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USING THE “HUMAN RIGHTS BASED APPROACH” TO TACKLE HOUSING DEPRIVATION IN NA IRISH URBAN ESTATE

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ABSTRACT

Housing rights are becoming significant as a tool for highlighting needs and raising housing standards across the world. These rights are now an integral part of economic, social, and cultural rights within international human rights instruments, while the right to adequate housing is recognised legally at national and international levels. Among the methods of implementing these rights the “Human Rights Based Approach” (HRBA) is used by NGOs, community organisations and rights advocates. Many housing rights issues arise in relation to standards in social housing, urban regeneration and social housing policy development. This article examines a case study where the HRBA has been applied by local authority tenants in partnership with community development organisations and supported by human rights expertise to campaign for improvements to substandard housing conditions and deprivation within a Dublin inner city social housing estate. It appraises the adoption of the HRBA as a response to inadequate

housing conditions and delayed regeneration programmes. The impact of poor housing on the health of tenants was an integral element of the arguments used. The outcomes of using the HRBA for the rights holders (the tenants) are assessed. Overall, this campaign led to significant improvements in conditions. The factors underlying the success centred on the way in which the HRBA framework, with its focus on measurable indicators of human rights violations, enabled community development organisations to create a human rights based public campaign that exerted considerable political pressure through the empowerment of tenants, leveraging of human rights experts, and considerable media publicity. The development of solutions in parallel with the local authority was also important. This approach transcended many established NGO and State approaches to addressing poverty.

Keywords: Human Rights Based Approach, housing rights, social housing, regeneration, substandard conditions, public campaign, tenant empowerment

SUMMARY

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INTRODUCTION - THE HOUSING CONTEXT

The shift from social housing for the general population, since the 1970s, towards the narrowing of this form of tenure to house mainly very poor people across Europe, has been recounted by Malpass and others (Malpass, 2008). Neoliberal policies such as the privatisation (tenant purchase and transfer to non-state agencies) of social rented housing stock, reduced investment in provision and maintenance. Subsidising the private housing market through home ownership supports has transformed social housing systems across Europe since the 1980s (Brenner & Theodore, 2002; Clapham, 2006; Jessop, 2002; Oxley, 2000; Sassen, 1991; Whitehead & Scanlon, 2007). While the average level of owner-occupation across Europe is over 60%, the majority of EU States retain some social housing provision from less than 2% in Greece, Spain and Estonia to over 30% in The Netherlands. In Ireland, the public housing stock in 2012 accounted for some 129,033 tenancies or 7.9% of all tenures in comparison to 12.7% in 1981 and 18.4% in 1961 (CSO, 2012). While the size of the social housing sector has been shrinking since the 1980s in the majority of countries, the number of applicants for social housing has increased (CECODHAS, 2011; Andrews, Caldera Sánchez & Johansson, 2011). According to Eurostat, 30 million people in the EU suffered both lack of space and poor housing conditions in 2009. Some 6% of the EU population suffered from severe housing deprivation. The most frequent problems were noise from the neighbourhood (22.2%), overcrowding (17.8%) and pollution, crime or other environmental problems (16.5%). In addition, 12.2% of people in the EU lived in households affected by high housing costs (Rybkowska & Schneider, 2011).¹

¹ In 2008, the EU adopted a Regulation establishing common rules for the decennial provision of comprehensive data on population and housing, establishing a common set of housing data to be collated by Member States. Regulation EC 763/2008 13.8.2008, OJ L 218/14. See also Regulation EC No. 315/2006 of 22 February 2006 implementing Regulation EC No 1177/2003 of the European Parliament and of the

In Ireland, while many local authority (social housing) estates remain stable, well managed and functioning areas, some have become the most deprived urban areas in the country (Fahey et al., 2004; Murray & Norris, 2002; NESCS, 2004; Nolan et al., 1998; Nolan & Whelan, 2000). Through the 1980s some inner city local authority estates in Dublin became characterized by run-down environments and deep levels of deprivation and disadvantage (Drudy & Punch, 2005; Kelly & MacLaran, 2004). The deterioration of these estates prompted State action in housing management from the 1990s (Brooke & Norris, 2001; O’Connell, 1998), and the establishment of what is now the State Centre for Housing Research. Despite various measures to promote tenant involvement and better estate management some estates remain as urban ‘ghettos,’ characterised by substandard housing conditions, social problems, high unemployment, drug addiction and associated gang related crime, and low education participation rates (Norris & Redmond, 2005; Whitehead & Scanlon, 2007).

Efforts were made by local tenant organisations, charitable bodies and community development organisations to create a voice in policymaking for local authority tenants (Fahey, Norris, McCafferty, & Humphreys, 2011; Fitzpatrick & Watts, 2010; Punch, 2009), despite the absence of any legal recognition of tenant involvement in housing policy making or management. “Grassroots” community action had led to the formation of the Dublin Housing Action Committee, and the National Association of Tenants Organisations in the 1970s, however, these organisations went into decline in the 1980s (Punch, 2009). From the 1990s onwards, individual tenant and community organisations in Dublin mobilised tenants against drug dealing gangs. During this period, locally based community development, youth and education services and projects were also developed, using State and EU funding. However, there was a general incorporation of community mobilisation within State “social partnership” structures. The deteriorating conditions across estates in Dublin in the 2000s made successful cross-city organisation very difficult to achieve (Tenants First, 2006; 2009). Significantly, despite many State commitments to “participative” and “partnership” approaches since the 1980s, there has

Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables relating to housing conditions. Within these regulations “severe deprivation” is defined as the percentage of the population living in a dwelling which is considered to be overcrowded, and with at least one of the following three housing situations: (1) a leaking roof, or damp walls, floors, foundations, or rot in window frames or floor (referred afterwards as ‘leaking roof’), (2) neither a bath, nor a shower, nor an indoor flushing toilet, or (3) too dark.

not been the development of a national organisation that would represent the interests of social housing tenants and input their views into law and policy-making.

There is also a structural problem within the Irish housing regulatory regime that contributes to this state failure to address substandard local authority conditions. The regulations and enforcement on unfit and poor quality housing derive from the Irish Housing Act 1966, supplemented by Regulations in 1993, 2008 and 2009 (DOELG, 2009). However, enforcement is the obligation of the local authority - a situation of conflict of interest between service provider and regulatory roles. There is no independent complaints process for social housing tenants, except to the Office of the Ombudsman, or in cases of discrimination - the Equality Tribunal (Kenna, 2011a).

1 THE FAILURE OF HOUSING POLICY AND MANAGEMENT

The Dolphin House Estate - the subject of this article, is Dublin’s second largest remaining public housing flat complex owned and managed by Dublin City Council, with 436 units. Built in the 1950s, it is approximately 18 acres (7.5 Ha), and comprises of six u-shaped ‘blocks’, three and four storeys in height. The living units (flats) are smaller than modern minimum guidelines with much overcrowding; are affected by dampness and mould, sewerage (waste water) penetration, accessibility problems (no lifts, despite being multi-storey), and one-room units (originally designed for older people) (Hearne, 2010; Sheridan Woods, 2009). In common with many inner city local authority estates, levels of socio-economic deprivation remained high during the economic boom years of the “Celtic Tiger”. There are high unemployment rates, extremely low levels of participation in third level education, high levels of poverty, and serious anti-social behaviour related to criminal drug activity. However, there is also evidence of strong community resilience (Bissett, 2008; Hearne, 2011b; Rialto Learning Community, 2010).

A new state urban regeneration policy of Public Private Partnerships (PPPs) was introduced in 2001 as the principal mechanism to deliver the demolition and regeneration of the most acutely disadvantaged local authority estates across the country (Department of the Environment and Local Government (DOELG) 2001). PPPs entailed land transfer to a private developer to build owner-occupier housing and commercial/retail units in return for providing new social housing and community facilities on the remainder of the site, with a social services

fund (Hearne, 2011b; Norris & Redmond, 2005). This reflected regeneration trends across Europe, with urban renewal focusing on social transformation (gentrification) that results in the displacement of the existing poorer income populations, in order to attract higher income owner occupiers into the area (Van Gent, 2010).

However, the financial and property crash of 2008 resulted in the collapse of most PPP regeneration projects as private developers withdrew from the contracts (Hearne, 2009, 2011b; Kelly, 2008). This left thousands of local authority tenants living in substandard conditions and many hundreds permanently relocated in preparation for regeneration. The collapse of the plans compounded the lack of confidence in housing management by tenants, now facing years of intolerable housing conditions. The frustration and policy failure led tenants and local community development organisations in the community of Dolphin House to consider new options for articulating their grievances. In 2009 they began implementing a Human Rights Based Approach (HRBA) to address issues of substandard housing and the collapse of regeneration plans. This was the first time such an approach was developed in the Republic of Ireland in the housing and local community development sector. It is the development, methods, processes, and outcomes of the application of the HRBA in this estate that is the focus of this article.

1.1 Approach of the Authors

Academic analysis and documentation of tenants and community development organisations using a HRBA to address poor housing standards and associated deprivation has hitherto been absent. Indeed, the approach is unknown to most marginalised and disadvantaged communities, as they face deep inequalities in power, expertise, education, capacity and funding (Hearne, 2009; MacLaran et al., 2007; Punch, 2009; Tenants First, 2009). Comparing this approach to others, however, remains problematic due to the paucity of academic literature on tenants’ action in creating change - a statement in itself of the nature of social exclusion of these tenants.

The study draws on a socio-legal methodology advancing an interdisciplinary rights-centred approach in the belief that both the social sciences and law (principally international human rights instruments with less of a role given to explicit domestic law), together can provide valuable insights, which neither alone can offer. As Banakar and Travers suggest ‘... *focusing the reflexive lenses of sociological analysis on the practice-based features of the law,*

can potentially enable us to uncover the institutional limits of the legal practice, in a way that traditional forms of legal studies cannot do’ (Banaker & Travers, 2005, 22). While the legal structures, in terms of legislation and relevant case law, provide the framework within which the demands for improved housing conditions take place, the reality is that these are unenforceable by tenants, except in rare circumstances. Thus, a strictly jurisprudential or legal process approach is insufficient, and examination of local housing policy and process is also required. As Banaker and Travers suggest the objective of such interdisciplinary research is to ‘... combine knowledge, skills and forms of research experience from two (or several) disciplines in an attempt to transcend some of the theoretical and methodological limitations of the disciplines in question and create a basis for developing a new form of analysis’ (Banaker & Travers, 2005, 5). Thus, the law utilized here is that of UN human rights instruments. Notwithstanding claims that a preoccupation with rights can paralyse the will for radical action (Kennedy, 2002), and that law is viewed as an instrument of the ruling class, legitimising injustices in society, the law can also be used as a tool in overturning the structures of domination in modern society (Unger, 1986; Tushnet, 1991).

Housing research in Ireland is largely commissioned and undertaken from a managerialist perspective, within a liberal pluralist model of the State (Kenna, 2011a). Few studies exist on the direct role of tenants in leading processes of change and efforts to improve their housing situation (Bissett, 2008; Drudy and Punch, 2005; Hearne, 2011). Corporatist approaches have created powerful networks between the State and local housing and community development organisations that leave little room for critical engagement and analysis.

This study draws on these critical reflections to analyse the HRBA as used by tenants, in partnership with community development workers and academic and human rights expertise, to demand change, in the context of international human rights obligations on the Irish State.

1.2 Methodology

The study draws on primary qualitative (participative and observatory) and quantitative research undertaken by Hearne while he was involved in the development and implementation of the Human Rights Based Approach (HRBA) in the case study estate from 2009 to 2013. The HRBA was developed and implemented by the Rialto Rights InAction Group (RRIAG). The RRIAG

was set up in May 2009, involving a group of local tenants, community workers (including Hearne²) from the Dolphin Community Development Project³, and, Community Action Network (CAN)⁴, to use the HRBA to address the substandard conditions, poverty, health and the collapse of the regeneration plans in Dolphin. The HRBA was modelled on the methodology used by the Participation and the Practice of Rights Project (PPRP) operating in Northern Ireland since 2006 which had secured improvements to similar local authority housing estates in Belfast. CAN played a central role in facilitating RRIAG meetings, providing training to the tenants, developing human rights expertise, and co-organising the hearings with the tenants⁵. A number of advisory meetings were held between the RRIAG and tenants and workers from the PPRP in the initial stages.

As an academic researcher and community worker, Hearne observed and participated in every aspect of the HRBA. Therefore, the evidence provided in this article is based principally on Hearne’s research undertaken over five years working on the estate. His ‘insider’ position revealed perspectives and evidence often hidden from mainstream legal and sociological researchers. Theoretical overview, analysis and insights are provided by Kenna, whose first involvement with the HRBA was as a human rights ‘expert’ in the first RRIAG human rights hearing in May 2010. He advised the RRIAG on a small number of occasions afterwards. The research evidence is thus derived from RRIAG meetings, surveys, tenants’ testimonies and secondary analysis of documentation produced, as well as statements in the Irish Parliament, government policy and analysis of the HRBA literature.

² Hearne has been employed as a community worker and advisor on regeneration and PPPs by the local Dolphin community development project from 2007, while he was completing his Ph.D research, to the present. When regeneration plans collapsed in 2009, the children’s charity, Barnardos, agreed to fund his post in order to progress regeneration planning, develop the human rights approach, and to provide advocacy and support to the community. Hearne remains employed by Barnardos as community regeneration co-ordinator with the funding for the post coming from the Department of the Environment and Dublin City Council since 2012. His role within the Rialto Rights InAction Group included attending weekly meetings, undertaking tenant surveys, overseeing research, developing strategy, policy analysis, writing reports, and liaising between the Local Authority and tenants.

³ This involved three local community development workers and the regeneration co-ordinator (Hearne), all of whom were involved at different levels but for whom the RRIAG was only one aspect of their employment responsibilities.

⁴ Community Action Network (CAN) is a Dublin-based community development NGO. It received funding from the Joseph Rowntree Trust in late 2009 to implement the HRBA in Dolphin House. They dedicated approximately two workers one day a week to supporting the project.

⁵ The extent of tenant engagement ranged from approximately ten tenants being involved on a weekly basis, a further twenty undertaking media work and the public hearings, and up to sixty tenants attending public meetings.

2 THE HUMAN RIGHTS BASED APPROACH

Housing rights are now part of economic, social, and cultural rights within the UN, European, human rights instruments, and the constitutionalization of these rights, while contentious, is no longer viewed as being associated with communist/Marxist approaches (Craven, 1995; Eide et al, 2001; UNHCHR/UN-Habitat UNHRP, 2011). Both the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) establish States obligations to respect and secure the realization of housing rights, within the framework of an adequate standard of living. There are obligations on States in the context of public international law to take steps, individually and through international assistance and co-operation, to the maximum of their available resources, to achieving progressively the full realization of the rights involved, by all appropriate means, including the adoption of legislation. Thus, States become accountable to the international community, to other States which have ratified the same texts, and to their own citizens (Alston & Quinn, 1987; Donnelly and Howard, 1998; UN, 1991). The UN Committee on Economic, Social and Cultural Rights (UNCESCR) and Special Rapporteurs have established the integral elements of housing rights obligations in General Comment 4 (1991) (UNHCHR/UN-Habitat/UNHRP, 2011), while other UN and Council of Europe instruments also have established clear legal housing rights standards on contractual safety, availability, allocation, standards of adequacy, habitability, affordability and suitability of housing.

The Danish Institute of Human Rights provides a useful definition of the principles underlying the HRBA, differentiating the language of needs from the language of rights. It points out that rights always trigger obligations and responsibilities, whereas needs do not. Rights always cannot be addressed without raising the question of who has obligations in relation to these rights. This automatically raises questions about the actions and accountability of duty bearers (Kirkemann Boesen & Martin, 2007). The significant and historical shift in development thinking introduced by HRBA differs significantly from traditional charity-based or needs-based approaches to development.

Thus, the HRBA is based, fundamentally, upon the principles of accountability, participation and empowerment whereby States (duty-bearers) are made accountable through various local, national and international processes to fulfil their obligations, arising from

international instruments to the “rights-holders” (citizens, especially those whose rights are violated). It aims to empower the rights-holders to advocate effectively by using the language of international human rights norms, based on indicators and benchmarks, to measure compliance. The HRBA is concerned with the process as well as the outcome of human rights implementation and therefore people are recognized as key actors in their own development, rather than passive recipients of commodities and services (UNICEF, 2004). Participation is both a means and a goal, strategies are empowering, both outcomes and processes are monitored and evaluated and programmes focus on marginalized, disadvantaged, and excluded groups. By adapting human rights obligations to local situations, the HRBA aims to affect lasting change in the relationship between the duty bearers and the rights holders (CAN, 2010).

It is accepted, however, that using the HRBA to advance housing rights has a number of potential drawbacks (Kenna, 2011a). These include the potential vagueness of international human rights standards, often described as a “moral compass” rather than a concrete template on which to base enforceable laws and policies (Kenna, 2011b). The elusiveness of terms like “progressive realization”, and “maximum of their available resources” can provide “wiggle room” for States from their responsibilities (Hunt, 1998; Felner, 2009). The lacuna of legal enforceability for violations, unless rights are reflected within national laws, is a potential pitfall. The apparent lack of awareness of the violations approach by housing rights advocates, (as set out in the *Limburg Principles*⁶ and the *Maastricht Guidelines*⁷) often results in circular arguments over resources and statistics. States plead insufficient resources to justify non-fulfilment of certain rights, while judges spurn the public resource allocation role inherent in many cases, on grounds of liberal democratic balance of power dogmas.

3 THE CASE STUDY IMPLEMENTATION OF THE HRBA IN THE DOLPHIN HOUSE LOCAL AUTHORITY ESTATE

Drawing on the methodology outlined in the international HRBA literature, particularly the PPRP in Belfast, the RRIAG developed its own approach to realising human rights that involved five key elements (CAN, 2010).

⁶ UN Doc E/CN.4/1987/17, *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (June 1986).

⁷ *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (January 1997) 20 HRQ 691.

3.1 Selection of the human rights issues

Tenants and community workers were trained and educated in human rights by CAN. Tenants began to relate their lived experiences of sub-standard conditions to international human rights obligations. This process instilled confidence in tenants to begin to hope for, demand, and expect, the state to fulfil its responsibilities. Three areas were chosen by the community to implement a HRBA, housing relating to issues of sewage and dampness, health relating to drug addiction treatments, and substandard play and youth facilities. CAN facilitated the process so that tenants’ voices and experiences were dominant, that they received education and training to enable them to undertake central roles and they were the key decision makers. The community workers, including Hearne, undertook much of the practical organising of tenants, while Hearne also provided policy and strategy analysis (CAN, 2010). The housing area progressed most rapidly given the issues affected the greatest number of tenants, impacted acutely on health and children, and tenants were willing to get involved actively in publicly campaigning. There was also a base of work upon which to build undertaken by the community workers and tenants in previous years.

3.2 Setting indicators

Table 2 provides detail of the eight specific indicators of substandard housing conditions that were developed by the RRIAG that could identify breaches of international human rights standards and be monitored over time. They included the number of residents reporting conditions of mould, dampness, sewerage invasions, negative health impacts as a result of the conditions and tenant satisfaction with the local authority. The indicators were based on the manner in which standards of housing are a key factor in the social determinants of health (WHO, 2011). Their impact on adult and children’s health, mental health, community cohesion, and consequently participation in employment and education, particularly for vulnerable groups, such as children, older people and lower income families, was, therefore, central to the indicators. This approach is supported by the WHO assertion that the social cohesion of the community and the sense of trust and collective worth depends on the quality of the neighbourhood and urban design (Ormandy, 2009).

The indicators adopted were also endorsed by the President of the Irish Human Rights Commission (IHRC) who stated at the first RRIAG human rights hearing that they were “... a very innovative approach which is important both to empower tenants to articulate their problems in terms of human rights standards and to provide a way of measuring to what extent the housing conditions in Dolphin House are improving or otherwise” (CAN, 2010, 20). The indicators were monitored on a regular basis⁸ through evidence gathered from tenant surveys, and other methods, the results of which were then compiled and analysed by Hearne and CAN, in consultation with the tenants, for the human rights hearings.

3.3 Evidence Gathering

Tenants and community workers gathered the evidence for the indicators through a door-to-door questionnaire survey of a random sample of tenants living in 70 units in April 2010 to establish a benchmark of the conditions (see Table 2) and repeated in September 2010, March 2011 and April 2012. The RRIAG also commissioned scientific testing of the waste water and the spores from the mould and dampness⁹, a local community television company made a documentary of interviews with tenants, and photographic evidence was gathered. The research found that 89% of tenants had problems with sewage invasions and smells including grey and black wastewater repeatedly backing up and overflowing into household fixtures. Delays of up to four days in responding to such blockages by Dublin City Council (DCC) were reported. A tenant surveyed in March 2011 explained:

The bath - it (sewage) gurgles, it comes up a couple of inches. I have to put the plug in every night and I have a big heavy candle I put over it. If the kids are in the bath, well as soon as we hear that gurgle, I have to drag them out of the bath because it will come up in on top of them and you don't know what's coming up. (RRIAG, 2011, 4).

⁸ Surveys were undertaken in April 2010, September 2010, March 2011 and April 2012.

⁹ This scientific analysis was carried out by NUI Maynooth Microbiology Department, and private companies Mouldbusters and Tobin Environmental Engineers.

DCC had denied that the waste-water was dangerous to health, but the scientific analysis indicated that the waste water was highly polluted¹⁰. The April 2010 survey also found that some 72% of flats were affected by dampness and fungal contamination. The scientific analysis found that the fungal contamination level is ‘far greater’ than that ever recorded in residential housing. Colonies of *Aspergillus fumigatus*, *Mucor*, *Rhizopus* and *Penicillium* were detected in most of the test locations. *Aspergillus fumigatus* is a known human pathogen, which can cause pulmonary (lung) diseases in humans, with prolonged exposure at the levels identified potentially resulting in asthma and bronchitis (Kavanagh, 2010). DCC responded by claiming that there was no serious mould or damp but just condensation, caused by tenants drying clothes on radiators and not opening windows, and was the tenant’s responsibility to rectify as *per* the Tenants Handbook (DCC, 2010, 20). But as one tenant explained in the April 2010 survey:

It’s every where...It’s all around the beds. The walls are soaking wet. The walls are literally black. I have to wash them down with bleach and its back a couple of weeks later. The vents are all open anyway. There is nothing I’m doing wrong. I don’t dry clothes in the bedrooms. It’s in the walls. It’s black and furry and disgusting to look at. (RRIAG, 2011, 4).

The surveys revealed how the conditions were having significant health implications for tenants, particularly children and families. Supporting medical evidence was provided by the tenants detailing how young children repeatedly suffer from serious chest infections, pneumonia, bronchitis and e-coli infections related to the housing conditions. Tenants explained in the survey how children were infected on their face and hands from sewerage overflows in the play area. Adults reported suffering headaches from the smells and that their mental health was affected, emphasising the stress and embarrassment caused by living in such conditions.

3.4 Public Human Rights Hearings

¹⁰ The sampled waste-water was found to have “constituents which can be described as harmful to human health when compared broadly with the categories given in Statutory Instrument No. 294 of 1989 - European Communities (Quality of Surface Water Intended for the Abstraction of Drinking Water)”. It found that “the elevated coliforms, suspended solids, phosphate (ortho), phosphorous (total) and BOD in it were consistent with partially treated and untreated sewerage waste” (Tobin Consulting Engineers, 2011, 3).

The RRIAG organised its first public ‘human rights hearing’ in May 2010, to which key human rights experts (including Kenna and the President of the Irish Human Rights Commission (IHRC)) were invited to attend and witness the tenants present their evidence and launch their indicators. Months of preparatory media and presentation training was undertaken with the tenants by CAN and a PR company was engaged on a short-term basis to undertake press work and prepare and train tenants for media interviews resulting from the hearing. At the hearing, the living conditions of tenants were publicly condemned by the President of the IHRC as a violation of adequate housing rights enshrined within the UN instruments. The evidence of the shocking conditions and their proven links to health impacts, combined with the legitimacy of the human rights approach, the presence of experts and the ability and willingness of tenants to speak on the media, resulted in the hearing gaining widespread national media coverage. Hearne observed tenants explain at subsequent RRIAG meetings that, through the HRBA process, they fully realised, and internalised, that what was happening to them was a breach of the state’s obligations and their rights under international human rights treaties. They explained that it was the framing of their issues within a human rights context and language and the affirmation from human rights experts that gave them the legitimacy, confidence, and belief to campaign and state publicly that their living conditions were a clear violation of the state’s responsibilities under human rights instruments. They described this as a personally ‘transformative event’.

3.5 Engagement with duty bearers and monitoring

Subsequent to the first hearing the RRIAG engaged with the duty bearers (DCC, the DOELG, and the IHRC) through formal meetings and organised three public ‘monitoring’ human rights hearings (2010, 2011, and 2012). The hearing in April 2011 focused on the results of questions that were added to the surveys relating to detrimental health impacts while the June 2012 hearing focused on the educational impact of children missing school days due to illness related to the housing conditions.

The RRIAG also engaged with UN human rights monitoring systems, including meeting the UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, during her mission to Ireland. It made a submission to the UN Universal Periodic Review (UPR) of Ireland in October 2011. While demands for the realisation of rights for local authority tenants were included in Ireland’s Civil Society UPR - Stakeholder Report (Hearne, 2011a; Irish Council for

Civil Liberties, 2011). The RRIAG also lobbied political representatives which resulted in private meetings with the Minister for Equality and opposition members of parliament.

3.6 Outcomes

In response to the initial Human Rights Hearing, DCC officials met with tenants and community workers and proposed a number of initiatives, including cleaning waste water pipes and installing dehumidifying equipment in the worst affected flats. However, the monitoring hearings provided evidence that these measures were inadequate (see Table 2 above). Progress did commence following the second monitoring hearing of April 2011, which coincided with a change of national government. In May 2011, the national television station (RTE) broadcast a special documentary about the estates where PPP regeneration had collapsed, and specifically examined the case of Dolphin House as a result of the Hearings (RTE, 2011). Afterwards, the new Minister for Housing and Planning was questioned on national television about the issues. Through the prism of the HRBA, incontrovertible evidence of poor housing standards in State housing was addressed in the media thus putting pressure on the governmental and political system at the highest level.

Subsequently, DCC’s senior officials met regularly with the tenants, DCC accepted its responsibility in addressing the serious problem of substandard housing conditions, and undertook a conditions survey between June and December 2011 of each apartment in order to apply for funding to the Department of Environment to refurbish, as a short-term measure, the worst affected apartments. This was a radical departure from previous practice. DCC’s own survey found that 56% of all flats were affected by dampness (with 114 flats, or 30%, rated high dampness level ‘red’) and 25% (95) identified with mould, and 67% (252 flats) with drainage odours. However, at meetings of the RRIAG, tenants outlined their experience of DCC’s poor quality surveying which included varying intensity of analysis and flats being left out of the survey. They expressed concern that the bias of DCC’s workers undertaking the survey resulted in the underestimation of the problem.. Despite the dispute over accuracy, DCC’s figures did reveal that a very significant proportion of units in Dolphin House were substandard -which is in stark contrast to DCC’s denials of the existence and scale of the problem.

In 2011, the RRIAG commissioned an independent architect to analyse refurbishment specifications required to bring the units up to an acceptable standard. DCC accepted the

architect’s proposals and undertook a programme to refurbish, to a new standard, forty of the worst effected units¹¹. By April 2013, approximately forty units were refurbished by DCC with the tenants in the worst affected housing units relocated into these units. It is likely, therefore, that the next survey will reveal significant progress on the indicators in relation to dampness and mould. In addition, a draft regeneration Masterplan was submitted by DCC to the Department of Environment in March 2012 including a timetable for a first phase commencing within two years. The plan is based on comprehensive refurbishment addressing the physical housing conditions, minimising community dislocation and state funded. However, it will be at least eight years before regeneration is complete.

4 ANALYSIS OF THE EFFECTIVENESS OF THE DOLPHIN HRBA: STRENGTHS AND LIMITATIONS

Forensic analysis of the RRIAG’s HRBA methodology points to a number of characteristics of the human rights framework as applied in this case study that were central to ensuring the campaign’s success. Most significant was the manner in which this HRBA applied the human rights framework to empower tenants claim their rights and directly pressure the Irish state to fulfil its obligations to provide adequate housing under international human rights treaties. This empowered tenants to see themselves as legitimate rights-holders and self-advocate in human rights terms. The feelings of inadequacy and failure that are so often associated with the individualised, isolated experience of inequality of housing conditions were replaced with a sharp focus on accountability for rights abuses. Similar to the findings of Pieterse (2007) international law and rights-based discourse engendered in tenants a belief in the rights that they are entitled to, and empowered them to be able to speak publicly about their issues using the language and framework of human rights (Hearne, 2011a). The RRIAG used community development organising principles to educate and train tenants in human rights and support, organise and empower them to lead a public campaign centred on highlighting how the Irish state breached its human rights obligations to this disadvantaged community. It was the

¹¹ This included additional insulation, and installation of ‘double-glazed’ windows and mechanical ventilation systems that had not previously been applied to Dublin City Council refurbishments.

publicly critical nature of this HRBA campaign which created the political pressure that, ultimately, forced the state to act.

Secondly, the human rights framework provided legitimacy to the tenants’ claims which meant that the public hearings achieved widespread media publicity. This was because the campaign highlighted not just the seriousness of the substandard conditions, but that the conditions demonstrated the Irish state’s failure to meet its human rights obligations. The Minister for Environment and other government politicians, therefore, were made directly accountable as their responsibility in ensuring the state met its treaty obligations was placed in public focus. Senior Dublin City Council officials explained in interviews with Hearne that it was this media coverage on state and government failures, and their responsibilities to act under human rights obligations, that was the most influential factor in pressuring politicians and local authority officials to take action.

Thirdly, central to achieving public and political legitimacy was the methodological approach within this HRBA which involved evidence-based indicators that linked the substandard conditions to specific human rights instruments as outlined in Table 2. These were used to demonstrate the benchmark of conditions in the initial hearing and lack of progress in subsequent ones. The indicators also provided a key method by which the human rights experts and the media could identify human rights breaches. The targets set for the indicators were ambitious and initial failure to make progress did lead to despondency amongst tenants. Community development support and the determination of the community was important to maintain campaign focus and energy. However, the ability to highlight the difference between the targets identified at the hearings by human rights experts as a legitimate timeframe for remedy, and the time being taken by the state to act, was an important component of the campaign.

As identified by Stammers (1999) the HRBA demonstrated its potential in this case to create a pathway for marginalised tenants to gain access to the public sphere, and helped conceptualise and articulate demands in a publicly acceptable and coherent way.

Fourthly, the power analysis in the HRBA that required an identification of the location of power within the state and strategies to make it accountable placed the focus of advocacy on much higher levels within the state than had been addressed through previous community work. Senior local authority officials, the Minister for Environment and elected members of government, that had the power and resources to bring about the required change, were thus

invited to respond at the hearings and to meet with the tenants. Considerable effort was placed by the RRIAG in engagement, lobbying and negotiation with the political and state institutions, including meeting government and opposition elected representatives and identifying and working to implement solutions with the local authority. This was followed up with monitoring of implementation in public hearings which sustained the media coverage and political pressure.

From the perspective of public interest law it is interesting to explore the emergence of individual litigation that took place as a result of the media coverage generated by the first hearing when a private lawyer offered, independently of the RRIAG, the tenants of Dolphin to take individual cases on their behalf. This resulted in one case reaching court in 2011, where the Circuit Court awarded a disabled tenant €15,000 damages against DCC with the Judge ruling that the evidence showed the flat was “unfit for human habitation and in breach of the council’s contractual duty of care under the Housing Act” (Managh, 2011). A very small number of other cases were settled out of court. The RRIAG did not get involved in supporting such individual private litigation for complex reasons, principally because it was not deemed to provide a collective benefit. The HRBA approach, in contrast, aimed to achieve transformative change of the relationship between DCC and the tenants and, in that process empower tenants to bring about that change themselves, as a community. The community development approach applied to this HRBA could be complicated by issues of confidentiality and the disempowerment of individuals within the legal system.

A discussion of the challenges and limitations faced by the HRBA provides some useful points for reflection and on-going debate. Most difficult was convincing tenants of the relevance and potential of the HRBA approach. Tenants had considerable distrust of the local authority and cynicism about any possibility of change and improvements in their conditions. Educating tenants in relation to their human rights and empowering them to believe and understand that they were in fact rights holders and that change was possible was, therefore, a time consuming process that required a high level of input from workers in relation to training, development and leadership. The success of the RRIAG, therefore, depended on significant community development input, educating, organising and training of tenants, funding, technical expertise (human rights and policy analysis) and public campaigning. This is in line with the community development and human rights literature which highlights how marginalised communities require a high level of support to implement such initiatives successfully (Atkinson & Jacobs, 2010; Hearne, 2011a).

Another challenge was opposition to the RRIAG that emerged internally within the community after the first public hearing. Some tenants claimed that the publicity from the hearings was negative for the community. This reduced after tenants witnessed the first changes undertaken by the local authority. However, the refurbishment and relocation of the worst affected tenants led to others, who were not moved in the first phase, being upset and frustrated as issues arose around communication between DCC, the RRIAG and these tenants. This would suggest that the indicators in relation to participation will be most difficult to address as they deal with decades of neglect and abandonment. These issues meant that tenant leaders in the RRIAG required a lot of support in making the case for the HRBA, not just publicly, but also internally within the community.

Another issue that arose was the private questioning by government politicians and state officials of the legal legitimacy of the RRIAG’s claim that the state was in breach of its human rights obligations. The success of the public campaign appears to have ensured that this question was not pursued and the state accepted, publicly and practically at least, the legitimacy of the concerns raised. However, there was a risk that the state could have continued to deny responsibility and thus significantly tested the capacity of the campaign and HRBA. The election of a new national government in 2011 was influential in avoiding that scenario. The new Minister for Housing was from the Labour Party, and therefore, politically sensitive to issues of local authority housing and human rights obligations. The change of national government, therefore, played an important, though not the central, role in the success of this HRBA as it is likely that a re-elected government would also have responded, though possibly in a longer time frame, to the political pressure from the RRIAG.

Therefore, while Dolphin House can provide a positive example for moving from individual solutions to a collective process of pressuring the State at central and local level to address housing rights, it was a complex process that required considerable resources, publicity, an active campaign, access to expertise and active and engaged tenants. It is noteworthy that a small number of other communities are achieving progress in relation to housing conditions by citing human rights obligations and the Dolphin experience¹². Achieving housing policy reform on

¹² Community workers in two disadvantaged estates in Dublin affected by serious mould and dampness explained to the author that in late 2012 they succeeded in getting DCC to carry out a similar housing conditions survey and a plan for refurbishing the worst affected flats as a result of citing the Dolphin human rights experience.

a broader scale in terms of changing the way the institutions interact with tenants and the State’s methods of addressing inadequate housing conditions and regeneration is clearly a complex task. Experience from other countries demonstrates how a HRBA can achieve local level gains but fails to challenge macro-level concerns such as neo-liberal economic policies (Aberese Ako et al., 2013). In this case the RRIAG has begun to test the potential for extending the engagement of these marginalised rights holders to demand, on a longer term basis, other social and economic rights. Initial indications are pointing to the HRBA in this instance having resulted in the creation of an active, empowered group of tenants articulate in human rights who are willing to investigate how the HRBA can be applied to wider issues such as education, employment and health in the regeneration process.

CONCLUSION

The analysis presented in this article of applying human rights in practice through the HRBA to advance housing rights for social housing tenants provides a number of insights relevant in both academic and professional international human rights discourse, as well as rights, law and policy making for NGOs, Governments, community development organisations and local authority tenants. The evidence of the RRIAG campaign demonstrates that a HRBA can contribute to making states accountable at a local level for their international human rights obligations and thus realise, in practice, social and economic rights for disadvantaged populations. In this case study the local authority had, for decades, denied the extent of the substandard conditions and insisted that tenants were responsible for causing and, therefore, remedying housing defects. Through a public campaign based on a HRBA the local community redefined the substandard housing conditions as relating to human rights obligations of the Irish state. As a result, the local authority, central government department and government politicians accepted responsibility to address the conditions and involved the affected tenants in the process of remedy.

It was the combination of the conceptual clarity and accessibility of the HRBA with effective community development that was critical in this case. The HRBA provided a coherent and legitimate framework to which tenants could relate, which transcended the ‘official’ language of existing State approaches. This included such concepts as “social inclusion” which

was familiar to community workers and human rights experts, enabling effective campaigning and advocacy to be organised. In many ways, this demonstrated that housing rights are not just idealistic and aspirational values, ambiguously phrased and impossible to quantify. Clarity and purpose can be gleaned from these socio-economic rights, which can overcome clashes of values and competing political approaches, especially when combined with working class community advocacy. Indeed, by using terms such as ‘responsibility to respect, protect, promote and fulfil housing rights obligations’ which the State had accepted at international level, public officials were exposed to new methods of evaluation of their policies and actions. The human rights principles of transparency, accountability, impartiality, participation, empowerment and non-discrimination offered a new tool to achieve change for tenants, which could penetrate the paternalistic and other policies of the State. The result is an empowered and articulate group of tenants and community workers who can continue to examine and critique, not just the regeneration process, but the operation of all State agencies in their neighbourhood, from a rights perspective. The wider societal legitimacy for their claims, articulated through the HRBA, has led to broad public and political acceptance of their priority claim on State resources.

Fundamentally, this HRBA public campaign forced the Irish State to engage with tenants as rights holders. However, this approach faced many challenges, such as issues of defining indicators, organising and training tenants, availability of technical expertise, the significant effort required by tenants and community workers and the risk of state denial of responsibility. The inadequate housing conditions are being addressed by the State, and there is a commitment to a defined regeneration scheme with time limits and tenant involvement in decision-making. The success or failure of this HRBA project may be more reflected in the lives of the participating tenants than anything else, and further research on this will be needed.

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