

# The Elements of Adequate Housing: Grenfell as Violation

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*This article is written in admiration of the Grenfell Tower Survivors, and in memory of those who were lost in the fire. I would like to thank all those working to expose the injustices around Grenfell, hold those responsible to account, and ensure it never happens again.*

## Abstract

This paper considers the Grenfell Tower fire as a breach of the right to housing by the UK, in contravention of its obligations under international law. I examine how the fire, the underlying housing conditions that at least in part led to it, and the government's response, breach the elements of the right to housing under the International Covenant on Economic, Social and Cultural Rights. I concentrate on the requirements that housing must be habitable, accessible – particularly for disadvantaged groups – and in an adequate and safe location. In a close analysis of the international legal standards, I clarify the ways the UK breached the right to housing, and how those international legal standards point to its inadequate actions and response for the survivors and victims. In concluding, I suggest that although the government is likely to resist the right to housing, it remains a powerful political tool to demonstrate the government's lack of care of its people, and its overall legal and policy shortcomings as made strikingly clear by the Grenfell Tower fire.

## Keywords

Right to housing – Grenfell Tower fire – accountability – International Covenant on Economic, Social and Cultural Rights – habitability – accessibility – location – disadvantage.

## 1. Introduction

The 14<sup>th</sup> of June 2017 dawned on a perfect English summer day. But for the residents of the Grenfell Tower and Lancaster West Estate, in London's Royal Borough of Kensington and Chelsea, the daylight only confirmed the horrors of the night. Dawn exposed the fire-ravaged skeleton of the Grenfell Tower, still burning and smoking. The fire was a tragedy on a personal level. More than 70 people were killed in the fire, and many more were injured. The disaster left family, friends and neighbours traumatised, and a community broken up and dispersed.

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More than 200 households in the tower were made homeless, and more than 120 from the surrounding area were also forced from their homes.<sup>1</sup>

But the black ruin of the tower was also a political indictment of the failure to care for and value the residents of Grenfell, and others like them: communities struggling with poverty, austerity, and lack of opportunity amongst the striking wealth of the city of London.

This paper considers this lack of care and value through the lens of the right to housing. The Grenfell Tower fire illustrates a breach of the right to housing by the UK, in contravention of its obligations under international law. I examine how the fire, the underlying housing conditions that at least in part led to it, and the government's response, breach the elements of the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>2</sup> I concentrate on the requirements that housing must be habitable, accessible – particularly for disadvantaged groups – and in an adequate and safe location. In a close analysis of the international legal standards, I will clarify in what ways the UK breached the right to housing, and how those international legal standards point to its inadequate actions and response for the survivors and victims. In concluding, I suggest that the right to housing remains a powerful political tool, which can be used to put the government's shortcomings and lack of care for its people in the spotlight, and potentially to hold it to account.

## 2. The Right to Housing and the UK's International Legal Obligations

### A. Why a Right to Housing?

Housing provides and protects some of our most fundamental needs. As I have explored elsewhere, housing is important in the formation and protection of identity, community and place in the world.<sup>3</sup> And housing plays many roles: safe, adequate housing protects us from external physical threats and shelters us from the elements. It gives us a base from which to build a livelihood and take part in the broader society. It provides a space in which our psychological needs can be met, fostering and influencing the development of our identities.<sup>4</sup> At the same time, housing functions as a financial asset, an indicator of wealth and economic security, and an economic instrument. Moreover, housing plays these roles on several scales. Housing – or home – is a vital material base for individuals and households, with significant psychological influences, while simultaneously it is a piece of property which often functions as asset. At the other end of the scale, the nation's housing stock is a key indicator of GDP, while the form and nature of housing in any state may be seen as an element of national character or culture. House building can even be equated with nation building.<sup>5</sup> In between, the built environment takes on a specific character through housing forms, from the tall narrow faces of the houses in Amsterdam's De Pijp, to Rio de Janeiro's favelas, to the UK's 1970s tower blocks – the Grenfell Tower among them.

The recognition of the right to housing in international law is based on an appreciation of the importance of housing to privacy, autonomy and freedom; its function in facilitating participation and inclusion in society; and its role in providing the material goods that make all

<sup>1</sup> Adam Forrest 'Grenfell Tower: Almost 100 Families still without own Home this Christmas, 18 Months after Fire' *The Independent*, 23 December 2018 <<https://www.independent.co.uk/news/uk/home-news/grenfell-tower-fire-families-housing-christmas-kensington-chelsea-council-theresa-may-a8696941.html>> accessed 18 July 2019.

<sup>2</sup> Adopted 16 Dec 1996, entered into force 3 Jan 1976.

<sup>3</sup> Jessie Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart 2013).

<sup>4</sup> *ibid* 231.

<sup>5</sup> Rachel Kallus and Hubert Law Yone, 'National Home/Personal Home: public Housing and the Shaping of National Space in Israel' (2002) 10 *European Planning Studies* 765; Sarah Charlton 'Housing for the Nation, the City and the Household: Competing Rationalities as a Constraint to Reform?' (2009) 26 *Development South Africa* 301; Hohmann 2013 (n 3) Ch 8.

of these things meaningful and possible.<sup>6</sup> In other words, the principles that inform and underlie the right to housing include some of the most fundamental concerns of human rights.<sup>7</sup> Moreover, while aspects of a person's relationship with her housing and home may be protected by rights to privacy, property, liberty and security, by rights to vote and to freedom of expression, a right to housing shifts the focus, insisting that housing is not instrumental to the realisation of other human needs and goods, but itself fundamental.<sup>8</sup>

If we understand the right to housing in this way, we are faced with a complex and multifaceted right, which touches on the relationship between the individual and the state, the public and the private, inclusion and exclusion.<sup>9</sup> Its realisation is deeply affected by and tied up with a range of other political, economic and ideological problems and phenomena. These include privatisation and deregulation, financialisation, and issues of inequality.<sup>10</sup> All of these issues are relevant in the context of the Grenfell Tower fire, as further discussed below.

In the UK, there are relentless pressures that impact on ordinary peoples' ability to access adequate housing. These include: lack of supply;<sup>11</sup> poor conditions;<sup>12</sup> lack of affordability relating to disinvestment in social housing and housing's financialisation;<sup>13</sup> and a discriminatory context of welfare and austerity policies that impact particularly on those who are poorer, disabled, and from racialized backgrounds.<sup>14</sup>

Given the UK government's failure to incorporate the right to housing into domestic law, and the lack of enforcement mechanisms at the international level, it is difficult to use the right to hold the government to account before an English court.<sup>15</sup> However, the right to housing still remains a powerful tool. It can provide evidence of international obligation and a hard legal standard against which to evaluate government law and policy. It can also be used as a rallying cry, and a political platform: one which insists on housing as a right for all. For this reason, as the section below demonstrates, the right to housing remains an important opportunity for activism, through which we can shine a light on the government's failings around

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<sup>6</sup> See for eg the work of the UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Right to Non-Discrimination in this context, available at <<https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>> accessed 16 August 2019.

<sup>7</sup> Hohmann 2013 (n 3).

<sup>8</sup> *ibid.*

<sup>9</sup> *Ibid.*, Part II.

<sup>10</sup> See Jessie Hohmann 'The Right to Housing' in Markus Moos (ed) *A Research Agenda on Housing* (Edward Elgar 2019).

<sup>11</sup> See for eg, Shelter, *Building a Better Future: A Vision for Social Housing – Final Report of Shelter's commission on the future of social housing* (Shelter, January 2019) which calls for 3 million new social homes; Jessie Hohmann, *Protecting the Right to Housing in England: A Context of Crisis* (JustFair 2016) at 15 and 24-29.

<sup>12</sup> Hohmann, *ibid.* at 16 and 39.

<sup>13</sup> Shelter (n 11).

<sup>14</sup> See eg, *Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights*, London, 16 November 2018 at <[https://www.ohchr.org/Documents/Issues/Poverty/EOM\\_GB\\_16Nov2018.pdf](https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf)> accessed 15 August 2019; Vickie Cooper and David Whyte, *The Violence of Austerity* (Pluto Press 2017). Egregious examples of specific discriminatory housing policies include the 'Right to Rent' which forced landlords to check the immigration status of their tenants, and was held to violate the European Convention on Human Rights by the High Court in March 2019 (see R (Joint Council for the Welfare of Immigrants) v SSHD [2019] EWHC 452 (Admin)), and the 'Bedroom Tax', which was also found to be discriminatory by the UK Supreme Court in R (on the application of Carmichael and Rourke) v Secretary of State for Work and Pensions (Respondent) [2016] UKSC 58.

<sup>15</sup> See the discussion in Section 2B, below. This is not to say that there is no protection of the right to housing in the UK. A number of domestic laws protect aspects of the right, and in fact the UK has been commended by the UN Special Rapporteur on Adequate Housing for a historically strong provision of adequate housing. See UNHRC, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, Addendum, Mission to the United Kingdom of Great Britain and Northern Ireland A/HRC/25/54/Add.2* para 11-16.

the Grenfell Tower fire and through with we can press for accountability both legally and politically.

### **B. The UK Government's International Legal Obligations for the Right to Housing**

The UK government accepted international obligations to respect, protect and fulfil the right to housing under ICESCR in 1976.<sup>16</sup> However, the state has not directly incorporated the rights under the ICESCR into its national laws. This means that individuals cannot approach a court to enforce their rights under the treaty. In fact, the Westminster government's long-held position is that current administrative and legislative measures ensure fulfilment of its international obligations for the right to housing.<sup>17</sup> In addition, the UK has not yet ratified the Optional Protocol to the ICESCR, which would allow individuals to take their complaints to the UN under the treaty, in a similar way that they can currently approach the European Court of Human Rights. The government has argued that there are no clear benefits for individual applicants to this route, and that existing judicial mechanisms are adequate to provide remedies for people.<sup>18</sup>

However, as the Grenfell Tower fire, and its aftermath, have made chillingly clear, the right to housing is not adequately protected in the UK, and it is not clear that national laws can be used to hold the government to account for its failings. In addition to those who lost their lives, their grieving families and friends, and those survivors and others directly affected by the fire, the resulting enquiries, media and public scrutiny have revealed that many thousands of households in the UK are not enjoying adequate, safe and secure housing as required by international law.

In this part of the paper, I outline the right to housing in international law, and the obligations it places on the government.

The legal standard against which the UK's performance on ensuring the right to housing will be measured is set out in Article 11(1) of ICESCR:

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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Article 11(1) thus sets the right to housing within a broader context of the right to an adequate standard of living, which in turn reflects housing as one of a number of material underpinnings of a decent life. In addition, each aspect of Article 11(1) has its own legal content, and places specific obligations on the state.

The right to housing aims to ensure that everyone has somewhere to live in peace, dignity, and security.<sup>19</sup> It is not just a right to shelter, or to a roof over one's head, but to *adequate housing*. This has been interpreted by the UN body overseeing the ICESCR as

<sup>16</sup> ICESCR (n 2).

<sup>17</sup> Government of the United Kingdom, *United Nations International Covenant on Economic, Social and Cultural Rights United Kingdom, British Overseas Territories, Crown Dependencies 6th periodic report* (17 June 2014) available at <<https://www.gov.gg/CHttpHandler.ashx?id=103320&p=0>> accessed 29 May 2015, para 11.

<sup>18</sup> See eg *Ministry of Justice, United Nations Universal Periodic Review: United Kingdom, British Overseas Territories and Crown Dependencies: Annex to the response to the recommendations received on 4 May 2017* available at <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646051/annex-uk-response-to-the-recommendations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646051/annex-uk-response-to-the-recommendations.pdf)> accessed 15 August 2019, 12.

<sup>19</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4* (1991) E/1992/23, para 7.

requiring seven elements that make up adequate housing: legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.<sup>20</sup> A breach of *one* element may amount to a violation of the right to housing, though in practice the elements are intertwined.

The state must take steps to realise the right to housing, using the maximum of its available resources.<sup>21</sup> These resources should be conceived broadly. They include not only 'the budget,' but other dimensions of public finance (such as monetary policy and government borrowing) and can encompass human, technological, organisational, natural and informational resources.<sup>22</sup>

The state has discretion as to how it will fulfil its obligations under the ICESCR, and the international legal framework recognises that some aspects of complex and resource intensive rights such as the right to housing may take time to achieve.<sup>23</sup> It is important to point out that the right to housing is not a blunt instrument that requires states to give everyone a house. It is a contextual duty that requires forward movement towards adequate housing. On the other hand, some aspects of the right *must* immediately be ensured. The government has a 'negative duty' not to infringe anyone's existing rights. In addition, any aspect of the right that does not impose significant resource obligations should be fulfilled immediately. The government also has an immediate obligation to ensure a minimum core – or level – of each of the seven elements of the right to housing.<sup>24</sup> Special care should be taken to ensure that the rights of the most vulnerable are protected.<sup>25</sup> And there should be no discrimination in ensuring the right – this too is an immediate obligation.<sup>26</sup>

Because the obligation is to move forwards, when states take backward – or retrogressive – steps, they need to take human rights protection into specific account. The state should not take policy or budgetary decisions that are arbitrary or discriminatory in nature, or that fail to consider the disadvantaged and marginalised, the most vulnerable, and those in situations of grave risk in any austerity policy.<sup>27</sup> Where there are various policy options open to the state, it should choose a course that is the least detrimental to peoples' rights.<sup>28</sup> That means that a human rights approach should underpin and guide even cuts to social and services and broader government policy. The Committee which oversees the ICESCR (the CESCR), recently stressed this in a case against Spain. It criticised the local government for the sell-off of badly needed social housing, holding that this was an unacceptable retrogressive measure, leaving families homeless and without access to adequate housing.<sup>29</sup> As Sepúlveda Carmona notes, '[h]uman rights are not a mere policy

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<sup>20</sup> *ibid*, para 8. The seven elements of the right to housing are analysed in greater depth in Hohmann (2013) (n 3) 21 – 28.

<sup>21</sup> Art 2(1) ICESCR (n 2).

<sup>22</sup> Diane Elson, Radhika Balakrishnan and James Heintz, 'Public Finance, Maximum Available Resources and Human Rights' in Aoife Nolan, Rory O'Connell and Colin Harvey (eds) *Human Rights and Public Finance: Budgets and the Promotion of Economic, Social and Cultural Rights* (Hart 2014) 14.

<sup>23</sup> Art 2(1) ICESCR (n 2).

<sup>24</sup> UN Committee on Economic, Social and Cultural Rights, *The Nature of States' Parties Obligations (Article 2(1)): Committee on Economic, Social and Cultural Rights General Comment No. 3* (1990) E/1991/23, para 10.

<sup>25</sup> UN Committee on Economic, Social and Cultural Rights, *An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources'* (2007) E/C.12/2007/1, para 4.

<sup>26</sup> Art 2(2) ICESCR (n 2).

<sup>27</sup> UN CESCR, *An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources'* (n 25).

<sup>28</sup> *ibid*. See also UN Committee on Economic, Social and Cultural Rights, *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with regard to Communication No. 5/2015*, E/C.12/61/D/5/2015 (2017) (the Ben Djazia case) para 17.6.

<sup>29</sup> Ben Djazia, *ibid*.

'option', dispensable during times of economic hardship'.<sup>30</sup> Rather, human rights provide 'a clear legal framework for the design and implementation of all policies.'<sup>31</sup> Nevertheless, the Committee has not considered austerity policies to breach the Covenant *per se*.<sup>32</sup>

While the UK has a proud tradition of social welfare protections, including social housing and a range of benefits that have allowed people to enjoy safe, adequate and secure housing since at least the Second World War,<sup>33</sup> the Grenfell Tower fire demonstrates that the UK has not been meeting its obligations to protect and ensure adequate housing for all. The conditions leading to the fire, the fire itself, and the government's response to it all clearly show that the right to housing has been breached. In the following section, I will consider the breach of three elements of the right: habitability, accessibility (especially for disadvantaged groups), and location.

### 3. The Grenfell Tower Fire as Breach of the Right to Housing

#### A. Habitability

Adequate housing must be *habitable*. This means that housing should provide a healthy and safe living environment. It should not endanger the inhabitants' physical or mental health. In order to meet this criteria, adequate housing must provide enough space; protect inhabitants from the elements (cold, damp, heat, rain and wind); and protect against structural hazards and disease vectors.<sup>34</sup> The physical safety of inhabitants must be guaranteed.<sup>35</sup> The Committee on Economic, Social and Cultural Rights notes that unsafe, unsanitary or inadequate housing is 'invariably associated with higher mortality and morbidity rates.'<sup>36</sup>

The Grenfell Tower fire demonstrates that the United Kingdom government failed to ensure that housing was safe for the inhabitants of the Tower, with the most disastrous consequences. This is one area where the international legal standard is especially important as a potential accountability mechanism, as under English law, until March 2019, there was no general obligation to ensure that homes were fit for human habitation.<sup>37</sup>

There is no question: the fire demonstrates that the Grenfell Tower was not habitable housing meeting the standard set out in international law. It breached the standard in a number of important ways, endangering the inhabitants' physical and mental health. It is also important to note that while the *fire* clearly demonstrates that the Tower was not safe or healthy for its residents, pre-existing conditions – those that led to the fire – also failed this important test of adequacy and decency under international law. For this reason, the analysis here has significant ramifications beyond the tower inhabitants itself, and can be extended to others living in high rise blocks under the same regulatory regime.

The concerns of residents before the fire, and a number of important reports and inquiries to date, demonstrate a range of failures to ensure habitable housing for the Grenfell

<sup>30</sup> Magdalena Sepúlveda Carmona, 'Alternatives to Austerity: A Human Rights Framework for Economic Recovery' in Aoife Nolan (ed) *Economic and Social Rights after the Global Financial Crisis* (CUP 2014) 41.

<sup>31</sup> *ibid.*

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights, *Letter dated 16 May 2012 from the Chair of the Committee to the States parties to the Covenant*; UN Committee on Economic, Social and Cultural Rights, *Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights* E/C.12/2016/1 (2016); Ben Djazia (n 28) para 17.6.

<sup>33</sup> See, eg John Boughton, *Municipal Dreams: The Rise and Fall of Council Housing* (Verso 2018); Rolnik Report, A/HRC/25/54/Add.2 (n 15) para 11-15.

<sup>34</sup> *General Comment No. 4* (n 19) para 8(d).

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> The Homes (Fitness for Habitation Act) 2018 came into force in March 2019.

residents. These include the lack of functioning fire safety equipment, such as sprinklers and fire extinguishers;<sup>38</sup> inadequate or non-existent fire safety doors and smoke ventilation systems;<sup>39</sup> inadequate escape routes in the case of a fire;<sup>40</sup> faulty wiring in the building, which lead to dangerous and frightening power surges;<sup>41</sup> and lack of access for emergency vehicles in the event of emergencies.<sup>42</sup> All of these issues demonstrate that the Grenfell Tower did not meet the standards of habitability required of adequate housing. In addition, the dangerous cladding applied to refurbish the Tower only recently before the fire, was a clear breach of habitability standards. This cladding, which enabled the rapid spread of the fire – a fire that leapt up 19 stories in only 12 minutes,<sup>43</sup> has been the subject of much discussion, particularly as to whether it breached the UK's legal safety standards and guidelines, and who was responsible for the enforcement and monitoring of those standards.<sup>44</sup> *Regardless* of domestic law, it is clear that the cladding was a major contributor to the severity of the fire, and the loss of life and home that resulted from it. As such, the cladding clearly breaches the international legal requirement that housing be habitable: poor national laws are not a defence for failing to meet international human rights standards, and the UK is under an obligation to ensure that *all* housing is habitable. Recent legal changes in the wake of the fire, such as the Homes (Fitness for Human Habitation Act) 2018, are important, but any change should be assessed for full compliance with the human right to housing for every person.

The physical health and habitability impacts of the Grenfell Tower fire are stark, and include death and serious bodily injury. But these are compounded by mental health issues, which include the stress and anxiety facing residents who rightly feared that they were living in unsafe housing, but who were unable to make their voices heard, as the sustained criticism of the Grenfell Action Group highlights.<sup>45</sup> The ability to participate meaningfully is a key aspect of human rights standards under ICESCR, and the fact that the residents were not listened to

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<sup>38</sup> 'Another Fire Safety Scandal' (*Grenfell Action Group*, 21 February 2009)

<<https://grenfellactiongroup.wordpress.com/2013/02/21/another-fire-safety-scandal/>> accessed 26 August 2019.

<sup>39</sup> See the expert report of Dr. Barbara Lane, presented to the Grenfell Tower Fire Enquiry: *Grenfell Tower – Fire Safety Investigation: The Fire Protection Measures in Place on the Night of the Fire, and Conclusions as to: the Extent to which they Failed to Control the Spread of the Fire and Smoke; the Extent to Which they Contributed to the Speed at which the Fire Spread – Phase 1 Report of Dr. Barbara Lane FEng CEng* (12 April 2018) <<https://www.grenfelltowerinquiry.org.uk/evidence/dr-barbara-lanes-expert-report>> accessed 26 August 2019 Appendix J and Appendix I.

<sup>40</sup> 'Another Fire Safety Scandal' (n 38) 'Grenfell Tower Still a Fire Risk' (*Grenfell Action Group*, 24 January 2016) <<https://grenfellactiongroup.wordpress.com/2016/01/24/grenfell-tower-still-a-fire-risk/>> accessed 26 August 2019.

<sup>41</sup> 'KCTMO – Playing with Fire!' (*Grenfell Action Group*, 20 November 2016)

<<https://grenfellactiongroup.wordpress.com/2016/11/20/kctmo-playing-with-fire/>> accessed 26 August 2019; Peter Apps 'The Paper Trail' (*Inside Housing*, 11 August 2017)

<<https://social.shorthand.com/insidehousing/32LVlu5ltu/grenfell-the-paper-trail>> accessed 9 July 2019.

<sup>42</sup> 'Fire Safety Scandal at Lancaster West' (*Grenfell Action Group*, 28 January 2013)

<<https://grenfellactiongroup.wordpress.com/2013/01/28/fire-safety-scandal-at-lancaster-west/>> accessed 26 August 2019.

<sup>43</sup> Brenna Bhandar 'Organised State Abandonment: The Meaning of Grenfell' (*Critical Legal Thinking*, 21 September 2018) <<http://criticallegalthinking.com/2018/09/21/organised-state-abandonment-the-meaning-of-grenfell/>> accessed 9 July 2019.

<sup>44</sup> See further Susan Bright and Douglas Maxwell, 'Human Rights and State Accountability for Fire Safety in Blocks of Flats' (2019) QMHRR 5(2) 1.

<sup>45</sup> See the blog of the Grenfell Action Group <<https://grenfellactiongroup.wordpress.com/>> accessed 26 August 2019); see also Judith Blakeman, Ward Councillor and Labour Spokesperson for Housing, quoted in Peter Apps 'The Paper Trail' (n 41); John Boughton 'Grenfell and the Need for a Tenants' Voice' (*Housing After Grenfell*, 25 January 2019) <<https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/01/grenfell-and-need-tenants-voice>> accessed 26 August 2019; Daniel Renwick 'Organising on Mute' in Dan Bulley, Jenny Edkins and Nadine El-Enany (eds) *After Grenfell: Violence, Resistance and Response* (Pluto Press 2019) 19-20.

before the fire, as well as in its aftermath, should also be taken into account in any assessment of whether the government has responded adequately from a human rights perspective. The residents, and bereaved families, have continued to experience trauma. For example, the Equality and Human Rights Commission (EHRC), joining forces with Race on the Agenda (ROTA), have documented the lack of adequate response for those who lost their homes, highlighting high levels of anxiety and stress.<sup>46</sup> Moreover, given the number of other high-rise blocks which fail to meet standards of habitability, including those with unsafe cladding, these mental and physical safety issues plague numerous people throughout the UK who live in fear of another catastrophic fire. As Susan Bright and Douglas Maxwell note, writing in this volume, as many as 200,000 people in the UK are still living in buildings with major fire safety defects.<sup>47</sup>

While private businesses, agencies, and individuals have been relevant actors in the building, refurbishment, and management of the Grenfell Tower,<sup>48</sup> it is the responsibility of the Government to ensure an appropriate regulatory framework exists, to ensure it is monitored, and that it is enforced. The state cannot avoid its ultimate accountability for human rights obligations in international law through outsourcing or lack of oversight. And it cannot use domestic laws that do not meet human rights standards as a shield against these obligations – this is a basic principle of international law. This means that, despite the fact that private actors may also be responsible – morally and legally – the government remains ultimately responsible for ensuring that housing meets the standard of habitability it has taken on through its international law obligations, a standard it has clearly not met here.

Unfortunately, while this position in international human rights law is, in the words of the UN Special Rapporteur on Housing, ‘crystal clear’<sup>49</sup>, in practice, deregulation, outsourcing and privatisation have enabled the government to effectively ‘pass the buck’. The complicated web of public, private, and quasi-public (or quasi-private) action, ‘arms-length’ relationships and complicated contracts and tenders between corporations and other entities which have often proven linked in fact, has not only allowed the government to mask its responsibility but ultimately resulted in the deaths and injuries at Grenfell.<sup>50</sup> We need, as Bhandar has written, to interrogate the way in which such deregulation and privatisation have been undertaken under a political ethos ‘premised on the abandonment of responsibility as central to the governing ideals of organisational action.’<sup>51</sup> In other words, the capitulation of responsibility underlying the lack of safe and secure – that is, habitable – housing for Grenfell residents is not mere neglect or lack of care, but a committed stance to governing without taking responsibility.<sup>52</sup>

Turning to the element of accessibility under the right to housing, we can focus on how this lack of care impacts most heavily on disadvantaged groups.

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<sup>46</sup> Equality and Human Rights Commission (with Race on the Agenda) Research Report No. 126, *Following Grenfell: Residents’ Access to Public Services and Support* (Equality and Human Rights Commission, March 2019) 10 – 28.

<sup>47</sup> Bright and Maxwell (n 44). See also Peter Apps ‘Revealed: The Mental Health Trauma of Residents in Private Blocks with Dangerous Cladding’ (*Inside Housing*, 26 April 2019) <<https://www.insidehousing.co.uk/insight/insight/revealed-the-mental-health-trauma-of-residents-in-private-blocks-with-dangerous-cladding-61169>>; Susan Bright ‘Is Everyone safe Tonight?’ (*Housing After Grenfell*, 7 May 2019) <<https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/05/everyone-safe-tonight>> accessed 26 August 2019.

<sup>48</sup> At least 60 companies were involved in the refurbishment of the Grenfell Tower in 2014-16. See Stuart Hodgkinson, *Safe Houses: Private Greed, Political Negligence and Housing Policy after Grenfell*, (Manchester University Press, 2019), 56 as quoted in Daniela Nadj ‘Deregulation, the Absence of Law and the Grenfell Tower Fire’ (2019) 5(2) QMHRR 1.

<sup>49</sup> Leilani Farha ‘Grenfell tower is a Terrible Betrayal of Human Rights’ *The Guardian* (21 June 2017) <<https://www.theguardian.com/housing-network/2017/jun/21/grenfell-tower-terrible-betrayal--human-rights-uk-government>> accessed 26 August 2019.

<sup>50</sup> See further discussion in Hohmann (2019) (n 10); Bhandar (n 43).

<sup>51</sup> Bhandar, *ibid.*

<sup>52</sup> *ibid.*

## B. Accessibility

*Accessibility*, as an element of the right to housing, is designed to ensure that disadvantaged groups have full and sustainable access to adequate housing.<sup>53</sup> This means that priority consideration in both housing law and policy should be given to disadvantaged groups, including the elderly, children, those with a physical or mental disability, and those with a persistent medical problem.<sup>54</sup> This list is not exhaustive, and other groups who are disadvantaged in various ways – from women to those living in informal settlements – should be recognised as falling within this category.<sup>55</sup>

This aspect of the right to housing has clear links with requirements of non-discrimination, which has a high status as a human rights obligation in international law, and imposes an obligation of immediate action on states, regardless of whether they have chosen to sign up to particular human rights treaties.<sup>56</sup> Non-discrimination is also required by Article 2(2) of the ICESCR, which states that:

States Parties to the present Covenant guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The requirement of accessibility has been breached on a number of levels for Grenfell residents. First, it is important to recognise that Grenfell Tower housed many residents who fall within the definition of disadvantaged, and who are therefore due priority consideration in housing, and who are more vulnerable in relation to it. While at first blush it might therefore seem that these people had priority access to housing, it is actually more accurate to state that these members of disadvantaged groups were *confined* to inadequate housing in the Grenfell Tower, on both the standard of habitability, as discussed in the section above, and accessibility, as I will now show.

Racialised and ethnic minority groups were housed in Grenfell Tower in a number disproportionate to the broader community.<sup>57</sup> Minority children, particularly black children, are disproportionately housed in tower blocks in England and Wales.<sup>58</sup> High numbers of racialised

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<sup>53</sup> *General Comment No. 4* (n 19) para 8 e. See also Art 19 of the Convention on the Rights of Persons with Disabilities, which makes accessibility of housing a core element of the right of people with disabilities to live independently in the community. Convention on the Rights of Persons with Disabilities (CRPD) A/Res/61/106 (24 January 2007).

<sup>54</sup> *General Comment No. 4* (n 19) para 8 e.

<sup>55</sup> United Nations Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights General Comment No. 16* (2005) E/C.12/2005/4. United Nations Committee on Economic, Social and Cultural Rights, *Non-discrimination in Economic, Social and Cultural Rights (Article 2, para 2, of the International Covenant on Economic, Social and Cultural Rights) General Comment No. 20* (2009) E/C.12/GC/20.

<sup>56</sup> The right to non-discrimination is a norm of customary international law, thus binding *all* states even those who have not signed or ratified the relevant human rights treaties. See Malcolm Shaw, *Principles of Public International Law*, 8<sup>th</sup> edition (CUP 2017) 217.

<sup>57</sup> EHRC, *Equality and Human Rights Commission Submissions Following Phase 1 of the Inquiry into the Fire at Grenfell Tower* <<https://www.equalityhumanrights.com/sites/default/files/grenfell-inquiry-phase-1-submissions-january-2019.pdf>> accessed 26 August 2019, para 119(4).

<sup>58</sup> Danny Dorling *Peak Inequality: Britain's Ticking Time Bomb* (Policy Press 2018) 90. See more generally Ida Danewid 'The Fires this Time: Grenfell, Racial Capitalism and the Urbanisation of Empire' (2019) *European Journal of International Relations* <<https://doi.org/10.1177/1354066119858388>> accessed 24 July 2019. As Benito-Sánchez points out, this also more clearly raises issues of racial discrimination. For a discussion of the relationship between racial and socio-economic discrimination in human rights law, with reference to Grenfell, see

residents were also killed in the fire.<sup>59</sup> The vicinity of the Grenfell Tower was ‘among the top 10 percent most deprived areas in England’ in 2015,<sup>60</sup> starkly contrasting with the borough of Kensington and Chelsea as a whole, where the average annual salary is the highest in the UK.<sup>61</sup>

Social stigma around tower block or high-rise housing in the UK is notable, which prompts an argument that as a whole, the residents of Grenfell Tower were disadvantaged through stigma.<sup>62</sup> Phil Murphy, a former firefighter, Complex Building Compliance Manager, and housing association tenant of a 24 storey block of flats – with a single escape staircase like the Grenfell Tower – points out that this is not ‘mere’ social stigma. He writes that it is enshrined in the fire safety guides for high-rise buildings, which tend to privilege a negative picture of residents as vandals and drug dealers, rather than insist on strong regulatory standards, safety checks, and tenant participation.<sup>63</sup> This stigma is layered onto the stigma that increasingly attaches to the residents of social housing in the UK, who are often portrayed as marginal, residual, and unwanted.<sup>64</sup> Thus while the insistence that the Grenfell Tower residents and victims were ‘ordinary Londoners’<sup>65</sup> is an important statement of solidarity, it remains accurate to claim that the residents are disadvantaged, such that they were owed priority consideration in access to adequate housing.

Second, it is clear that the government failed to give priority consideration to a number of people who would fall within the category of disadvantaged groups. Residents who were elderly, ill, or had mobility issues were housed high up in the building, making their ability to access their housing – and importantly, to escape in the event of an emergency – unacceptably difficult, as is made chillingly evident in the testimonies of people whose family members and loved ones died, unable to escape the smoke and flames.<sup>66</sup> While housing

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Juan Carlos Benito Sánchez ‘Towering Grenfell: Reflections around Socioeconomic Disadvantage in Antidiscrimination Law’ (2019) 5(2) QMHRR 1, Part 2.

<sup>59</sup> Only 7 of the Grenfell Tower fire victims were white. See Mark Rice-Oxley ‘Grenfell: the 72 Victims, their Lives, their Loves and Losses’ *The Guardian* (14 May 2018) <<https://www.theguardian.com/uk-news/2018/may/14/grenfell-the-71-victims-their-lives-loves-and-losses>> accessed 9 July 2019; Robbie Shilliam, *Race and the Undeserving Poor* (Columbia University Press 2018); Danewid, (n 58) 2; Lowkey ft. Mai Khalil – ‘Ghosts of Grenfell’ (official music video) <<https://www.youtube.com/watch?v=ztUamrChczQ>> (accessed 26 August 2019).

<sup>60</sup> See Gordon MacLeod ‘The Grenfell Tower Atrocity’ (2018) 22(4) City 460, Figure 1; Caelainn Barr, ‘Wealth and Poverty Sit Side by Side in Grenfell Tower’s Borough’ *The Guardian*, 15 June 2017 <<https://www.theguardian.com/uk-news/2017/jun/15/wealth-and-poverty-sit-side-by-side-in-grenfelltowers-borough>> accessed 26 August 2019.

<sup>61</sup> Bethan Bell, ‘London Fire: A Tale of Two Tower Blocks’ *BBC News*, 16 June 2017 <<http://www.bbc.co.uk/news/uk-england-40290158>> accessed 26 August 2019.

<sup>62</sup> See, eg, Lynsey Hanley, *Estates: An Intimate History* (Granta 2012); Tracy Shildrick ‘Lessons from Grenfell: Poverty Propaganda, Stigma and Class Power’ (2018) 66(4) *Sociological Review* 783; Danewid (n 58) 10; Phil Murphy ‘Stigma, More Than A Label’ (*Housing After Grenfell*, 6 February 2019) <<https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/02/stigma-more-label>> accessed 26 August 2019. Stigma and stereotype based on ‘economic and social situation can also be a form of discrimination under the ICESCR. See *General Comment No. 20* (n 55).

<sup>63</sup> Murphy, *ibid*.

<sup>64</sup> See the discussion in Jessie Hohmann ‘Resisting Dehumanising Housing Policy: The Case for a Right to Housing in England (2017) 4(1) QMHRR 1, 13-14; Ray Forrest and Alan Murie, ‘Residualization and Council Housing: Aspects of the Changing Social Relations of Housing Tenure’ (1983) 12(4) *Journal of Social Policy* 453; Peter Malpass and Alan Murie, *Housing Policy and Practice* (Macmillan 1982) 174.

<sup>65</sup> See for example Yasmin Alibhi-Brown, ‘Grenfell Tower Should be Left Standing as a Reminder of all that is Unequal in Britain’ *inews*, 11 December 2017 <<https://inews.co.uk/opinion/grenfell-tower-left-standing-reminder-unequal-britain/>> (accessed 26 August 2019).

<sup>66</sup> EHRC *Submissions Following Phase 1 of the Inquiry into the Fire at Grenfell Tower* (n 57) para 102 onward; EHRC, ‘Briefing Paper: Following Grenfell: The Right to Adequate and Safe Housing’ (19 September 2018) <[https://www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-right-to-adequate-safe-housing\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-right-to-adequate-safe-housing_0.pdf)> accessed 26 August 2019, 8. See further EHRC ‘Housing and Disabled People: Britain’s Hidden Crisis’ (EHRC, May 2018).

young children in high-rise flats may not appear to raise issues of human rights on a daily basis, the difficulty of shepherding children to safety in the event of an emergency demonstrates that the government should have given particular consideration to them in housing.<sup>67</sup>

If priority should be given to disadvantaged groups in order to fulfil the right to housing, that prompts us to ask where disadvantaged people should be housed, and raises the issue of adequate location as an element of the right, to which I now turn.

### C. Location

In addition to being both habitable and accessible for disadvantaged groups, the *location* of housing must be taken into consideration in assessing whether it is adequate in human rights terms. This aspect of the right recognises that housing is part of the social fabric of our lives. The spatial relationship of the home to other houses, to the local area, to livelihoods, shops, schools and recreational facilities, as well as to webs of kin and community, are an important aspect of it.<sup>68</sup> Adequate housing, 'must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.'<sup>69</sup> Thus housing may be inadequate if it is isolated from work and educational opportunities, health services, or community ties, even if it is otherwise safe and secure.<sup>70</sup> Location also encompasses the requirement that housing should not be built in or on polluted sites, or in proximity to environmental health risks.<sup>71</sup>

In order to understand the impact on this aspect of the right to housing and the Grenfell Tower, it is important to say a few words about the background context of social housing in the UK. This background features a number of 'austerity' measures that have increased poverty and the marginalisation of disadvantaged individuals, families and groups in the UK.<sup>72</sup> It features decades of changes to housing law and policy, and the undermining of social housing tenures, that actively seeks to weaken protection for the poor and vulnerable, and to push people into the private rental market;<sup>73</sup> a tenure stream that is poorly regulated and unaffordable.<sup>74</sup> It includes the reality of growing social inequality and spatial polarisation across the UK and within its communities. The backdrop to the Grenfell Tower fire is an acute experience of 'social cleansing and state-induced gentrification', especially across London.<sup>75</sup> These factors interlink and compound each other. As David Madden writes, '[t]he fire sits precisely at the confluence of so many currents reshaping contemporary social life in the UK and abroad. Urban inequality, economic stagnation, political stasis, the foreclosure and dereliction of alternative futures: they all come together here to lethal effect'.<sup>76</sup>

<sup>67</sup> See EHRC *Submissions Following Phase 1 of the Inquiry into the Fire at Grenfell Tower* (n 57) para 113 – 114.

<sup>68</sup> Kemeny *Housing and Social Theory* (Routledge 1992) 159.

<sup>69</sup> *General Comment No. 4* (n 19) para 8(f).

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

<sup>72</sup> UNHRC, *Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the Special Rapporteur on Extreme Poverty and Human Rights* (2019) A/HRC/41/39/Add.1; Stuart Hogkinson 'Grenfell a Neoliberal Tragedy' (2018) 30 *Social Policy Review* 5, 8 – 9, 12; UNCESCR, *Concluding Observations on the sixth Periodic report of the United Kingdom of Great Britain and Northern Ireland* (14 July 2016) E/C.12/GBR/CO/6 para 18-19, 40-42, 47-48.

<sup>73</sup> Hohmann (2016) (n 11); Housing and Planning Act 2016; Hodkinson, *ibid* 7–8; Boughton (n 33); Hohmann (2017) (n 64); UN CESCR *Concluding Observations on the sixth Periodic report of the United Kingdom*, *ibid* para 49-52.

<sup>74</sup> Hohmann (2016) (n 11); Hodkinson *ibid*; Boughton, *ibid*; UN CESCR *Concluding Observations on the sixth Periodic report of the United Kingdom* *ibid*, para 49-52.

<sup>75</sup> MacLeod (n 60) 470; see also Hogkinson, *ibid*.

<sup>76</sup> David J Madden, 'Editorial: A Catastrophic Event' (2017) 21 *City* 1, 3.

The background conditions that enabled and have contributed to the devastation of the Grenfell Tower fire should be subject to searching critique, including through a human rights lens, and much has been written on this broader context, including in this volume.<sup>77</sup>

To concentrate specifically on the right to housing under ICESCR for the purpose of this paper's analysis, there are three specific ways the Grenfell Tower fire, and the government's response to it, breach the location element of the right to housing.

The first predates the fire, and lies in the confluence of all the background factors noted above. That is, the cumulative impact of austerity policies and stripping back of welfare protections has led to poorer, disadvantaged and vulnerable individuals, households and communities living located in the worst-quality housing, which is provided with the poorest services and facilities.<sup>78</sup> Even when such housing – as is the case with the Grenfell Tower – sits among stunning wealth it may breach the location element of the right to housing if residents are effectively partitioned off, or 'ghettoised' from that broader location and unable to access the opportunities, facilities and infrastructure around them. For example, the privatisation of many of the facilities around the Lancaster West Estate effectively excluded the poorer residents of the area.<sup>79</sup> Even those facilities that the residents could still access: a new leisure centre and school, were constructed at the expense of public green space – a space which is powerfully important in the context of privatised space and the ability of the marginalised to exist in the city.<sup>80</sup> The redevelopment of the Lancaster West Estate, and the Grenfell Tower itself, demonstrates, as Madden writes, that 'inequality is incorporated into the landscape and infrastructure of the city and reproduced through predominant forms of urban development.'<sup>81</sup> This, in itself, can be considered a breach of the right to housing, particularly where such isolation and exclusion is compounded by the breach of other elements, including, as in the case for the residents of the Grenfell Estate, habitability and accessibility.

Second, where individuals, families or communities need to be resettled or rehoused, such as in the aftermath of the Grenfell Tower fire, the location of resettlement accommodation should take into account the pre-existing community, which should not be fragmented or dispersed. In addition, residents should not be isolated from their livelihood, schools, or support services. The Royal Borough of Kensington and Chelsea was slow to provide adequate housing for those made homeless by the fire. Even 18 months after the disaster, almost 100 families had not been allocated secure and adequate housing, with many living in hotels, temporary flats, or relying on friends or family.<sup>82</sup> Even two years on, not all residents had been rehoused in secure and adequate housing.<sup>83</sup> Some families were moved through multiple temporary housing, much of which was poor quality or unsuitable, moves which compounded the stress and trauma of the disaster and which further fragmented the Grenfell community.<sup>84</sup> Kensington and Chelsea, which had England's second highest rate of placing homeless people outside the borough,<sup>85</sup> has, however, managed – two years after the fire –

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<sup>77</sup> See for eg: Bhandar, this volume; van Bueren, this volume; Nadj, this volume; Bulley, Edkins and El-Enany (n 45) Hogkinson (n 72).

<sup>78</sup> Grenfell Action Group (n 45).

<sup>79</sup> MacLeod (n 60) 464.

<sup>80</sup> See Jeremy Waldron 'Homelessness and the Issue of Freedom' (1991-1992) 39 UCLA Law Review 295.

<sup>81</sup> Madden (n 76) 3.

<sup>82</sup> Forrest (n 1).

<sup>83</sup> Jen Mills 'Grenfell Victims Still Living in Temporary Accommodation Two Years Later' *Metro* (9 April 2019) <<https://metro.co.uk/2019/04/09/grenfell-victims-still-living-temporary-accommodation-two-years-later-9141649/>> accessed 26 August 2019.

<sup>84</sup> Forrest (n 1); *BBC News* 'Grenfell Family 'Face Removal from Home' 15 April 2019 <<https://www.bbc.com/news/uk-england-london-47898652>> accessed 26 August 2019.

<sup>85</sup> Robert Booth 'London's Richest Borough to Move those in Temporary Accommodation to Cheaper Areas' *The Guardian*, (2 August 2015); Dawn Foster, 'UN Report Lays Bare the Waste of Treating Homes as Commodities' *The Guardian*, 1 March 2017 <<https://www.theguardian.com/housing-network/2017/feb/28/un-report-lays-bare-the-waste-of-treating-homes-as-commodities>> accessed 26 August 2019.

to rehouse most of the survivors within the Borough, in important recognition of the relevance of location as an aspect of housing and one likely won through hard-fought battles by those affected, rather than official largesse.

Finally, if housing is not adequate when located on polluted land, then the government has a duty under the right to housing to ensure that both survivors, and those who live surrounding the Grenfell Tower, are not harmed by any toxins or pollution released from the building during the fire. Fires 'release a rich cocktail of pollutants, many of them acutely or chronically toxic'<sup>86</sup> these include carcinogens, respiratory sensitizers, and persistent bio-accumulative and toxic compounds, among others.<sup>87</sup> In addition to the toxic and polluting substances released into the air during the fire, tests have shown a number of dangerous environmental contaminants are still present in the debris, soil and air around the Grenfell Tower.<sup>88</sup> Professor Anna Stec found a number of toxic and dangerous pollutants in elevated levels up to 1.2km from the Grenfell Tower, recorded 6 months after the fire.<sup>89</sup> However, after the fire there was little evidence of action to identify these risks, or their potential impact on those affected by the fire or living in the surrounding areas.<sup>90</sup> Yet in September 2018, a number of residents who lived in council flats surrounding Grenfell were told that they would be forced to return, or would have their tenancies terminated by the Council.<sup>91</sup> It appears that the government has not taken adequate steps to ensure that it meets the requirements that their housing is located on safe, unpolluted land.

Grenfell survivors are faced with a difficult choice. On top of the trauma and dislocation they have already experienced, they may be forced to decide between further dispersal of their community, and living in proximity to dangerous fallout from the fire. The emptiness of this 'choice' demonstrates that human rights are best when their principles underlie and infuse the creation of public policy, including housing policy, and that they cannot remedy all past harms. This choice should never have been one that the residents of Lancaster West Estate needed to face, but now that they are faced with it, a human rights perspective would insist that their meaningful participation must be sought in finding a solution, however imperfect that solution may be. As the UN Special Rapporteur on Housing insists, '[t]hose are the fundamentals of human rights: voice, dignity, and participation in solutions to their own situations.'<sup>92</sup>

The Grenfell Tower fire need never have happened. Had the local and Westminster government taken responsibility, cared for and valued the Grenfell residents, this disaster would not have caused the loss of life, violation and grief it has wrought. In the final section, I will argue that a human right to housing could guide a better housing policy, with the wellbeing and safety of households at its core.

#### 4. Conclusion

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<sup>86</sup> Anna A Stec et al 'Environmental Contamination Following the Grenfell Tower Fire' (2019) 226 *Chemosphere* 576, 577.

<sup>87</sup> *ibid.*

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid* 579 and table 1.

<sup>90</sup> *ibid* 584; Jennifer Cockerell 'Grenfell Tower: Coroner Leading Inquest Calls on NHS to Set Up Long-Term Screenings for Survivors' *The Independent*, 21 September 2018 <<https://www.independent.co.uk/news/uk/home-news/grenfell-tower-inquest-coroner-dr-fiona-wilcox-nhs-england-screenings-survivors-a8549521.html>> accessed 26 August 2019.

<sup>91</sup> Dianne Taylor 'Grenfell Tower Area Residents Told: Return or Home or Lose Council Tenancies' *The Guardian*, 19 September 2018 <<https://www.theguardian.com/uk-news/2018/sep/19/grenfell-tower-area-residents-told-return-home-or-lose-council-tenancies>> accessed 26 August 2019.

<sup>92</sup> Patrick Butler 'UK May Have Breached Human Rights Over Grenfell, says UN' *The Guardian* (10 March 2018) <<https://www.theguardian.com/uk-news/2018/mar/09/grenfell-tower-uk-may-have-breached-human-rights-says-un>> accessed 26 August 2019.

As I noted at the outset of this paper, the Westminster government's long held position is that current administrative and legislative measures ensure fulfilment of its international obligations for the right to housing.<sup>93</sup> The assumption behind such a stance is that domestic welfare entitlements are sufficient to ensure human rights, or that they make human rights unnecessary. The Grenfell Tower fire, and the underlying housing conditions that were at least in part responsible for the fire's severity and its horrific consequences in loss of life and injury, demonstrate that the UK's current law and policy is woefully inadequate to ensure decent, safe and habitable housing. England's current legal framework falls far short of the standards required of the government by its international legal obligations for the right to housing, as has been pointed out in a number of expert reports,<sup>94</sup> and reiterated in this paper with specific reference to the right to housing's standards of habitability, adequate location, and accessibility for disadvantaged groups.

It may be impossible to hold the government to account in a court of law under the right to housing, given the lack of enforcement mechanisms at the international level, and the failure of the UK government to incorporate the right into domestic law.<sup>95</sup> However, this does not mean that raising the right to housing in the context of Grenfell is pointless, that it is a hollow promise, or that it has no teeth.

The government's international legal obligations for the right can be used to demonstrate how the government has failed to live up to its responsibilities, and has failed to take adequate care of its vulnerable individuals, families and households. Human rights, including the right to housing, have real power. First, they give people – including the Grenfell survivors, and those working with them and on their behalf – international standards to which the government has committed, and which can be used to demonstrate the government's failings. Second, human rights can give us a different discourse that we can use to discuss and advocate around housing. We can insist that the government treat housing as a right, rather than a commodity, and we can use the right to housing to insist that each person lives in dignity, safety and security. And we can fight for a human and human rights centred policy landscape.

The right to housing can be used to place the individual, her agency, dignity and personhood, back at the centre of housing policy questions. The right to housing, in this sense, can function as an important reminder of the person behind the stereotype, subsumed behind stigma and weighed down by austerity measures.<sup>96</sup> Rights holders are not 'burdensome or passive recipients of charity.'<sup>97</sup> Nor are those denied their rights submissive victims. Rather, rights are political markers of agency, dignity and humanity.<sup>98</sup> A claim of human rights is a claim of humanity, and a demand for legal recognition of that humanity.<sup>99</sup> It is an insistence that states not cross certain red lines around the person that would strip away her dignity.

While the government may, as the UN Special Rapporteur on Housing has written, 'reject[] the message and the messengers',<sup>100</sup> the messengers cannot be silenced. The Grenfell Tower fire exposes clearly that the government does not accept that housing is a

<sup>93</sup> Government of the United Kingdom, *United Nations International Covenant on Economic, Social and Cultural Rights United Kingdom, 6th periodic report* (n 17) para 11.

<sup>94</sup> See eg, EHRC 'Briefing: Right to Housing' (n 66); Hohmann (2016) (n 11); UN CESCR *Concluding Observations on the sixth Periodic report of the United Kingdom* (n 72); Rolnik (n 15); Generation Rent and JustFair, *No-Fault Evictions Violate Human Rights: Section 21 Must End* (JustFair, September 2018) <<http://justfair.org.uk/wp-content/uploads/2018/09/JF-Generation-Rent-End-Section21-Sept2018-FINAL.pdf>> accessed 29 July 2019.

<sup>95</sup> Douglas Maxwell 'A Human Right to Housing?' (*Housing After Grenfell*, 25 February 2019) <<https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/02/human-right-housing>> accessed 26 August 2019.

<sup>96</sup> See for eg, the statements of the UN Special Rapporteur on housing, reported in the Guardian in March 2018: Butler (n 92).

<sup>97</sup> Sepúlveda Carmona (n 30) 42.

<sup>98</sup> Hohmann 2013 (n 3) 241 – 46.

<sup>99</sup> *Ibid*, 246 – 49.

<sup>100</sup> Farha (n 49).

right. The Westminster Government's current housing law and policy is not underpinned by a right to housing, but by a systematic devaluing of social housing, and its residents. But examining these policies through the lens of the right to housing powerfully illuminates the government's shortcomings, in a way that has the potential to shift the discourse and put the government under sustained pressure for change.

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