divisions. Greece has experienced a loss of more than one fifth of its employment over the past five years.50 Opinion polls show a political scene dominated by extremes-New Democracy, the governing conservative party enjoy a slender lead over the far left Syriza while third place has been consistently occupied for some time by the overtly fascist New Dawn party.51

Democratic deficits and loss of control have long been identified as factors key to polarising communities and states. The European approach to such instability in the past may have been to defer to the sovereignty of the state involved to resolve tensions, however the risk in Greece’s is that when the country does emerge from crisis it will lay the blame for its woes with Europe- who threw out the baby to save the bathwater.

The European Union has, since its inception, professed itself to be in the business of promoting peace, sustainability and stability. The risk the EU runs by allowing policies such as the TAIPED approach to asset sales in Greece is that it will not achieve its objectives 52 and Europe will be left with a resentful and unwilling partner in Greece. The reality of course, may be that the EU is aware of this and has knowingly run such a risk - the Mezzogiorno regions of Southern Italy and Greece have been constant recipients of structural and infrastructural investment of EU funds which have repeatedly failed to become economically self-sufficient.53

50 Dan O’Brien “Irish jobs surge most promising sign of recovery in more than half a decade” The Irish Times September 5th 2013.
51 O’Brien Ibid.
52 “When Germany’s finance minister, Wolfgang Schäuble, broke a taboo by admitting publicly this week that Greece would need yet another bail-out, he was merely stating the obvious” in “Greek Privatisation: an Already floundering agency loses its boss, again” Ibid.
Community Economic Development aims to alleviate poverty and disadvantage in communities while creating sustainable economic change through a mix of legal, social and community development tools. It is difficult to conceive of how isolating communities who are both geographically and politically as well as economically peripheral not just in Greece but in Europe more generally, will help in the long term financial recovery of either Greece or Europe. The model adopted by the TAIPED to date, through its exclusion of sustainable development and social concerns has contributed to a culture in which the society which emerges from the financial crisis has the potential to be characterised by exacerbated inequality and concentrations of wealth among discrete sectors of the population at the expense of ordinary citizens dispossessed of basic economic resources and community services.
Case Study
LIMERICK COMMUNITY LAW & MEDIATION CENTRE – A CASE STUDY

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Limerick Community Law and Mediation Centre is a community based law centre that works to reduce and remove barriers to the law on the basis that all people should be able to access basic legal information and advice regardless of income and background.

The establishment of the Law Centre in late 2012 came about from representations made by community representatives and activists within Limerick to establish a Community Law Centre to address a very significant unmet legal need identified primarily within the regeneration communities. Northside Community & Mediation Law Centre in Dublin is responsible for the overall management of the Law Centre. An Advisory Committee was set up comprising of representatives from various community groups and other key stakeholders to provide guidance on the direction and the development of the service. Limerick Community Law Centre is the first Community Law Centre in Ireland based outside of Dublin and is unique in that it primarily serves the four identified regeneration communities of Moyross, Southill, St Mary's and Ballinacurra Weston (‘the Regeneration areas’).

The Law Centre is funded by the Office of Regeneration at Limerick City Council and PILA (the Public Interest Law Alliance). Early in the life of the Centre, it was recognised that certain legal issues and needs might arise that might be particular to these communities and a consultation process was undertaken to produce a report on the legal needs of these communities. The findings and recommendations were published in a report in April 2013 entitled ‘Community Consultation Report-Unmet Legal Need in Limerick’.

‘Legal Need’ for the purposes of a community law centre means empowerment so that citizens can, firstly, identify that they have a legal problem and, secondly, find a satisfactory non-legal solution to their problem should they wish to do so. Thirdly, they require information should they wish to pursue that solution or, where appropriate, obtain legal advice and representation. Satisfying legal need does not necessarily require engagement with a legal process, but often rather the advice or information to allow the person to understand and assess their situation and to proceed accordingly.

In our survey of legal challenges encountered in the Regeneration areas, housing and property related issues emerged as the primary concern for respondents, accounting for almost half of the concerns outlined. Family law matters accounted for approximately 30% of issues, with issues regarding debt accounting for approximately 12%. Criminal law matters accounted for a considerable proportion also, approximately 20%, though the Law Centre does not engage with criminal law matters.
The Law Centre aims to promote community development and social inclusion by empowering local communities through the provision of legal advice, advocacy, representation and legal education. One of the primary means in which this is delivered is through the medium of the free legal advice clinics, which are provided in partnership with various community groups in the Regeneration areas.

Legal Advice Clinics have been in operation since January 2013 and some clear patterns have emerged in the numbers and types of queries presenting to the Centre. Attendees at advice clinics have presented with similar types of problems and in similar proportions to those identified in the early consultation process. Our experience has shown that housing related problems comprise the single biggest legal need issue confronting residents in the Regeneration areas.

In the months January to September 2013, the Limerick Community Law and Mediation Centre dealt with 180 separate matters. Reiterating the findings from our consultation survey, Housing and Family related matters comprised by far the largest proportions of issues presenting to the Law Centre, 28% and 20% respectively. Of housing issues faced by clients a large proportion of complaints relate to housing standards of local authority housing, with tenants often stating to be living in uninhabitable conditions or in accommodation unsuited to their needs. Anti-social behaviour problems and access to suitable housing are other significant problems faced by those in the Regeneration areas.

Of family law issues, the greatest volume of matters presenting were associated access and guardianship rights issues. The next largest area was one which was not represented in our initial consultation survey, wills and probate, which accounted for 10% of queries. These queries relate both to persons seeking to make wills and persons seeking access to the assets/bank accounts of deceased relatives. For the latter group, understanding and completing relevant probate forms often present a significant obstacle and these are examples of people where the provision of legal advice and information is sufficient to satisfy their legal need and improve their situation.

Social welfare issues make up 8% of queries. An increasing proportion of this figure relates to persons being pursued for alleged overpayment of supplementary welfare entitlements and this correlates to the experience of the Northside Community Law Centre in Dublin. Those presenting with this issue were generally unaware of any overpayment or contest that any overpayment was made.

Consumer issues, employment, personal injury, and debt each make up approximately 5% of all queries. Surprisingly, issues regarding debt made up a smaller proportion of queries than expected following the consultation process, and than might be expected given the current media profile of difficulties related to debt in Ireland today. It has been the experience of the Centre that the issues concerning persons from the Regeneration areas presenting to clinics relate more to basic or immediate need, such as issues surrounding housing, family issues or social welfare.

In the coming months the Law Centre will be establishing Community Mediation, providing mediation as an option for resolving conflict in the community. In our consultation process respondents gave a generally positive though cautious response to the idea of a mediation service. The fact that mediation operates as a fast, private, non-legal, and low cost means of dispute resolution was highlighted as an advantage of such a service and there was a perception that it would help in certain types of disputes. The need to be able to trust the mediation process and independence of the body were identified by respondents as being critical to their involvement in the process, and it is hoped that the Law Centre’s work on behalf of people and with community groups in the Regeneration areas may assist in achieving this.
Over the past year the Law Centre has slowly grown to be recognised as a means of assistance for persons facing legal difficulties in Limerick Regeneration areas and other disadvantaged communities through the free legal advice clinics, working with community groups, and word of mouth. Approaching our second year, the Law Centre will continue to work to empower the community, through the provision of community education courses, campaigning on behalf of the communities, progressing legal cases on behalf of clients taken on by the Centre, and soon commencing our mediation services, as well as continuing to run regular drop-in legal advice clinics in local community centres.
Book Review
BOOK REVIEW: POLITICS, PARTICIPATION AND POWER: CIVIL SOCIETY AND PUBLIC POLICY IN IRELAND*


There is no doubt that the recent referendums demonstrated the notion of an anti-participatory society existing in Ireland today. Politics, Participation and Power is a collection of meticulously selected essays compiled by the editors, Murphy and O’Broin. The essays complement one another and go toward the three overarching themes in the book: e-participation, power inequalities and protest as participation. This book should be seen as a go-to guide for anyone interested in our current situation and pragmatic approaches to improving it. This book is written in a clear, concise manner, making it accessible to a wide readership.

The introduction in Chapter 1 suggests that Politics, Participation and Power could be read in partnership with its sister volume, Power, Dissent and Democracy, though this is not essential reading to get a grasp of the book’s objective, which is to promote the idea of meaningful participation as the backbone for a reformed democracy in Ireland. The significance of this book is that it combines academic knowledge with the experience of those involved in public policy formulation. Not only does this book give an overview of the Country’s current situation for the complete beginner, it offers an insight to a new more meaningful solution through civil participation. It is a proponent of the idea that decisions are legitimated by the degree to which the people impacted by them have the right and opportunity to “participate in deliberation about their content, and as a result grant their reflective assent to the outcome”.

Chapter 2 is the fulcrum of this book. The aim of the chapter is to transform Lincoln’s famous “government by the people” into a reality. The author draws a distinction between our current procedural democracy and an enriched substantive democracy that would increase and strengthen public trust, transparency and accountability. This easy-to-navigate book is divided into four main sections: Partnership, Poverty, Policy Making and Public Spheres. This clear layout demonstrates the key facets of the book with undertones of the broad aim of the book.

2 Deiric Ó’Broin and Mary Murphy (eds), Politics, Participation and Power: Civil Society and Public Policy in Ireland (Glasnevin Publishing 2013) 12.

Reviewed by Shauna Stanley, Trinity College Dublin.
**Section I: Partnership**

Chapter 3 by Allen takes a look at the role of interest groups in shaping public policy in Ireland, calling it “a dance of strangers”, to highlight the limitations of “corporatism”. The author offers a reason as to why there is this anti-participatory attitude ingrained in Irish society. The social partnership approach to public policy was often portrayed as a problem solving space, yet it tended to avoid hard choices. The social partnership expiration date of 2014 and the antiquity of social partnership necessitates new ideas. As Allen shows us, interest groups began playing a part in Irish society when Sean Lemass was elected Taoiseach in 1959, long before the introduction of the first model of social partnership in 1987. The author offers a comprehensive synopsis of the role of interest groups in the fall of the State and predicts that if the interest groups cannot proffer new solutions, that go beyond their sectional bases, their offer of social partnership may be dropped in favour of a move that will instead benefit the economy.

The case for community participation was argued succinctly in Chapter 2, and it ties in rather well with Chapter 4. O’Broin undertook research as to the effectiveness of community involvement in the public policy making process at a local level and how the State has attempted to facilitate this. The findings stress the need to improve the communication between local development agencies and Non-Governmental Organisations like Pobal. The author offers valuable insight when he contends that community participation is still evolving. The reason that the system of public participation has been incoherent and ad-hoc is that there is no robust model of community participation. Ireland needs adopt a similar strategy to our European counterparts to devise, implement and maintain a plan for community participation as we are getting nowhere fast by continually chopping and changing the system.

**Section II: Poverty**

A critical issue to be acknowledged when advocating meaningful participation of citizens is that there is an inequality of power amongst the population. Special effort should be made to bolster participation of the most vulnerable in society in an attempt to address this inequality. The three chapters under the heading of “Poverty” offer very different insights into the experience of participation from the perspective of the poor. Chapter 5 is an analysis of the ABCD model, which functions on the concept of “potentiality”. This assumes that people will act upon issues that they care about and thereby ameliorate levels of disadvantage and achieve betterment of quality of life for people in the community. There are two competing views of this model addressed in the chapter. One is that it is a revitalisation method to assist the local authority in its own goals. The other is that it is a tool of empowerment for communities. As it does not completely serve either view, the author argues for an adjusted ABCD model that could possibly make a positive contribution, though it is a new idea which has not been tested long-term. Nevertheless it is a breath of fresh air in the stale Irish environment.

Chapter 6 by Ginnell looks at participation in the context of the EU social inclusion strategy, the Open Method of Cooperation (OMC). The European Commission Joint Reports recognises that Ireland’s strategy is deficient in parts, recommending that Ireland needs to go beyond merely the preparation stage to implementation and evaluation. Even still, the author criticises how the Commission seems to be shifting from strictly monitoring social policy, saving such burdensome demands for economic policy. The author argues that the Government need to reconsider the dismantling of the independent community infrastructure which was central to supporting participative democracy in marginalised communities. Unfortunately Ginnell himself does not proffer any alternative solutions to this problem.

3 ibid 15.
While the first two chapters in this section give a good overview of two particular approaches to the Poverty and Participation question, the issue of power inequality on a whole is critiqued best by Allen in Chapter 7, titled “Barriers and Barricades: Exploring the Challenges to Building Social Movements for People who are Poor”. Allen’s reflection on the experiences of homeless and unemployed people shows the limitations of self-organisation of such groups due to their transient nature. The impact of the withdrawal of resources of civil society organisations who mediate between state and marginalized people has also become a barrier to participation for these groups. This chapter effectively teases out the problems with this social issue and the effect it can have on change.

Section III: Policy Making

The editors cleverly selected two articles focused on another area – Science – that would not usually be in the realm of consideration for legal/political academics. Concentrating on one particular topic is also a great way to demonstrate the flaws in the system. Chapter 8 deals with Advancing Biomedical Research and promotes the concept of “Scientific Citizenship” and trying to engage public enthusiasm for science. Chapter 9 concerns nanotechnology. Why is this relevant to the cause? As the author so succinctly puts it, “Ireland has a lack of engagement with socio-technical issues and an elite discourse that rarely allows dissent.” The editors decided to include these specialist chapters because of the undeniable “cross sectorial learning to be gained from a close reading” of these chapters. Through an alternative forum, both raise the issue of ethical reasons for enabling public participation. If technology develops to be very pervasive, then it needs to be the subject of public discussion. O’Broin views the concept of the Scientific citizen as crucial for enabling both citizen competence in the sciences and active participation in political discourse. Murphy’s examination of citizen juries as a method of involving the public with nanotechnology is a practical insight into the challenges of involving the public and the time and resources needed. The pilot programme tackled issues of literacy in marginalised communities in a way that was encouraging for future developments. These chapters manage to make a clear link between science policy and an inclusive society, which in turn opens the concept of participation in the political system to people who would not have thought of it before.

Section IV: Public Spheres

In Chapter 10, Murphy examines the “Claiming Our Future” initiative (COF). She begins with an account of the theoretical concepts that assist an analysis of State and civil society relations and then considers obstacles to those who want to promote alternative macro policy demands before examining COF.

The nature of Irish political discourse, coupled with media ownership, points away from high-energy democracy. This means that debate about political alternatives in unlikely to begin at the top. “Strategic pluralism is a strength not a weakness.” COF has been mistakenly perceived as a front for various political parties as well as a new political party in itself. It is also vulnerable to perceptions that individuals may be promoting their own agendas. Murphy irons out the perceived faults to offer a comprehensive review of the programme. The article concludes that it is difficult to assess whether this experience has contributed to developing greater public policy alternatives, though it is evident that there has been media and public sphere success.

5 Ó’Broin and Murphy (n 2) 27.
6 ibid 112.
7 ibid 123.
In Chapter 11 the theme “participation as protest” most blatantly shines through concerning the Occupy movement. Written as a narrative in a way that the reader will either love or hate, it is at the very least a break from the formalistic tone of the rest of the book. It serves as a useful outline to the recession and the trade union movement, before focusing on Occupy. It demonstrates how Occupy Dame Street emerged from Occupy Wall Street, mostly because of social media, a genuine grassroots manifestation. The author uses metaphors of the seas, for example “nevertheless the class struggle being waged from above has begun to be met with class struggle from below. Another wave will come.” This chapter, if perhaps overly subjective, does show how there is a need to move away from mainstream media and that the media itself could be used as a form of empowerment for those who are not in power and are searching for a way to participate. In summation, public spheres need to be meaningfully populated by active citizens. Though the two chapters in the Public Spheres section contrast, it is actually beneficial to be reading from two perspectives as they both demonstrate how the government fails to enable legitimate participation and instead sticks to a procedural approach discussed in Chapter 2. Both chapters agree fundamentally on the importance of autonomy from the State and of society-led creation of public spheres.

The Conclusion, contained in Chapter 12, written by editors Murphy and O’Broin is a useful summary of the entire book and offers some critique of the various chapters. The chapters selected by Murphy and O’Broin in this book explore different approaches to meaningful participation from a number of different ideological standpoints and fields. The three themes, e-participation, power inequalities and protest as participation, surfaced in various chapters are dealt with in considerable detail by the editors in the concluding chapter, which reinforces the legitimacy of the book itself and strengthens the link between the different concepts. This book elucidates the harsh reality of disillusionment with the Irish political process. The book highlights the pitfalls in the democratic systems and possible routes out of this political crisis that will also add legitimacy to the Irish democratic process. It is noted that without State willingness for such policy-making processes to work, they can be frustrating experiences that fail to harness their transformative potential. As the law centre movement demonstrates on a micro level, public participation and empowerment is the way to ameliorate our democratic ailments.