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Class, Intersectionality, the Right to Housing and the Avoidable Tragedy of Grenfell

Tower

GERALDINE VAN BUEREN QC

Introduction

The avoidable tragedy of Grenfell Tower starkly raises the issues of class and intersectionality, an area which has, until now, received insufficient analysis. This chapter excavates, inter alia, three issues surrounding class, intersectionality and the Grenfell Tower tragedy: the nature of class as a concept; its implications in constituting a ground of discrimination under the Equality Act 2010; and its relationship with intersectionality.

The reasons behind the insufficient attention to the cross-section of class, intersectionality and human rights may have to do with the many myths surrounding class and class discrimination in the UK,¹ which may also have contributed to the exclusion of class discrimination from protection under the Equality Act 2010. In particular, because of issues such as fluidity, and attributed and self-attributed identity, there are concerns with class being too loose a category to be capable of a satisfactory definition to constitute a category for protection. But in light of tragedies like Grenfell, there now needs to be serious consideration of whether reference to class as a concept in twenty-first-century legislation represents a novel departure at all in the UK. At the same time, there is also a need to analyse the reasons behind the apparent wariness of

class amongst some feminists and race scholars, as well as the historical and rather unjustifiable exclusion of race, sex and gender from discussions of class. Finally, there is the right to adequate housing, which is a right guaranteed both under international law and in a growing number of national constitutions, including several European constitutions,² but is regrettably not a right yet guaranteed in the UK.

¹ These are examined in greater depth in G Van Bueren QC, *Class and Law* (Hart Publishing, forthcoming).

² These include France, the Netherlands and Spain. See below for a discussion of the French and Dutch legislation.

This chapter interrogates whether the hostility towards recognising socio-economic rights in England³ is also a facet of class discrimination, and it explores how all of these matters fed into the avoidable tragedy of Grenfell Tower. It demonstrates that class has been considered in law on the basis of exclusion rather than equality of inclusion. It thus argues that law in the UK requires an express prohibition of class discrimination to deal with crosscutting issues like intersectionality and socio-economic rights such as the right to housing, because without such a prohibition of class discrimination, the situation that gave rise to the Grenfell Tower tragedy could re-occur.⁴

I. Class Discrimination: An Indefinable Concept or a Term Capable of Definition?

Class discrimination is perceived as being particularly complex because of the issues surrounding definition, resource distribution, stigma, wider participation and structural transformation. However, such complexity is often overstated. In fact, one of the assumptions behind the non-express inclusion of a prohibition of class discrimination in the UK is that it would disappear over time without the necessity of recognising it specifically, especially in law. Arguably, this has not occurred.⁵ Class, with its different forms of economic, social and cultural capital, may accumulate a range of advantages and disadvantages similar to those associated with gender, race, religion, disability and sexual orientation. As with other recognised grounds of discrimination,⁶ the effects of class discrimination extend beyond economic disadvantage. They include disadvantages which are not simply redistributive but go towards recognition in terms of stereotyping, stigma, prejudice, marginalisation etc, affecting access to basic goods like housing, education and healthcare. Seen this way, it is arguable that class, as

well as race, age and disability,⁷ played a significant role in the fire at Grenfell Tower and the ensuing responses of the local authorities and the government. It is only arguable at this stage, because the Moore-Bick Inquiry has not yet reported on this.⁸ However, questions that ought to be considered include whether the socio-economic status of some of the residents had a bearing on the choice of cladding and whether

³ This is arguably not the attitude to socio-economic rights in Scotland and Wales. On the right to food, see, eg, G Van Bueren QC, 'A Justiciable Right to Food: A Possibility for the United Kingdom?' [2019] *Public Law* 146.

⁴ Argued more fully in Van Bueren QC (n 1).

⁵ Within academia, see, eg, the creation of the Association of Working Class Academics in 2019, which is chaired by the author.

⁶ Equality Act 2010, s 4. The following characteristics are protected characteristics under the Equality Act 2010: age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

⁷ See the discussion below in relation to poverty and socio-economic status or class.

⁸ Grenfell Tower Inquiry, Phase 1 Report (October 2019), <https://www.grenfelltowerinquiry.org.uk/phase-1-report>.

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socio-economic status played a role in ignoring the evidence produced in tragedies such as the Grenfell fire and the earlier Lakanal House fire in 2009.

In addition to being neglected in equality law, class has also been insufficiently connected to other human rights, as is illustrated by the example of life expectancy, which shows its link with the right to life vividly. So, in addition to the avoidable loss of life in Grenfell Tower, mortality and class discrimination seem fundamentally implicated and beyond the case of the right to housing. For example, there is a significant and unacceptable difference in life expectancy in the UK between different classes in boroughs of the same city.⁹ Class is not, in Kincheloe and McLaren's terminology, 'antiseptically privileged'¹⁰ and thus deserves equal consideration with other factors that impact individual life chances, especially the continuity and longevity of life. Despite its impact on life expectancy and, in turn, the right to life, there are a number of arguments raised against addressing class discrimination in the UK; these include an assumption that references to class are not a part of the British statutory tradition and that class is too difficult to define in law.¹¹

Historically, legislative references to class and its position in England and Wales were intended to reinforce rather than remove class barriers. Sumptuary laws, such as the Statute Concerning Diet and Apparel 1363, prescribed who could wear specific styles of clothing and eat specific foods.¹² Sumptuary legislation also had significant consequences for different classes in terms of unequal access to property and restrictions on travel. Such detailed prescriptions may appear trivial or even absurd in the modern era, but they encompassed all the essentials of medieval life. Magna Carta (1215) focused on the rights of the baronial class and of freemen, and this was expanded in Carta de Foresta (1217) to those living in the royal

forests and in Hwyl Dda to those serving specific nobility.¹³ References to class, however, were not limited to the medieval period and continued well into the twentieth century. Voting restrictions, for example, applied to both class and gender through property ownership, and it was not until the Representation of the People (Equal Franchise) Act 1928 that class became formally invisible in the plebiscite.

⁹ In relation to Glasgow, see World Health Organization, 'Closing the Gap in a Generation Health Equity through Action on the Social Determinants of Health' Commission on Social Determinants of Health Final Report (2009), https://www.who.int/social_determinants/thecommission/finalreport/en. See also SDS Fraser and S George, 'Perspectives on Differing Health Outcomes by City: Accounting for Glasgow's Excess Mortality' (2015) 8 *Risk Managed Healthcare Policy* 99.

¹⁰ JL Kincheloe and P McLaren, 'Rethinking Critical Theory and Qualitative Research' in K Hayes, SR Steinberg and K Tobin (eds), *Key Works in Critical Pedagogy* (Sense Publishers, 2011) 285–326.

¹¹ An analysis of the literature on intersectionality and the capacity of the concept to embrace more fluid forms of discrimination can be found in Van Bueren QC (n 1); and S Atrey, 'The Intersectional Case of Poverty in Discrimination' (2018) 18(3) *Human Rights Law Review* 411.

¹² See further G Van Bueren QC, 'Socio-economic Rights and a Bill of Rights: An Overlooked British Tradition' [2013] *Public Law* 821.

¹³ *ibid.*

Hence, historically, it has long been recognised that class is a legal relationship as well as a political, social and economic one, and it is therefore an appropriate area to legislate on. But the traditional ways in which class has been legislated on has been to service those who are relatively privileged, while being detrimental to those who are most vulnerable. The fact that class has a tradition of legislative protection in this very chequered way raises the question of whether class could still be a relevant factor in contemporary legislation. But it is in fact the consequence of continuing to ignore class discrimination in twenty-first-century legislation which ends up reproducing class discrimination, thus repeating the history of class discrimination through legislation, albeit in a different way. Now, it is discrimination by being excluded from protection, while previously it was discrimination by express inclusion.

Such ‘instruments of exclusion’, as Marshall described them,¹⁴ continued at an informal level prior to Grenfell Tower. In both Rowntree’s and Boothby’s poverty maps of York and London, residents of streets were colour coded according to the moral standing of their inhabitants. It is beyond the scope of this chapter to explore the link between assumptions of morality and class;¹⁵ however, it is appropriate to raise the question whether, amongst other things, portrayals of members of poorer classes feed into the lack of equal protection under both human rights and anti-discrimination laws.

Yet, the link between property ownership and class, although formally invisible in electoral law, as distinct from property residence, arguably played a significant and ultimately fatal role in Grenfell Tower, with perceptions concerning entitlement feeding into the way in which the Tower and its people were neglected and rendered vulnerable. Marshall’s approach to class is relevant here because he regarded the essence of social class as ‘the way a man is treated’. In the Royal

Borough of Kensington, both Marshall's approach and Bourdieu's ideas of cultural, economic and social capital¹⁶ played out clearly. Those perceived, wrongly or rightly, of having little economic, cultural and social capital – a perception based on residence – may have been deprived of equal consideration of their rights based on such perception, especially in relation to the lesser weight placed on the evidence reinforcing their safety concerns. The assumptions about the value and dignity of members of particular classes continue to shape how they are perceived, especially in law and by public services, and may have ultimately contributed to the deaths of Grenfell residents.

One of the challenges faced by those who confront class discrimination is that it is perceived as too difficult or more difficult to define than other prohibited grounds found in the Equality Act 2010. First, it is argued that, unlike other grounds, there

¹⁴ TH Marshall (ed), *Class, Citizenship, and Social Development*, 2nd edn (Anchor Books, 1965).

¹⁵ His analysis was in relation to the Elizabethan Statute of Artificers, which confined certain apprenticeships to social classes. See further Van Bueren QC (n 1).

¹⁶ P Bourdieu, 'The Forms of Capital' in JG Richardson (ed), *Handbook of Theory and Research for the Sociology of Education* (Greenwood Press, 1986) 241–58.

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is too much fluidity in defining class. This makes class too difficult as a ground of discrimination to be protected when it cannot be defined with clarity. However, such an argument is open to challenge. The right to change one's religion recognised in international law under the International Covenant on Civil and Political Rights (ICCPR)¹⁷ and in regional treaties, including the European Convention on Human Rights (ECHR),¹⁸ has not been regarded as an insurmountable obstacle to prohibiting religious discrimination. Similarly, there is also fluidity in definitions of gender, and a change in gender is not regarded as a bar to gender equality, but in fact a ground of protection in itself via transgender status. For example, the Court of Justice of the European Union in *P v S and Cornwall County Council*¹⁹ recognised that discrimination on the basis of gender reassignment constituted discrimination under the EU Directive on equal treatment for men and women.

Despite the growing body of jurisprudence from national constitutional courts, beginning in Europe with the German Constitutional Court in particular,²⁰ contemporary human rights law has yet to come to terms with fluidity and self-definition of identity as a facet of autonomy. This is not to deny the complexities surrounding class and other forms of discrimination; however, human rights law has always, since its inception, grappled with complex and challenging cases in both domestic and international contexts; indeed, it is arguable that such complexity is the *raison d'être* of human rights law. The *travaux préparatoires* of the UN Convention on the Rights of Persons with Disabilities 2006, for example, illustrate the challenges of defining 'disability' based on different conceptions or models of disability – medical, social and human rights.²¹ Similarly, in drafting the UN Convention on the Rights of the Child, it took 10 years to agree upon a definition (as well as other matters), but the political

will was such that a definition was eventually agreed.²²

There is, in addition, an alternative approach; the prohibited grounds of race or sex have not been defined in their specific international or domestic instruments; rather, they have been defined and explored on a case-by-case basis. In defining class, guidance can therefore be sought from the approach to the definitions of race and sex. This is especially important because class is not merely an economic concept. It is, like race and sex, as much to do with the social, political and cultural dynamics of power as economic power. Moreover, it intersects with gender and sex to create uniquely gendered and sexualised forms of class capital. In 'The Forms

¹⁷ International Covenant on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 18.

¹⁸ European Convention on Human Rights and Fundamental Freedoms (opened for signature 4 November 1950, entered into force 3 September 1953) ETS 5, art 9.

¹⁹ Case C-13/94 *P v S and Cornwall County Council* [1996] ECRI-2143.

²⁰ German Constitutional Court, 1 BvR 2019/16 (10 October 2017). This judgment follows the line adopted by the European Court of Human Rights in *Van Kuck v Germany* [2003] 37 EHRR 51, which provides that the freedom to define one's gender identity is an essential aspect of self-determination.

²¹ T. Degener, 'Disability in a Human Rights Context' (2016) 5 *Laws* 35.

²² The definition was, however, open ended. The author was one of the drafters.

of Capital', Bourdieu expanded the notion of capital beyond the economic definition, emphasising material exchanges, to include 'immaterial' and 'non-economic' forms of capital, described as cultural and symbolic capital.²³ An understanding of these multiple forms of capital helped elucidate the structure and functioning of the social world.

In particular, the term 'cultural capital' represents the collection of non-economic forces, such as family background, social class, varying investments in and commitments to education, different resources, etc that influence academic success. Bourdieu distinguished between three forms of cultural capital. The embodied capital is directly linked to and incorporated within the individual and represents what they know and can do.²⁴ Embodied capital can be increased by investing time into self-improvement in the form of learning. As embodied capital becomes integrated into the individual, it becomes a type of *habitus* and therefore cannot be transmitted instantaneously. The objectified state of cultural capital is represented by cultural goods, such as books, paintings, instruments and machines. They can be appropriated both materially with economic capital and symbolically via embodied capital. Finally, cultural capital, in its institutionalised state, provides academic credentials and qualifications which create a 'certificate of cultural competence which confers on its holder a conventional, constant, legally guaranteed value with respect to power' and these academic qualifications can then be used as a rate of conversion between cultural and economic capital.²⁵

Class itself is intersectional and is not accurately described by reference only to Caucasian males, as on occasion is portrayed by the media in the UK. Class is a rich multi-dimensional concept, which embraces race, religion and gender, as well as other fundamental aspects of identity. There is a need to further embrace intersectionality in the contemporary context when

considering issues of class, otherwise there is a danger in adopting inaccurate, narrow and exclusionary approaches to class and also in isolating class from the social structure of society as a whole. Intersectional approaches are necessary to move discussions of class beyond 'white working-class men'. By adding the dimension of a prohibition on class discrimination, the law will be strengthened not only in relation to class discrimination but also in relation to all the other protected characteristics and in turn the intersections that constitute them all.

It may be argued that because there was and continues to be a focus on social exclusion in policies, the inclusion of class as a prohibited ground of discrimination would not have had any impact on preventing the Grenfell Tower fire. Social exclusion, originally a French concept, is defined in the literature as applying to those who are systematically excluded from participation in society.²⁶ Participation in

²³ P Bourdieu, 'The Forms of Capital' in Richardson (n 16) 241–58.

²⁴ *ibid.*

²⁵ P Bourdieu, 'Ökonomisches Kapital, kulturelles Kapital, soziales Kapital' in R Kreckel et al, *Soziale Ungleichheiten* (Soziale Welt, Sonderheft 2, 1983) 183–98.

²⁶ Contemporary political interest in the concept began in 1974 when René Lenoir, then Secretary of State for Social Action in a French Gaullist government, first popularised the term.

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this context refers to four dimensions: the capacity to purchase goods and services; participation in economically or socially valuable activities; political engagement; and social interaction.²⁷ Social exclusion arises from a variety of causes, which are partly material, but also relate to other issues, such as living in a deprived area, suffering partnership breakdown, being a member of an ethnic minority, or being elderly or disabled. Social exclusion, as with class, is not just a temporary phase of poverty; it is systemic, often passed on from generation to generation and can be self-perpetuating. Although social exclusion is valuable in tackling poverty, by itself, it has not made a perceivable dent in addressing inequality and social mobility in the UK, as figures continue to show.²⁸ Nor has the focus on social exclusion created a binding obligation on local authorities to weigh the concerns and entitlements of people, such as the Grenfell Tower residents, equally and on a par with other more wealthy residents in the borough. This is not to argue that social exclusion policies or the concept of social exclusion itself should be abandoned; rather, it is to maintain that adopting both a social exclusionary approach reinforced by a prohibition on class discrimination would be more effective in tackling the complex nature of inequality associated with class rather than simply an aspect of it (ie, social exclusion).

A more cautionary approach is advisable in relation to socio-economic status, however. First, the term 'socio-economic status' does not provide positive definitions of identity, nor is it seen as autonomy-affirming in any way. For example, I may choose to describe my origins as working class, which is an important facet of my identity, but I do not self-identify as being from a low socio-economic status. There is nothing positive about low socio-economic status, whereas many of us are proud either: (a) to be living working-class lives; or (b) of coming from working-class backgrounds. There is also a risk that

courts would not regard discrimination on the grounds of socio-economic status in the same light as racial discrimination and would instead adopt the approach of the US Supreme Court, which, as Sandra Fredman observes in Chapter 4 of this volume, sees such discrimination as less severe and as deserving of lighter scrutiny. In *San Antonio Independent School District v Rodriguez*,²⁹ the US Supreme Court rejected a claim that policies which discriminate against poor people can attract heightened judicial scrutiny. This was in part because the judgment did not classify poverty as similar to race.³⁰ In American jurisprudence, racial classifications were suspect because they concerned a discrete and insular minority, but poor people could not be regarded as discrete

²⁷ See J Mathieson et al, *Social Exclusion Meaning, Measurement and Experience and Links to Health Inequalities: A Review of Literature* (WHO Social Exclusion Knowledge Network Background Paper, 2008) 1.

²⁸ Social Mobility Commission, *State of the Nation 2016: Social Mobility in Great Britain* (16 November 2016), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/569410/Social_Mobility_Commission_2016_REPORT_WEB_1.pdf.

²⁹ *San Antonio Independent School District v Rodriguez* 411 US 959, 93 S Ct 1919.

³⁰ In contrast, during the parliamentary debates on the inclusion of socio-economic status, there were a minority of Members of Parliament who appeared to equate socio-economic status and class; see, eg, discussions in HC Deb 11 May 2009, vol 492, col 614.

or insular. Hence, a system which funded local schools on the basis of local taxes and led to under-resourced schools in poorer areas could not, according to the US Supreme Court, be subject to heightened scrutiny, which would have been appropriate for a system which provided inferior schools to students of colour.

Broader attempts to address poverty also do not often connect issues of poverty with conceptions of class per se. Thus, class remains invisible even in the UK mission of the United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights, who explicitly argued for the need to combat extreme poverty with human rights, but failed to consider the impact of class on extreme poverty and human rights.³¹ However, class is as relevant to poverty as it is to extreme poverty, as the recent UN Declaration on the Rights of Peasants 2018³² makes clear. Its preamble states that peasants and other people working in rural areas suffer disproportionately from poverty, hunger and malnutrition, and Article 2(3) recognises ‘the existing power imbalances’ between peasants and those who make the decisions that affect their lives. These statements show awareness not only of poverty, but also of class in terms of the way in which class relations work in entrenching poverty and, in turn, the violation of human rights.

II. Class, Socio-economic Rights and the Right to Adequate Housing

In essence, the avoidable tragedy of Grenfell Tower concerned the right of every- one to adequate housing. Therefore, it is also necessary to explore the resistance shown by many, but not all, wealthier states to enshrining the right to adequate housing and other justiciable socio-economic rights into their constitutional structure, including the UK. In the UK, the resistance to recognising justiciable socio-economic rights has been shown by political parties both on the left and the right. Although the major statute

on human rights is entitled the Human Rights Act 1998, it omits the express codification of socio-economic rights. The partial incorporation of the ECHR in the UK, along with the non-ratification of Protocol 12 on a self-standing non-discrimination guarantee, and the partial ratification of the European Social Charter 1961 with its omission of ratification of both the complaints procedure and newer substantive rights leave a gap in protections.³³ Although socio-economic rights, like civil and political rights, are symmetrical in nature such that everyone within the state's jurisdiction benefits from them,

³¹ UN Doc A/HRC/41/39/Add.1 (23 April 2019).

³² UN General Assembly, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 73rd sess 2018–19, A/RES/73/165.

³³ Although the Human Rights Act 1998 is commonly referred to as incorporating the ECHR, this is not accurate because the Human Rights Act 1998 does not incorporate art 13 ECHR or all of the substantive rights in the ECHR Protocols.

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socio-economic rights may be of particular value to members of social classes with less access to resources to realise their human rights.

In fact, symbolically and practically, justiciable socio-economic rights reduce class inequality directly. Symbolically, socio-economic rights reduce class inequality because they create a route for all classes to enjoy the right to adequate housing, nutrition and water, clothing and standard of living necessary for a good life. In practice, socio-economic rights reduce class inequality because they transform some members of the community, including those living in welfare states, from beneficiaries of social policies into social actors as rights bearers. This is the reasoning behind the Universal Declaration of Human Rights enshrining several socio-economic rights. Although it is commonly and erroneously assumed that rights, such as the right to adequate housing, were incorporated only at the urging of the Soviet states and therefore are an expression of communist values, an examination of the *travaux préparatoires* provides evidence that the socio-economic rights were included at the insistence of the Latin American states, and later reiterated in binding treaty form by a wide range of member states of the UN with diverse political systems.³⁴

The International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁵ paved the way for recognising socio-economic and cultural rights in additional human rights treaties aimed at protecting specific groups, such as the UN Convention on the Rights of Persons with Disabilities,³⁶ the Convention on the Elimination of All Forms of Discrimination against Women,³⁷ the Convention on the Rights of the Child³⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination.³⁹ All of these may raise further questions in relation to the

Grenfell Tower fire, for example, concerning the mobility challenges faced by disabled persons, older people, pregnant women and children. The class aspect of the right to housing in Grenfell is thus exacerbated by other intersectional vulnerabilities associated with disability, age, gender and pregnancy.

Because of the lack of incorporation of the ICESCR into domestic law, the right to housing has not been legally recognised in the UK. In addition, although the UK is bound by the Council of Europe's European Social Charter, which guarantees the right of the family to social, legal and economic protection, and

34 For a fuller discussion, see Van Bueren QC (n 1). See, eg, UN Doc E/CN.4/W.8?Art 14/p18 submitted by Chile in relation to the right to work and the right to form unions. See also UN Doc E/CN.4AC.1/3/Add.1/p314 submitted by Chile, Costa Rica, Nicaragua, Paraguay, Peru and Uruguay.

35 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations Treaty Series, vol 993, p 3, art 11.

36 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106, art 28(1).

37 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations Treaty Series, vol. 1249, P 13, art 12(2)(h).

38 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3, art 27(3).

39 UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations Treaty Series, vol 660, p 195, art 5(e)(iii).

makes explicit reference to an obligation to protect family life and provide 'family housing',⁴⁰ the UK has not ratified the European Social Charter in full. The UK, in contrast to other states including Ireland, France and Portugal, has only ratified the barest minimum of the European Social Charter.⁴¹ Full ratification would have offered the possibility for those living in Grenfell Tower to have the possibility of having their safety concerns attended to as a matter of right to housing recognised in Article 31(1) of the European Social Charter. This is evidenced by the interpretation of the Council of Europe's Committee of Social Rights, which requires states to both ensure an adequate supply of housing and to ensure that existing housing is of an adequate standard.⁴²

The consideration of the UK's legal obligations in relation to the right to housing is thus limited in international law.⁴³ However, it is this failure to consider socio-economic rights as equal to and in fact related to civil and political rights, as a matter of indivisible and interdependent human rights, that further sidelines issues of class, which would prima facie make all socio-economic rights extend to all classes. Thomas Hammarberg, the former Council of Europe Commissioner for Human Rights, has stated that it is critical to support victims of housing rights violations, because access to housing is a precondition for exercising all other fundamental rights.⁴⁴ This approach is reinforced by the General Comment of the Committee on Economic, Social and Cultural Rights, which also provides that states, as a matter of legal obligation, are obliged to conceptualise adequate housing as not only equated with shelter, but equally, and importantly, as a facet of security, living in peace, and proximity to essential services such as schools and hospitals.⁴⁵ The Committee has begun to put this into effect through rulings on

40 European Social Charter 1961, art 16.

41 Ireland ratified the European Social Charter on 7 October 1964 and the Revised European Social Charter on 4 November, accepting 92 of the 98 paragraphs of the Revised Charter. It ratified the Additional Protocol providing for a system of collective complaints procedure on 4 November 2000. It has not yet made a declaration enabling national non-governmental organisations to submit collective complaints.

42 Collective Complaint No 31/2005, *European Roma Rights Centre (ERRC) v Bulgaria* (European Committee of Social Rights, 18 October 2006).

43 It is also limited in domestic law. 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 tragedy 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. After the Grenfell Tower fire, Karen Buck MP re-introduced 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.

44 T Hammarberg, *Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing*, CommDH (2009) 5 (30 June 2009) 3.

45 CESCR General Comment No 4 on the Right to Adequate Housing (Art 11(1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights on 13 December 1991, (Document E/1992/23) [9]. The principle is reiterated by the UN Special Rapporteur on the Right to Adequate Housing in 2016: '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.'

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complaints, such as the case of *IDG v Spain* in 2015,⁴⁶ which established that the state has an obligation to provide for effective remedies in foreclosure procedures related to defaulting on mortgage payments. Other European countries seem to have adopted strong protections around housing, having recognised a right to housing constitutionally.⁴⁷

It may be tempting to conclude that if the UK had incorporated a right to housing, it would have prevented the fire, deaths and injuries in the Grenfell Tower tragedy. However, a right does not itself guarantee its own enforcement. France, for example, saw a similar tragedy to Grenfell unfold in Marseilles in 2018. France had previously, as a consequence of being found in breach of the European Social Charter,⁴⁸ adopted an enforceable right to housing.⁴⁹

Although fortunately fewer lives were lost in Marseilles, there are other similarities with Grenfell.

These include the prior notice given to the authorities of the risk of fire and the rich ethnic diversity of the residents, including refugees and asylum seekers. Their right to adequate housing was still violated, even in the presence of an explicit recognition of the enforceable right. However, rights are not self-enforcing and the mere recognition of a legal right to housing does all but prevent tragedies of this nature. Neither would a prohibition on class discrimination automatically guarantee that the tragedy of Grenfell Tower would have been avoided. But it would, in combination with a right to housing, make discrimination, such as that which arose in Grenfell, where those of a certain class received homes with poorer cladding, unlawful. Recognition of class discrimination in the enjoyment of legally recognised socio-economic rights would thus strengthen those rights as well as combat class inequality *per se*.

Although Brexit may, depending upon the nature of

any future relationship (uncertain at the time of writing), release the UK from human rights obligations

See 'Adequate Housing as a Component of the Right to an Adequate Standard of Living' (8 August 2016) UN Doc No A/71/310 [5], [27], http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/310 a.

46 Communication 2/2014, UN Doc E/C.12/55/D/2/2014.

47 See, eg, art 22(2) of the Constitution of the Kingdom of the Netherlands 2008, which provides that 'it shall be the concern of the authorities to provide sufficient living accommodation'. This constitutional protection has its origins in the Dutch Housing Act 1901.

48 In *FEANTSA v France* CC39/2006. The European Committee of Social Rights found that France violated art 31 by not making sufficient progress towards eradicating substandard housing, failing to pass legislation to prevent evictions, having an insufficient supply of social housing and having a poor social housing allocation system.

49 Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (1) NOR: SOCX0600231L Version consolidée au 27 mars 2019, which introduced an enforceable right to be housed (the DALO law) and charged prefects with the task of making the social housing application process more efficient by allocating accommodation to applicants deemed to have priority. This responsibility is exercised under the supervision of an administrative judge. Any person in difficulty, whose application for housing has not been satisfied, may apply to a mediation committee and then, in certain cases, lodge an appeal with an administrative court if they wish to pursue their application. In its first case, the court ruled that in order for the state to meet its obligation to protect the right to housing, 'families must not merely have a place to stay for the night but an adequate home'. See further K Olds, 'The Role of Courts in Making the Right to Housing a Reality throughout Europe: Lessons from France and the Netherlands' (2010) 28 *Wisconsin International Law Journal* 170, 171.

under EU law, including those arising out of the EU Charter of Fundamental Rights,⁵⁰ it would have no effect on the obligations which the UK has by virtue of being a party to the Council of Europe and thus under the ECHR. As well as providing for a right to life in Article 2, the ECHR provides in Article 14 a right not to be discriminated against on 'any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. This list of prohibited grounds of discrimination is not exhaustive and is prefaced by '*any ground such as*' (emphasis added). Arguably, this, together with 'other status', would mean that the right is a right not to be discriminated against on a ground other than those listed, when there is no rational relationship between the ground and the differential treatment based on that ground. An inclusion of class either through reading it into 'social origin ... birth or other status', as enshrined in the ECHR both in Article 14 and in its Protocol 12, is thus ostensibly possible in this context and, via this, in the UK. In fact, the European Court of Human Rights (ECtHR) is not bound by its earlier and current jurisprudential ranking of the grounds of discrimination with its consequential and regrettable exclusion of categories.⁵¹ Similarly, it would be open to the courts in the UK under the Human Rights Act 1998 to go beyond the approach of the ECtHR.

Further, although there is no express right to housing under the ECHR, Article 2 of the Convention – which recognises that 'everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally' – may provide an indirect method of redress in relation to extreme violations of the right to life in the context of housing. The ECtHR has found that there is a positive obligation on governments to take 'all appropriate steps' to safeguard life for the purposes of Article 2 ECHR.⁵² These positive obligations must apply 'in the context of any activity, whether public or not, in which

the right to life may be at stake'⁵³ and this clearly applies to the regulations concerning high-rise buildings. The ECtHR has in fact come up with these principles specifically in cases of loss of lives. For example, in *Oneryildiz v Turkey*,⁵⁴ the Court stressed that there was practical information available that the inhabitants were faced with a threat to their physical integrity on account of the technical shortcomings of the municipal rubbish tip. It found that the timely installation of a safety system before a situation became fatal would have been an effective preventative measure 'without diverting the State's resources to an excessive degree'.⁵⁵

⁵⁰ European Union, *Charter of Fundamental Rights of the European Union* [2012] OJ C326/02, 26 October 2012.

⁵¹ N Petersen, 'The Principle of Non-discrimination in the European Convention on Human Rights and in EU Fundamental Rights Law' in Y Nakanishi (ed), *Contemporary Issues in Human Rights Law Europe and Asia* (Springer, 2018) 129–42.

⁵² *Oneryildiz v Turkey* (2005) 41 EHRR 20 [89].

⁵³ *ibid* [89]–[90].

⁵⁴ *ibid*.

⁵⁵ *ibid* [107].

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Similarly, in the case of Grenfell, it would be open to a domestic court to consider whether, under the Human Rights Act 1998, the installation of safer cladding panels and the cost of a sprinkler system would have diverted the resources of the UK or the concerned local authority 'to an excessive degree'. It is unlikely that such a cost would have been found to be excessive in light of the danger associated with cheap cladding, ie, of loss of lives. Further, in *Budayeva v Russia*,⁵⁶ where an authority knew that a dam had been weakened but failed to tell the residents who would have been affected, the ECtHR has found that where lives are at risk, there is a smaller margin of appreciation given to states parties.

However, in respect of less serious violations, the ECHR's protection of the right to life has not provided a shield because, with some justification, the ECtHR has regarded this as protecting a right to housing through the back door without the express consent of the states parties. This justification is derived from a treaty regime, which does not focus on the inherent intersectionality of human rights, but rather on the sovereign decisions of states to ratify treaties with clear parameters and interpretations limited by the *travaux préparatoires*.

There is also the potential of applying Article 3 of the ECHR to the Grenfell Tower fire tragedy. In *Selcuk and Askar v Turkey*,⁵⁷ the ECtHR had found a violation of Article 3 ECHR when the applicants, who were over 50 years old and who had lived their entire lives in their village, were forced to watch their village being burnt and destroyed by members of the Turkish security forces. According to the Court, this had amounted to inhuman treatment under Article 3 ECHR. A similar finding may ensue in a case over the Grenfell Tower fire on the basis that it actually involved not only a loss of home and community, and the life associated with it, but also the actual loss of lives within that home and

community.

However, piecemeal approaches to class discrimination, which may also include piecemeal approaches such as the incorporation of socio-economic rights in the UK,⁵⁸ would remain inadequate in terms of providing a shield against all the disadvantages associated with class inequality. Similarly, a prohibition of class discrimination alone would be insufficient to address all of the disadvantages of poverty. These approaches demonstrate the obstacles placed in the way of those seeking answers concerning the Grenfell Tower conflagration. Rather, an ideal intersectional approach would include all forms of necessary legal reform. One of the principal focuses of intersectionality has been on identities and the disadvantages associated with them; however, there is also an intersectionality of rights which in human rights language is not referred to as intersectional, but in terms of indivisibility and interdependence of rights. The lack of appreciation of intersectionality, as well as the indivisible and interdependent nature of human rights violations, lies at the heart of the avoidable tragedy of Grenfell Tower.

⁵⁶ *Budayeva v Russia* (2014) 59 EHRR 2.

⁵⁷ *Selcuk and Asker v Turkey* (1998) 26 EHRR 477.

⁵⁸ The author is a member of a small group who, at the time of writing, is drafting an Economic, Social and Cultural Rights Act for the UK.

Intersectionality is often applied to the interplay between different forms of equality, but there is also an important interplay, sometimes under-appreciated, between human rights in general and equality in particular, and the diverse bases on which they are violated. In human rights terminology, this interplay is described as indivisibility and it is arguable that by focusing only on the equality aspects of intersectionality, the human rights aspects of intersectionality have been ignored. It is also arguable that the very slow response of the human rights community in perceiving the fire in Grenfell Tower as a fundamental human rights issue was because of the complex intersectional issues it raised, concerning the loss of life in social housing affecting a diverse range of people, including primarily working-class people. In fact, the human rights dimension of the Grenfell Tower tragedy continues to be ignored, with the parliamentary inquiry into the tragedy even failing to grant the Equality and Human Rights Commission standing to appear. Its first report has also failed to address the tragedy as a matter of human rights violations *per se*.⁵⁹ But, as this chapter has shown, it is only when class discrimination is attended to, along with the right to housing, that one comes to appreciate Grenfell as an avoidable tragedy which would have been prevented had an intersectional approach been taken to appreciating how violations transpire because of multiple identities (including class) and how they affect the experience of multiple rights (such as the right to housing).

59 A Nolan, 'Human Rights and the Grenfell Tower Inquiry', *London Review of Books Blog*, 4 November 2019, <https://www.lrb.co.uk/blog/2019/november/human-rights-and-the-grenfell-tower-inquiry>.