

Mandate 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

REFERENCE:
AL GBR 2/2020

29 April 2020

Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **situation faced by leasehold owners in buildings clad with flammable materials, living in unsafe housing and unable to sell their flats and move elsewhere, and those who are required to pay large amounts to have the dangerous cladding removed.**

According to the information received:

On 14 June 2017, a fire erupted at Grenfell Tower in the Royal Borough of Kensington and Chelsea, leading to the deaths of 72 people and destroying 129 homes. In the aftermath of the tragedy, it was discovered that the spread of the fire had been greatly accelerated and exacerbated by cladding, which had been applied to the façade of the building between 2012 and 2016. The cladding was of a type known as Aluminium Composite Material (ACM), which is highly combustible, and thus allowed flames to spread throughout the building at significant speed.

Following the recognition that the ACM cladding had greatly contributed to the Grenfell Tower disaster, the Government took steps to ban its use in future building projects. However, of around 457 buildings in England that were identified as having been clad in ACM, 361 of these buildings have still not had the cladding removed, and 88 have no plans in place to do so.¹ At the same time, many other forms of cladding, including timber, terracotta and high-pressure laminate (HPL), also pose a significant threat to the safety of residents as they are as flammable as ACM. Around 600,000 persons in England live in blocks with dangerous, flammable cladding attached. The freeholders of these buildings are both private actors, including offshore companies, and social housing providers. Both social and private residents have been forced to live in highly dangerous housing conditions, but private leaseholders have been more widely impacted.

¹ <https://www.insidehousing.co.uk/news/news/government-has-no-estimate-on-how-long-cladding-removal-will-take-60188>

In order to address the issue of unsafe cladding, the Government, in June 2018 and May 2019, announced £400m and £200m would be set aside to remove cladding on social and private housing respectively, an insufficient amount to meet the costs of removing dangerous cladding from all buildings that require it. Also, the funding was made available only for buildings clad with ACM. Whilst additional funding for cladding removal of other types has recently been made available, the lack up until now of funding for the removal of other hazardous cladding materials has had a highly detrimental impact on many residents in blocks covered with these types of cladding.

Residents have been unable to sell their houses, as a buyer has to provide a certificate showing that the building is safe in order to obtain a mortgage. These certificates are costly and difficult to obtain through surveyors. Where a survey is undertaken and the building is found to contain any form of flammable cladding, such certificates cannot be issued. Leaseholder's flats are, therefore, unmortgageable and unsellable, with many only discovering this when they were in the process of moving home, therefore heavily impacting their lives and consigning them to remain in homes that are at considerable risk from fire.

Additionally, mortgages for leasehold properties in tower blocks tend to have conditions imposed on them that the freeholder obtains building insurance covering fire damage. However, whilst flammable cladding is in place on these buildings, insurers have been reluctant to provide such cover without imposing exorbitant premium rises and/or requiring tenants to pay for additional safety measures. Without insurance in place, tenants' mortgages are invalidated, and they will either have to pay the full outstanding balance on their mortgage immediately, or have their homes repossessed. One resident has reported that, in order to obtain insurance, they were required to implement continuous monitoring for fire, either by paying for expensive alarm systems, or to hire firms to undertake 'waking watches', whereby two people patrol the building 24 hours a day, every single day of the year to look for signs of fire. Another resident informed that the cost of 'waking watches' for their building stretched to £24,000 per month, which had to be paid entirely by the leaseholders. This dramatically increases the financial insecurity of these leaseholders, hugely raising their housing costs and putting them at greater risk of defaulting on their mortgages or being unable to pay for vital services such as heating and electricity. Whilst these measures were only supposed to be a temporary solution to ensure residents' safety, and enable them to obtain essential insurance, in some instances they have continued for years.

With no government funding available, and unwillingness from building freeholders to pay for the removal of dangerous cladding, the costs of doing so in private blocks has fallen on leaseholders. In a block in Ipswich, leaseholders were told they must pay around £25,000 each to remove the cladding. In Runcorn, others stated their bill will amount to around £30,000 each. In a block in London, leaseholders were told to prepare for removal costs of up to £100,000 each. These

costs are required to be paid in full and immediately. This has posed a significant burden on leaseholders, many of whom have noted they do not have the funds available to pay for removal, thus stalling the removal of the cladding and keeping them living in dangerous conditions.

This situation, and the Government's unwillingness to assume the responsibility to remove dangerous cladding, has had a highly detrimental impact on the health and well-being of residents of blocks with such cladding in place. A survey of residents living in clad buildings, conducted by the UK Cladding Action Group showed that that 64.8% of respondents said their mental health had been 'hugely affected' by the situation they faced as a result of the cladding, and 87.8% noted that their mental health was worse at the time of the survey than it was prior to the cladding being recognised as dangerous. 69.5% of survey respondents said they felt anxious and/or worried on a daily basis because of the situation, whilst 92.3% said they had money worries. 8.7% of respondents disclosed they had had suicidal or self-harming thoughts as a direct result of the problems they faced as a result of the cladding.

On 11 March 2020, the Government announced a further £1bn of funding being made available to remove dangerous cladding of different types as well as ACM. However, the funding will not be accessible to people who live in buildings under 18m high, meaning that those in this situation must still find the costs of removal themselves, face living in highly dangerous conditions or risk being made homeless. Equally, additional funding is not available to cover other unavoidable expenses, such as 'waking watches' and insurance premium increases, which have resulted from the presence of dangerous cladding and which are leaving many leaseholders financially destitute. Moreover, even despite the additional funding being allocated, residents report that it still does not meet the true cost of the works required to make buildings safe for people to live in. Residents note that surveys done regarding the cladding have revealed numerous other life-endangering fire hazards in many buildings, including improper fire doors and ineffective fire compartmentation. There are estimates that the total cost of making only dangerously-clad social housing blocks completely fire safe could amount to £10billion alone,² therefore calling into question whether the new funding is sufficient.

Finally, despite the announcement of additional funding, it has not been made immediately available, leaving families at danger of losing their homes. In one block in Birmingham, leaseholders have been handed bills of, on average, £10,000 each for the removal of cladding, which must be paid immediately. Although their building meets the eligibility requirements for access to the new funding, because it is not yet available, they are still required to self-fund the removal, and if they cannot afford to do so they may have to forfeit their leases as

² <https://www.theguardian.com/society/2020/mar/02/social-landlords-face-10bn-bill-to-fix-fire-safety-problems>

they will invalidate their building's insurance. In some circumstances this would make residents homeless at a time when the Government has issued a nationwide lockdown in order to fight the coronavirus pandemic.

While I do not wish to prejudge the accuracy of the information made available to me, I wish to express my serious concern about these allegations of multiple violations of the human right to adequate housing, of which safety is a key component - contrary to international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what measures are in place to ensure the immediate safety of all residents living in buildings with flammable cladding.
3. Please explain by which date the Government plans to complete the removal of all flammable cladding from residential buildings.
4. Please explain all measures taken to ensure that residents of buildings lower than 18 m will have flammable cladding removed from their homes.
5. Please explain if any of the measures for the removal of flammable cladding will have a financial impact on residents, and, if that is the case, what measures are in place to support persons in positions of economic vulnerability.
6. Please explain what steps is the Government taking to prevent persons from being made homeless or to assist those who find themselves in a situation of economic vulnerability as a result of having their mortgage invalidated, having to cover high insurance premiums or having additional fire safety measures costs because of cladding, and any assistance put in place to help anyone who has already been made homeless in this way.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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

Annex

Reference to international human rights law

In connection with the above, and without prejudice to the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the United Kingdom on 20 May 1976, which states that "[t]he 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 [...]." Pursuant to article 2.2 of the ICESCR, it is the obligation of States Parties to guarantee that the Covenant's rights 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 [emphasis added]." The Committee on Economic, Social and Cultural Rights has stressed in General Comment No. 4 that the right to adequate housing includes affordability, accessibility, and legal security of tenure and habitability. With regards to the requirement that housing should be habitable, the Committee has found that States are under an obligation to ensure that all housing is "habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors," whilst also protecting their physical safety."³ States parties are required to demonstrate that every effort has been made to use a maximum of available resources in an effort to discharge their obligations.

I wish to also draw your Excellency's Government's attention to a number of my previous reports regarding different aspects of the right to housing, including my report on homelessness (A/HRC/31/54), wherein it is noted that States have an obligation to introduce strategies which prevent and eliminate homelessness. Where the United Kingdom's current policy towards cladding still leaves people at risk of losing their homes, this policy cannot be said to be sufficient to prevent and eliminate homelessness. Furthermore, I draw your attention to my report on financialization and the right to adequate housing (A/HRC/34/51), which details the adverse impact that institutional property investors and corporate landlords have on the human right to housing, and notes that States have an obligation under international human rights law to protect people from breaches of the right to housing by these actors. In many cases it is evident that it was private building companies which installed the dangerous cladding, yet these companies are not being held accountable as UK building regulations at the time of installation deemed the cladding safe, despite it evidently not being so. Equally, many of the affected buildings are owned by private freeholders, yet these actors are taking no responsibility for the removal of cladding, preferring instead to charge leaseholders for this. Equally, I refer your Excellency's Government to my report on human rights-based national

³ Committee on Economic, Social and Cultural Rights, General Comment 4, para 8(d)

housing strategies (A/HRC/37/53) wherein several principles are set out describing how Governments should create housing systems which are reflective of human rights. Finally, I also refer you to my report on the right to life and the right to adequate housing (A/71/310), wherein it is highlighted that there is an intrinsic link between the right to life and the right to adequate housing, and breaches of the right to adequate housing can have significant impacts on the right to life.

In relation to the right to life, I also draw your attention to article 6 of the International Covenant on Civil and Political Rights, ratified by the United Kingdom on 20 May 1976, which protects the right to life which is understood as “the supreme right from which no derogation is permitted” and, “the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.”⁴ The Human Rights Committee specifically states that “the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.” The Committee also states that the measures called for to address adequate conditions for protecting the right to life include, where necessary, “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care”⁵ References to ensuring access to shelter in this regard must be read in the context of the human right to housing, and thus impose on Governments to ensure access for all people to housing which meets the defined standards of adequacy, including being habitable. Violations of the right to life must be treated with the utmost seriousness and urgency. There is little doubt that where people are forced to live in buildings which are covered in materials which have been tragically shown to be a risk to life, this triggers right to life interests.

In relation to the role played by private actors in regards to both the installation and unwillingness to assist in removal of dangerous cladding, I reiterate the obligations that States owe to people to protect them from breaches of their human rights by private actors and note that States and relevant State authorities also have to ensure adequate regulation of business enterprises to ensure respect, protection and fulfilment of the right to adequate housing, as outlined by General Comment No.24 of the Committee on Economic, Social and Cultural Rights and by Pillar I of the UN Guiding Principles on Business and Human rights.

The full texts of the human rights instruments and standards recalled above are available at www.ohchr.org or can be provided upon request.

⁴ Human Rights Committee, General Comment No. 36 para. 2.

⁵ Human Rights Committee, General Comment No. 36 para 26