

IHRC Conference Making States Accountable

Dr. Padraic Kenna NUI, Galway

International Mechanisms for Protecting Housing Rights

Basic questions?

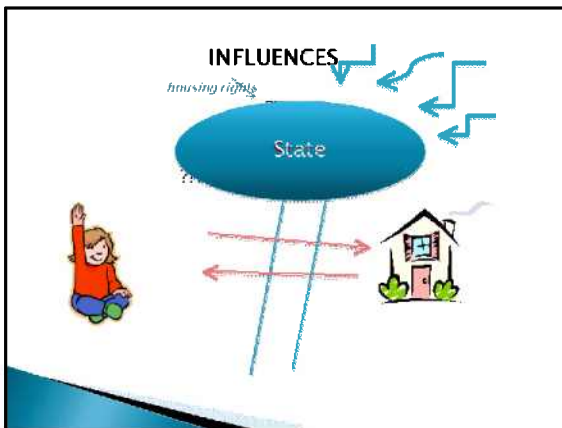
- ▶ Why do we need housing rights?
- ▶ What are these housing rights?
- ▶ How do we make States accountable?
- ▶ Is there any sign of the Irish State taking any notice of these rights?

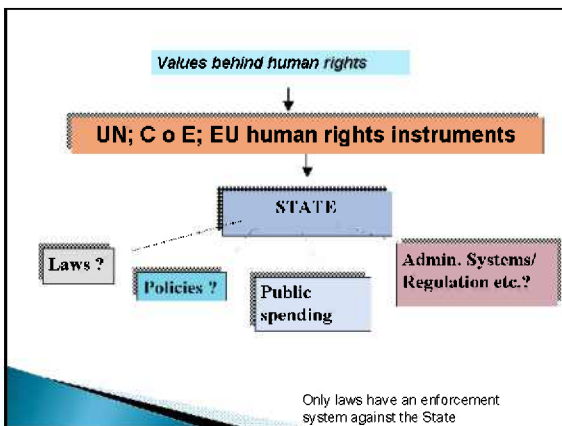
Why do we need housing rights?

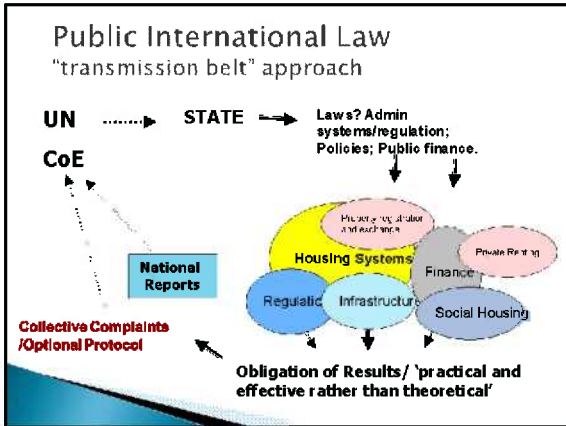
- ▶ At least 4,000 people with intellectual disabilities incarcerated within institutions
- ▶ 6,236 asylum seekers placed in direct provision accommodation with €19 per week to spend
- ▶ Ombudsman – 120 asylum children forced to sleep in hostels with no staff
- ▶ 1,317 Traveller households needing housing with 524 households on the side of the road
- ▶ Tens of thousands of LA tenants are living in substandard and unsafe housing – no legal standards apply

More!!

- › No protection from eviction laws for LA or HA tenants
- › Estimated 30 –40,000 households in mortgage arrears
- › *“more legal protection when buying a kettle than buying a house”*
- › Some 20% of the private rented dwellings inspected in 2008 did not meet the regulatory standards
- › At least 1,394 homeless households







Housing Rights

- ▶ **United Nations**
 - UDHR (Art. 25), ICESCR (Art. 11), General Comments 4 & 7, other instruments, ILO.
- ▶ **Council of Europe**
 1. Social Charters – Arts. 13, 15, 16, 17, 19, 23, 30 and 31.
 - Programmatic but collective complaints system
 - *FEANTSA v France* & Commissioners Recommendations (2009)
 2. ECHR – Arts. 2, 3, 6, 8, 13, 14, Art 1 of Protocol. 1. and combinations of these – individual and justiciable– ECHR Act 2003.
- ▶ **European Union**
 - Treaties, Regulations, Directives (justiciable),
 - CFR now Art. 6 Lisbon Treaty, other private law, such as unfair contract terms regs.

Legal application

- ▶ UN Treaties ratified internationally, but not legislated nationally – Arts. 29.6 and 15.2.1.
 - System of Reporting and Optional Protocol
 - *Limburg Principles*, 1986, *Maastricht Guidelines*, 1987
- ▶ Council of Europe –
 1. Social Charters –reporting system and Collective Complaints system
 2. ECHR – appeal to ECtHR after domestic remedies exhausted
- ▶ EU law – direct application in national courts

Problems of making States accountable

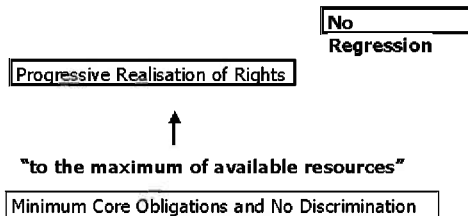
- ›Dualist systems – norms not juridified
- ›Reporting – disaggregation – resources
- ›Based on dignity – ?? –minimalist and relative
- ›Language vague and non-specific ‘maximum’
- ›Use of Indicators ! !!!
- ›Growth of non juridic approaches
- ›Limits of legal liberalism – critical
- ›Overall results are disappointing

Back to Basics – General Comment 3. (1991)
The nature of States parties obligations (Art. 2, para. 1 of the Covenant)

›*“If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d’être”.*

›*So where can we find the minimum core obligations for Ireland?????*

Obligations of States (ICESCR)



Matrix of Housing Rights

- Minimum core obligations - recognize - respect - protect - fulfil and progressive realization
- Non-discrimination
- Legal security of tenure - fair procedures in evictions etc
- Affordability - not affecting other needs
- Habitable housing
- Accessible housing
- Suitable location
- Culturally adequate housing
- Availability of services, materials and infrastructure

Many of these have overlapping legal recognition in domestic legislation and common law/equity precedents

REMEMBER

- › *A demand for adequate housing is much stronger than a demand for State to implement a right to housing*
- › *'even meeting the demand for a right to have a need met may allow for the non-fulfilment of the original need'*
