

Following Grenfell:

the right to

adequate and

safe housing

This briefing focuses on the right to adequate and safe housing, covering its meaning, jurisprudence and its relevance to Grenfell. It forms part of a series explaining human rights issues raised by the Grenfell Tower fire: the right to life, adequate and safe housing, access to justice, inhuman or degrading treatment, equality and non-discrimination, and children's rights.

What is the right to adequate and safe housing and what is its source in international law?

The right to adequate housing is one of the most well-recognised economic and social rights internationally. It is central to human dignity and without it, it is effectively impossible to exercise a range of other human rights, including family life, privacy, and health.

The right to housing is guaranteed by a variety of legally binding international and European standards. It forms part of the broader right to an adequate standard of living, enshrined, for example, in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICECSR):

'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'

The UN treaties on disabled people's rights, women's rights, children's rights and the rights of ethnic minorities all include provisions relating to the right to housing.¹ The UK Government has signed up to all of these treaties; as a result, all public bodies – at central, local and devolved levels – have to abide by them at all times.

At the level of the Council of Europe, the right to housing is not included in the European Convention on Human Rights (ECHR), which is the only human rights treaty that forms part of the UK's domestic law (through the Human Rights Act (HRA) 1998). The UK is also bound by the European Social Charter (1961). While the 1961 Charter does not contain an explicit guarantee of the right to housing, Article 16

¹ Convention on the Rights of Persons with Disabilities (CRPD, Art. 28(1)), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Art. 12(2)(h)), Convention on the Rights of the Child (CRC, Art. 27(3)), and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD, Art. 5(e)(iii)).

guarantees the right of the family to social, legal and economic protection, and makes explicit reference to an obligation to protect family life and provide 'family housing'. The UK Government has not ratified the revised European Social Charter (1996), which does include the right to housing (Article 31(1)).

As a result of the UK Government's ratification of the treaties listed above, it is bound by these human rights standards under international law.² However, the right to housing has not been incorporated into UK law, which means that individuals who feel their right to housing may have been violated won't be able to take legal action against Government for breach of the right to housing.

Domestic law in England provides piecemeal rights and protections for tenants through the Housing Act 2004, the Landlord and Tenant Act 1985, the Environmental Protection Act 1990 and the Building Regulations 2010. In the wake of the Grenfell Tower fire, this legislation has been criticised as outdated, complex and poorly enforced.³ While there are statutory obligations on most landlords to keep the structure and exterior of their properties in good repair, in England, there is no general obligation to ensure that properties are fit for human habitation. In Wales, the Renting Homes (Wales) Act 2004 introduces a new requirement for rented dwellings to be fit for human habitation. In Scotland, the Housing (Scotland) Act 2006 gives tenants greater rights to enforce basic standards of habitability.

Tenants in social and private rented accommodation often struggle to take action to improve their living conditions and address health and safety hazards. Local authorities cannot take enforcement action against themselves, while private tenants can face retaliatory eviction if they make requests for repairs. Access to justice is also impeded by the lack of legal aid for disrepair cases. The current legal framework in England does not guarantee the right to adequate and safe housing and does not conform with international standards.

After the Grenfell Tower fire, Karen Buck MP reintroduced the Homes (Fitness for Human Habitation) Bill, which would require residential rented accommodation to be provided and maintained in a habitable state. The Bill is currently before Parliament.

² UK courts have accepted that international human rights treaties can be used as an aid to interpretation of relevant domestic laws (such as the Housing Act, the Human Rights Act or secondary legislation about the provision of suitable temporary accommodation).

³ Shelter and University of Bristol (2017), 'Closing the Gaps: Health and Safety at Home', available at: <http://www.bristol.ac.uk/law/research/grenfell/> [accessed: 12 September 2018].

What does the ‘right to adequate and safe housing’ mean in practice?

The UN Committee on Economic, Social and Cultural Rights, the independent body that monitors the protection of ICESCR rights, set out seven key elements of the right to safe and adequate housing:

- **Availability of certain facilities essential for health, security, comfort and nutrition**, such as safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, site drainage and emergency services.
- **Affordability** of housing, in the sense that costs associated with housing should be at such a level that they do not compromise the satisfaction of other basic needs. This means that government should, for example, establish housing subsidies for those unable to obtain affordable housing and protect tenants against unreasonable rent levels or rent increases.
- **Accessibility**, guaranteed by housing law, policies and practice, with a particular focus on the specific needs of disadvantaged groups, such as the elderly, children, disabled people or people with a terminal illness.
- **Habitability**, meaning that inhabitants must be provided with adequate space, protected from cold, damp, heat, rain, wind or other threats to health or structural hazards to guarantee their physical safety. Where social housing is designed in a way that constitutes a fire hazard, or where responsible public bodies do not take sufficient measures to ensure that private rented housing is of a decent standard, the right to adequate housing may be violated.
- **Legal security of tenure**, guaranteeing legal protection against forced eviction,⁴ harassment and other threats to all persons – whether living in private rental accommodation, social housing, owner-occupation, emergency housing, informal settlements or otherwise.

⁴ In international human rights law, a ‘forced eviction’ is the permanent or temporary removal against their will of people from the homes and/or land which they occupy, without the provision of appropriate forms of legal or other protection. To be in line with human rights standards, evictions must be subject to a wide range of procedural protections. For instance, government must genuinely consult with those affected, give adequate and reasonable notice of evictions and ensure legal remedies are available to victims of evictions. See UN Principles and Guidelines on evictions:

https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf. In England, evictions are the biggest cause of homelessness. See: <https://www.nao.org.uk/report/homelessness/> [both accessed: 16 August 2018].

In domestic law in England, the Housing Act 1988, section 21, permits landlords to evict tenants in England without giving a reason, which is in breach of international human rights standards. While section 33 of the Deregulation Act 2015 is intended to prevent retaliatory evictions, the conditions that must be met to invoke the Act are onerous and it is very rarely used by tenants.

- **Location**, allowing access to employment options, health care services, schools, childcare centres and other social facilities.
- **Cultural adequacy**, in the sense that the construction of housing must appropriately enable the expression of cultural identity and diversity of housing.

Crucially, the fundamental human rights principles of human dignity and non-discrimination require the right to housing to be ensured to all people irrespective of income, access to economic resources or any other ground of discrimination. They also require that housing is not simply equated with the shelter provided by having a roof over one's head, but is seen as **adequate** housing, that is, somewhere you can live in security, peace and dignity.

Special protection for disadvantaged people, for example, disabled people

In implementing the right to housing, governments must gradually improve the housing situation of people, taking particular account of those who are disadvantaged. Among the key elements of the right to housing listed above is the **accessibility** of housing. It is the government's duty to make sure accessible housing, including sufficient social housing of an adequate standard, is available at an affordable cost for everyone. Social housing programmes should offer housing that is accessible, for example, for disabled people and the elderly. Governments should develop a national housing strategy based on meaningful participation by all of those affected, and set accessibility standards in consultation with disabled people and their organisations.

The accessibility of housing for disabled people is also one of the core elements of their right to live independently in the community (Convention on the Rights of Persons with Disabilities, Article 19). This includes mandatory building regulations that permit new and renovated housing to become accessible. The Equality and Human Rights Commission (EHRC) carried out an inquiry into housing for disabled people in 2017/18. We found that the long waiting times that disabled people face, as well as the weak regulatory framework and oversight of the building of accessible homes, are of particular concern. About two per cent of households in Great Britain include a disabled person who does not live in appropriate housing, which includes high-rises like Grenfell Tower.

Links to other human rights

The right to housing cannot be viewed in isolation from other human rights, in particular the rights to life, to respect for private and family life, and to property. The

UN Special Rapporteur on housing noted that ‘the right to life cannot be separated from the right to a secure place to live, and the right to a secure place to live only has meaning in the context of a right to live in dignity and security, free of violence’.⁵ The UN Committee on Economic, Social and Cultural Rights has taken the view that in situations where the right to housing is not guaranteed by domestic law, other domestic rights should be applied and interpreted in a way that ensures its protection in practice. Both the rights to life and to private and family life are protected by the ECHR, which has been incorporated into UK law through the HRA 1998. This means that in assessing whether public authorities have violated the right to housing, their actions or lack of actions to protect related rights that are binding under UK law will have to be considered by courts.

Access to effective remedies

Governments have to provide redress to individuals and families whose rights to housing, life, private and family life and other rights have been violated. This means that they need to be able to take legal action, including, for example, to file formal complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and discrimination in access to housing, or concerning unhealthy or inadequate housing conditions.

Some violations of the right to housing may require immediate redress; others may need longer-term solutions such as law and policy reforms.⁶ Regardless, access to justice must be ensured.

The responsibilities of private landlords and management companies

While it is the Government’s (including public bodies’) duty to actively protect people’s right to housing and to ensure their access to justice, under international human rights law, private landlords and management companies have a responsibility to respect those rights.⁷ This means that they must not interfere with people’s enjoyment of these rights. For example, they must meet accessibility and habitability standards set by the state and must not discriminate against certain

⁵ UN Special Rapporteur on adequate housing (2016), ‘Adequate housing as a component of the right to an adequate standard of living’, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/310 [accessed: 14 August 2018].

⁶ See for example the 2018 report by the UN Special Rapporteur on housing on human rights-based housing strategies: <https://www.ohchr.org/EN/Issues/Housing/Pages/HRbasedHousingStrategies.aspx> [accessed: 15 August 2018].

⁷ UN Guiding Principles on Business and Human Rights, Pillar 2, available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed: 12 September 2018].

tenants or disproportionately increase rent levels. It is the role of the UK Government to put adequate regulations in place, to guide private landlords' and companies' conduct and the protection of tenants, and establish clear enforcement mechanisms. This may mean, for example, taking active steps to ensure that private landlords remove dangerous cladding in the aftermath of the Grenfell Tower fire.

The right to adequate and safe housing in action

There is a wealth of jurisprudence relating to housing at international and domestic level. A few examples are provided below.

In 2002, the **UK High Court** found that a severely disabled person living with her husband, who was her carer, and their six children in crowded, temporary accommodation was living in unacceptable conditions. It held that the local authority had failed to meet its legal duties to place the family in suitable accommodation, in violation of their right to private and family life (see *Bernard v London Borough of Enfield*).

In 2005, the **Council of Europe's Committee of Social Rights** interpreted the right to housing as requiring states to ensure an adequate supply of housing and ensure that existing housing is of an adequate standard (see *ERRC v Bulgaria*).

In 2007, the **European Court of Human Rights** held that the eviction of a long-term established encampment, without an independent proportionate assessment of the eviction, is in violation of the right to respect for private and family life. It also highlighted that particular attention must be paid to consequences of an eviction and alternative solutions before deciding whether it is appropriate to proceed, especially when an eviction could result in homelessness (see *Winterstein v France*, see also *ERRC v Bulgaria, Yordanova and Others v Bulgaria*).

In 2016, the **UN Committee on Economic, Social and Cultural Rights** called on the UK Government to take action to tackle the housing deficit by ensuring a sufficient supply of housing, in particular social housing units, to:

- effectively regulate the private rental sector, including through tenure protection and accountability mechanisms
- address substandard housing conditions, and
- ensure access to culturally appropriate accommodation and stopping sites for Roma, Gypsy and Traveller communities.

See *UN CESCR Concluding Observations on the UK*.

In 2017, **The UN Committee on Economic, Social and Cultural Rights** found that Spain had violated the right to housing of a family with young children who were evicted from a rented room in a flat without being provided with alternative housing. It noted that although the eviction by court order was legal, the authorities had not taken all the necessary steps to provide the family with alternative housing (see *Ben Djazia et al v Spain*).

How is the right to adequate and safe housing relevant to Grenfell and the work of the Grenfell inquiry?⁸

Government's regulatory and enforcement duties

To properly assess responsibilities for the Grenfell disaster, it is crucial to examine:

- a) the adequacy of housing law, policies and practice in line with international standards, including whether reasonable quality, safety and accessibility standards were in place
- b) the enforcement and accountability mechanisms against these laws and policies, and
- c) the compliance by private landlords and companies with the standards set by the UK Government.

A key issue, affecting both residents' rights to housing and to life, in the Grenfell inquiry will be whether the use of polyethylene-based cladding in residential blocks was banned by building regulations, due to the risk of fire associated with it. If the building regulations did not ban its use, the Government will need to explain why in light of the evidence of the danger posed by the cladding. If the regulation did ban its use, questions will be asked about private landlords' and developers' compliance with the regulations, as well as the adequacy of the systems for monitoring and supervising compliance with those regulations. Further relevant housing-related laws the inquiry should scrutinise include those on fire safety, health and safety, accessibility, enforcement of tenants' rights and access to justice.

Availability of certain facilities essential for health and security

An international minimum standard in relation to housing is the availability of facilities essential for, among other things, the wellbeing and security of residents. This

⁸ The scope of the inquiry is set out in the terms of reference and list of issues, both of which are available online at: <https://www.grenfelltowerinquiry.org.uk/key-documents> [accessed: 14 August 2018].

includes protection from threats to health, protection from structural hazards and emergency services. A key issue for the Grenfell inquiry to look at will be whether Grenfell Tower was built in a way that constituted a fire hazard and whether essential facilities were provided.

Accessibility of housing for disabled people and the elderly

The fact that people with limited mobility were living high up in Grenfell Tower and faced greater difficulties escaping the fire raises important questions about discrimination against certain groups and accessibility standards. Our recent [inquiry into housing for disabled people](#) found that only seven per cent of homes in England offer minimal accessibility features, and many local authorities were concerned that developers fail to comply with the accessibility standards in the Building Regulations. Yet only seven local authorities had taken any action against a developer in the last three years.⁹

Some of the concerns we highlighted in our [briefing on the right to life](#) are just as relevant to the protection of residents' right to housing, including:

- the extent to which the UK Government was aware of the dangers posed by the cladding system
- the availability of complaints mechanisms and redress for residents, and
- the adequacy of the preventative measures adopted by the UK Government to prevent a further tragedy.

Further information on our work following the Grenfell inquiry is available on our [website](#).

If you have any queries on human rights in relation to the Grenfell Tower fire, please contact grenfell@equalityhumanrights.com.

⁹ EHRC (2018), 'Housing and disabled people: Britain's hidden crisis'. Available at: <https://www.equalityhumanrights.com/sites/default/files/housing-and-disabled-people-britains-hidden-crisis-main-report.pdf> [accessed: 12 September 2018].

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