

Response to Special Rapporteur on the Right to Adequate Housing concerning the Right to Life and Adequate Housing

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In late 2015 Ben Christman and Dr Hannah Russell conducted research into fuel poverty and human rights in the United Kingdom (UK). The outcome of this research was published under the title 'Readjusting the Political Thermostat: Fuel Poverty and Human Rights in the UK' within the *Journal of Human Rights in the Commonwealth*.¹ Drawing from this article the four questions posed by Ms Farha are answered from the perspective of fuel poverty, as an issue to be addressed under the right to adequate housing, and the right to life. The article is worth consideration in full as it deals with the link between civil and political and socio-economic rights within a European context. It is available at: <http://journals.sas.ac.uk/jhrc/article/view/2273>

1. Please provide any statistical indicators or other evidence regarding the health, mortality and morbidity consequences of inadequate housing and homelessness in your country on vulnerable groups, including documentation (visual or otherwise) of the lived experiences behind these numbers and of particular circumstances of which your organisation is aware.

Fuel poverty is the inability to afford adequate warmth in the home.² It is measured by looking at the households whose fuel expenditure on all energy services exceeds 10% of their income.³ Its primary cause is thermally inefficient housing, which engages the right to an adequate standard of living. In particular, the components of adequate housing affected by fuel poverty are the availability of services, materials, facilities and infrastructure (including energy for heating), affordability and habitability.⁴ The most recent figures show:⁵

¹ Citation: Ben Christman and Hannah Russell, 'Readjusting the Political Thermostat: Fuel Poverty and Human Rights in the UK' (2015) 2(2) *Journal of Human Rights in the Commonwealth* 1.

² Paul Lewis, *Fuel Poverty Can be Stopped* (Bradford: National Right to Fuel Campaign, 1982).

³ Brenda Boardman, *Fuel Poverty: From Cold Homes to Affordable Warmth* (London: Belhaven Press, 1991); Baron Isherwood and Ruth Hancock, *Household Expenditure on Fuel: Distributional Aspects* (London: DHSS, 1979).

⁴ E/1992/23, 'CESCR General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

⁵ DECC, *Annual Fuel Poverty Statistics Report 2014* (London: DECC, 2014), 61. These figures are from the 2011/12 period, using the 10% fuel poverty definition.

Country	Number of fuel poor households (millions)	Proportion of the population fuel poor (%)	Year of estimate
England	3.05	14%	2012
Scotland	0.65	27%	2012
Wales	0.39	29%	2012
Northern Ireland	0.29	42%	2011

There can be significant health impacts as the result of fuel poverty.⁶

Excess Winter Deaths

There are many factors which play a part in causing 'excess winter deaths' (EWDs - the observation that more deaths occur during the winter than during the warmer months of the year). These include inadequate housing. The WHO has estimated that approximately 30% of EWDs are related to cold housing,⁷ echoed by the Marmot Review, which found that:

21.5% of all EWDs can be attributed to the coldest quarter of housing, due to it being cold, over and above the amount of deaths which would have occurred had these houses had the same winter excess as the warmest housing.⁸

The Marmot Review also found that 73% of EWDs are attributable to cardiovascular and respiratory illnesses, with a strong association existing between cold temperatures and these diseases.⁹ Several studies have concluded that a large proportion of EWDs are preventable with the correct protective measures being taken during cold weather.¹⁰ The most recent figures (for the 2012/2013 period) show the scale of the problem across the UK: 31,100 EWDs in England and Wales, 2,000 in Scotland and 560 in Northern Ireland (a total of 33,660 for the UK).¹¹ Even at the more conservative end of the estimates, this would suggest that 7,237 UK EWDs in 2012/2013 were related to cold homes.¹²

⁶ Ben Christman and Hannah Russell, 'Readjusting the Political Thermostat: Fuel Poverty and Human Rights in the UK' (2015) 2(2) *Journal of Human Rights in the Commonwealth* 1, 16-18.

⁷ Janet Rudge, 'Indoor Cold and Mortality', in Braubach et al. (eds), *Environmental Burden of Disease Associated with Inadequate Housing: Methods for Quantifying Health Impacts of Selected Housing Risks in the WHO European Region* (Bonn: WHO Regional Office for Europe, 2011).

⁸ The Marmot Review Team, *The Health Impacts of Cold Homes and Fuel Poverty* (London: Friends of the Earth, 2011), 25.

⁹ *Ibid*, 24.

¹⁰ *Ibid*; Adrian Barnett et al., 'Cold Periods and Coronary Events: An Analysis of Populations Worldwide', *Journal of Epidemiology and Community Health* no. 59 (2005): 551; Stirling Howieson and Majella Hogan, 'Multiple Deprivation and Excess Winter Deaths in Scotland' (2005) 125 *Journal of the Royal Society for the Protection of Health* 18.

¹¹ ONS, *Excess Winter Mortality in England and Wales*; NRS, *Winter Mortality in Scotland 2012/13* (NRS, 2013); NISRA, *Tables for Excess Winter Mortality in Northern Ireland, 2012/13* (NISRA, 2013).

¹² Using the 21.5% estimate from the Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*.

Morbidity

Prolonged exposure to cold conditions can have numerous physical health impacts. Levels of circulatory diseases increase during cold periods as low temperatures cause blood vessels to narrow, raising blood pressure and increasing its thickness. Elevated blood pressure and viscosity raise the risk of strokes and heart attacks and contracting influenza is associated with higher heart attack levels.¹³

Incidences of the common flu, colds, arthritis and rheumatism are all influenced by cold temperatures.¹⁴ Children are particularly susceptible to developing respiratory conditions from living in damp, mouldy homes. Children in poor housing have been found to be between one and a half to three times more prone to coughing and wheezing than children in warm and dry homes;¹⁵ indicators of asthma or other respiratory afflictions. These symptoms can impact on children's lives and development through sleep loss, restricting daily activities, and absence from school.¹⁶

Mental Health

Occupants with bedroom temperatures at 21°C are 50% less likely to experience high levels of psychological distress than those with bedroom temperatures of 15°C or below,¹⁷ with some evidence that the presence of mould in a home and adult mental health are linked.¹⁸ There is also a correlation between the stress associated with financial difficulties of paying household bills (such as the cost of fuel) and mental health problems: those with problems in paying household bills are more likely to experience mental health problems,¹⁹ such as stress, anxiety and depression.²⁰ Liddell notes that for infants and children the health impacts of living in a cold home are primarily physical, whereas for adolescents the impacts fall mainly upon mental health.²¹ A 2008 study suggested that cold homes increase the chances of children and adolescents experiencing stress, anxiety and depression.²² Caution must be exercised

¹³ The Marmot Review Team, *The Health Impacts of Cold Homes and Fuel Poverty* (London: Friends of the Earth, 2011), 26-30.

¹⁴ *Ibid*, 26.

¹⁵ Jennifer Peat et al., 'Effects of Damp and Mould in the Home on Respiratory Health: A Review of the Literature' (1998) 53(2) *Allergy* 120.

¹⁶ Lisa Harker, *Chance of a Lifetime: The Impact of Bad Housing on Children's Lives* (London: Shelter, 2006), 13.

¹⁷ Geoff Green and Jan Gilbertson, *Warm Front Better Health: Health Impact Evaluation of the Warm Front Scheme* (Sheffield: CRESR, 2008), 14. Notably however, where households actively choose to occupy colder homes due to personal thermal preference, they report similar mental health levels to those occupying warmer homes: Roger Critchley et al., 'Living in Cold Homes after Heating Improvements: Evidence from Warm-Front, England's Home Energy Efficiency Scheme' (2007) 84 *Applied Energy* 147, 155.

¹⁸ Harris, *Health, Mental Health and Housing in England*, 45.

¹⁹ Mark Taylor et al., *The Psychological Costs of Unsustainable Housing Commitments* (Colchester: University of Essex, 2006).

²⁰ The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 29; Liddell and Morris, *Fuel Poverty and Human Health, 2992-2993* and Jan Gilbertson et al., 'Psychosocial Routes from Housing Investment to Health: Evidence from England's Home Energy Efficiency scheme' (2012) 49 *Energy Policy*, 122, 130.

²¹ Christine Liddell, *The Impact of Fuel Poverty on Children* (Belfast: Save the Children, 2008), 9.

²² Matt Barnes et al., *The Dynamics of Bad Housing: The Impact of Bad Housing on the Living Standards of Children* (London: NatCen, 2008).

when drawing such conclusions as children living in poor housing often experience considerable adversity besides substandard housing, making it hard to establish a causal link between cold housing and mental health problems.²³

A variety of techniques are used for coping with the cold resulting from fuel poverty: these include putting on extra clothes in the home, wrapping up in blankets or quilts, only using one room in the home, going to bed earlier, sharing beds, going to stay with relatives and keeping curtains closed during the day.²⁴ These behavioural changes can lead to social exclusion, often leading to the development of anxiety and depression.²⁵

2. Explain how the protection of the right to life in your state's (region or area of work) constitution or human rights legislation extends to violations resulting from alleged failures of governments to adequately address homelessness or inadequate housing. Please provide examples of attempts to secure access to justice for such violations of the right to life and describe the result. Please provide references to any relevant cases or initiatives.

Human Rights Standards in the UK

Fuel poverty's primary cause is thermally inefficient housing, with significant health implications. This may engage a variety of socio-economic rights, such as the right to an adequate standard of living and the right to the highest attainable standard of health. These rights 'represent objectives or aspirations for a State to pursue in promoting the well-being of its people'.²⁶ They are provided for in such treaties as the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the European Social Charter 1961/(revised) 1996 and the Charter of Fundamental Rights of the European Union 2000.

There is also the possibility that in more extreme circumstances fuel poverty engages civil and political rights such as the right to life, right to freedom from inhuman or degrading treatment, and the right to physical integrity (as provided for within the right to respect for family and private life). These are rights which are 'concerned with freedom from State interference'²⁷ and enabling 'people to participate freely in the political process'.²⁸ They are provided for within the International Covenant on Civil and Political Rights 1966 (ICCPR) and the European Convention on Human Rights 1950 (ECHR).

The UK has ratified each of these treaties,²⁹ with the exception of the European Social Charter (revised) 1996 which it is a signatory of.³⁰

²³ Harker, *Chance of a Lifetime*, 14.

²⁴ Will Anderson et al., *Coping with Low Incomes and Cold Homes* (Bristol: CSE, 2010), 31-38.

²⁵ The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 29-30.

²⁶ Richard Burchill et al, ed., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Farnham: Ashgate Publishing, 2013), 2.

²⁷ Burchill, *Defining Civil and Political Rights*, 2.

²⁸ Sabine Carey et al, *The Politics of Human Rights: The Quest for Dignity* (Cambridge: CUP, 2010), 105.

²⁹ The UK ratified the ECHR on 8 March 1951. The UK signed the ICESCR and ICCPR on 16 September 1968 and ratified these treaties on 20 May 1976. The UK ratified the Charter of Fundamental Rights of the European Union 2000 by ratifying the Lisbon Treaty 2007 on 17 July 2008.

³⁰ The UK has ratified the European Social Charter 1961, but only signed the European Social Charter (revised) 1996. Nevertheless, by signing the 1996 Charter it the UK is not bound by it, but it is obliged, in

Status of Right to Life and Right to an Adequate Standard of Living in UK

As a dualist State, international laws are not automatically given legal effect within the UK.³¹ For treaty obligations to become domestically enforceable, primary legislation is required. The only treaties that are recognised by the UK as enforceable at a domestic level are the ECHR, by virtue of the Human Rights Act 1998 (HRA),³² and the Charter of Fundamental Freedoms of the European Union, by virtue of the European Communities Act 1972.³³ The right to life is contained within Article 2 of these two treaties. Nevertheless, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirms that:

irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order.³⁴

The focus of this response is the ECHR/HRA. The practical effect of the HRA is that the rights contained within the ECHR are directly applicable in the domestic courts and against public bodies. Consequently, the ECHR operates like a 'shadow Constitution' in the UK.³⁵ The result has been that the UK legislature and judiciary have taken a more human rights based approach in their policies and judgments,³⁶ and the UK public authorities have a duty to act in a way which is compatible with the HRA.³⁷

The HRA safeguards rights that are civil and political in nature. Traditionally all forms of poverty, including fuel poverty, were understood to be primarily socio-economic rights

good faith, from acts that would defeat the object and purpose of the Charter. Furthermore, commentators have stated that the impact of the Charter should not be defined by its legal status and that the Charter's increased use by the European Court of Justice is an indicator that the Charter may achieve a similar status to the UDHR in the future. The UDHR was originally a non-binding treaty which is now viewed as a part of customary international law: Miguel Maduro, 'The Double Constitutional Life of the Charter', in *Economic and Social Rights Under the EU Charter of Fundamental Rights: A Legal Perspective*, ed, Hervey and Kenner (Portland: Hart Publishing, 2003), 284; John Morijn, 'Judicial Reference to the EU Fundamental Rights Charter: First Experiences and Possible Prospects' (2010) 1 *Working Paper of the IGC Institute/Human Rights Centre*.

³¹ Alec Stone Sweet and Helen Keller, 'Assessing the Impact of the ECHR on National Legal Systems' (2008) 88 *Yale Faculty Scholarship Series* 677, 686.

³² The UK government has announced plans to repeal the Human Rights Act and replace it with a British Bill of Rights. A draft of this Bill of Rights is not yet publically available and there is no timeframe for when, if at all, this change will happen.

³³ The Charter only applies in instances where EU law is engaged. The future application of the Charter has been called into question by the recent Brexit referendum in the UK.

³⁴ UNCESCR, *Concluding Observations of the UNCESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* (UNCESCR, 12 June 2009), para 13.

³⁵ *Ibid.*

³⁶ DCA, *Review of the Implementation of the Human Rights Act* (DCA, 2006), 1-2.

³⁷ Section 6(1), Human Rights Act 1998.

issues.³⁸ However, the indivisibility, interrelatedness and interdependence of all rights mean that fuel poverty affects civil and political rights too.³⁹

Link between the Right to Life and the Right to Adequate Housing

We did not come across any domestic cases that consider the link between the rights to life and to adequate housing during our research. Cases before the European Court of Human Rights (ECtHR) provide an indicator of the outcome if such cases arose.

Article 2 of the ECHR protects the right to life. It has been interpreted by the ECtHR as requiring that the State should take reasonable steps to prevent intentional and unintentional deprivation of life.⁴⁰ The inclusion of unintentional deprivation of life, combined with the reality that extreme poverty (of which fuel poverty can be a contributor) brought about by State policies and State inaction can threaten life creates the possibility of a violation of Article 2 in certain circumstances.

Judicial consideration of poverty and Article 2 of the ECHR is limited and applications that have been made on that basis have generally been unsuccessful (with the exception of *Nencheva v Bulgaria* (2013)).⁴¹ Nevertheless, even these unsuccessful cases show that in extreme circumstances, Article 2 may be engaged.

In *Wasilewski v Poland* (1999)⁴² the ECtHR found that ‘neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living, or a right to obtain financial assistance from the State’.⁴³ However, the Court indicated that if the applicant had been exposed to ‘any danger to life or limb’ it may bring the case ‘within the ambit of Article 2 of the Convention’.⁴⁴ This approach was upheld in *Sokur v Ukraine* (2002).⁴⁵ The ECtHR stated that while the applicant’s claim was inadmissible, the outcome may have been different if the applicant had shown that he suffered ‘such destitution as to put his life at risk’.⁴⁶ O’Cinneide proposes that the State ‘may be under a specific responsibility in particular circumstances to protect the destitute against knowable threats to their life’.⁴⁷ This fits within the findings of *Öneryildiz v Turkey* (2004).⁴⁸ The ruling in this case provided that instances where the State should have known that a risk to life existed and did not act reasonably can constitute a violation of Article 2. Yet in *Burke v United Kingdom* (2006),⁴⁹ the ECtHR stressed that the risk to life must be ‘real and imminent’.⁵⁰

³⁸ Lucy Williams, ‘Towards an Emerging International Poverty Law’, in *International Poverty Law: An Emerging Discourse*, ed, Lucy Williams (London: Zed Books, 2006), 6-7.

³⁹ OHCHR, *Guiding Principles on Extreme Poverty and Human Rights* (Geneva: OHCHR, 2012), 5.

⁴⁰ *Wöckel v Germany* (1998) 25 EHRR CD156; *Oneryildiz v Turkey* (2005) 41 EHRR 20; *Solomou and Others v Turkey* [2008] ECHR 552.

⁴¹ *Nencheva and Others v Bulgaria* [2013] ECHR 554.

⁴² *Wasilewski v Poland* Application No 32734/96, Admissibility, 20 April 1999.

⁴³ *Ibid*, para 3.

⁴⁴ *Ibid*, para 3.

⁴⁵ *Sokur v Ukraine* Application No 29439/02, Merits, 26 November 2002, para 1.

⁴⁶ *Ibid*, para 1.

⁴⁷ Colm O’Cinneide, ‘A Modest Proposal: Destitution, State Responsibility and the European Convention on Human Rights’ (2008) 5 *European Human Rights Review* 583, 584.

⁴⁸ *Oneryildiz v Turkey* (2005) 41 EHRR 20.

⁴⁹ *Burke v United Kingdom*, Application No 19807/06, Merits, 11 July 2006.

Nencheva v Bulgaria (2013),⁵¹ the only successful Article 2 complaint concerning conditions of poverty to date, explains that State action against a real and imminent risk to life must be 'swift, practical and sufficient' to prevent deaths.⁵² The specific facts of this case led to the ECtHR's conclusion that a violation of Article 2 had occurred. These included the fact that the victims were vulnerable persons, they were in the care of the State, the State had been fully aware of the dangers, and the events had 'not occurred in a sudden, one-off and unforeseen manner as the case of a *force majeure* event with which the State might be unable to cope'.⁵³

The ECtHR has also considered the possibility of the State being held accountable for the actions of third parties, for example, in relation to the State's failure to address the non-implementation of regulations by the responsible parties.⁵⁴ In *LCB v United Kingdom* (1998),⁵⁵ the ECtHR provided that the State must 'take appropriate steps to safeguard the lives of those within its jurisdiction'.⁵⁶ The Court has balanced this by requiring a causal link between the State's failure and the harm.

Therefore, for a case claiming that poverty, of which inadequate housing is a possible component, has led to a violation of Article 2 to have a chance in succeeding, it must be shown that: i) the destitution was a result of State action or inaction, ii) the destitution posed a real and imminent risk to life, and iii) the State was aware that a real and imminent risk existed and failed to take reasonable steps to counteract this. The Court will also take into account whether the victims were vulnerable and in the State's care.

3. Has the disproportionate effect of homelessness and inadequate housing on particular groups (eg persons with disabilities, indigenous peoples, women experiencing violence etc) been recognised by courts or human rights bodies in your country (region/area of work) as an issue of discrimination? Please provide examples.

There is a suggestion from the ECtHR jurisprudence that the disproportionate effect on particular groups should be taken into account. For example, the only Article 2 and poverty case to succeed before the ECtHR has been *Nencheva v Bulgaria* (2013). This appeared to be on the basis that the victims (children and young adults with disabilities in State care) were vulnerable.

4. What measures does your organisation promote or recommend to ensure access to justice for violations of the right to life resulting from homelessness and inadequate housing and to ensure that governments address the violations with appropriate urgency and commitment (eg application of international human rights law; legal reform; institutional reform).

⁵⁰ Ibid, para 1.

⁵¹ *Nencheva and Others v Bulgaria*, n 89.

⁵² Ibid, para 4.

⁵³ Ibid, para 4.

⁵⁴ *Budayeva and Others v Russia*, (2014) 59 EHRR 2; *Kalender v Turkey*, Application No 4314/02, Merits, 15 December 2009.

⁵⁵ *LCB v United Kingdom* (1999) 27 EHRR 212.

⁵⁶ Ibid, para 36.

The UK should recognise that fuel poverty engages human rights obligations, and develop fuel poverty policies in a manner which recognises this. This should involve the UK adopting a 'human rights based approach'⁵⁷ to its fuel poverty policies, broadly requiring that human rights laws and standards are integrated into relevant plans, processes and decision-making.⁵⁸ This would provide the UK with 'a sophisticated tool for managing risk, achieving transparency and finding objective, balanced and proportionate solutions'⁵⁹ to fuel poverty, ultimately leading to fuel poverty policies which reflect the rights of those within its jurisdiction, rather than those 'who [a Government] values'.⁶⁰

⁵⁷ Wambua Leonard Munyao, 'Understanding the Rights Based Approach and Its Role in Poverty Reduction' (2013) 3(3) *International Journal of Humanities and Social Science* 276, 276.

⁵⁸ John Tobin, 'Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations', in *The Human Rights of Children: From Visions to Implementation*, ed, Invernizzi and Williams (Farnham: Ashgate, 2011).

⁵⁹ Alice Donald et al, *Human Rights in Britain Since the Human Rights Act 1998; A Critical Review* (Manchester: EHRC, 2008), vii.

⁶⁰ Deborah Budlender, *The Women's Budget* (Cape Town: Institute for Democracy in South Africa, 1996), 7.