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Ms Raquel Rolnik
United Nations Special Rapporteur on adequate housing
UNOG – OHCHR
CH - 1211 Geneva 10

Dear Special Rapporteur,

Thank you for your questionnaire regarding adequate housing with a focus on security of tenure.

The United Kingdom is committed to ensuring adequate housing as a component of the right to an adequate standard of living to all its citizens, and takes its international obligations in this area very seriously. We would therefore like to contribute to your study on security of tenure.

Please see below our responses to your questionnaire on this topic. The following responses are in relation to England only. The responses do not relate to Scotland, Wales or Northern Ireland, for which the relevant Devolved Administrations are responsible.

*With best wishes,
Karen Pierce*

**Karen Pierce CMG
Ambassador and Permanent Representative to the UN and Other International
Organisations, Geneva**

Responses to Questionnaire on security of tenure

Legal security of tenure, including protection from forced eviction

1. Are there laws/regulations recognizing or ensuring legal security of tenure for all the population, and/or for specific individuals or groups?

There are a range of forms of residential property ownership that are recognized by the legal system in England. The main ones are:

- Freehold – where land is essentially owned outright by the owner. There are legal rights for public bodies to enter into compulsory purchase arrangements in certain circumstances, for example if a property needs to be demolished to make way for new development.
- Leasehold – often used for apartments, but also for houses, this type of tenure arises where the leaseholder purchases from the freeholder the right to use the property for an extended period of time (e.g. 99 years). A lease creates a legal (formal) interest in the property. As well as making an up-front payment, the lessee will normally pay a periodic ground rent (usually set at a relatively nominal level) and service charge covering costs of building maintenance, etc. If the leaseholder fails to comply with their obligations under the lease, including paying the ground rent or service charges, then they are at risk of forfeiting their lease. Legislation provides a range of rights and protections for leaseholders against forfeiture.
- Commonhold – this is a form of freehold ownership created by the Commonhold and Leasehold Reform Act 2002. It is suitable for flats and other interdependent premises. It is a voluntary alternative to long leasehold ownership. The common parts in a commonhold are owned by the Commonhold Association, which is controlled by the unit owners.
- Mortgage - The owner of a property (whether freeholder, leaseholder or commonholder) may grant a mortgage (i.e. security interest) in their interest in a property. If the mortgagor defaults on their debt to the mortgagee, then the mortgagee may seek to exercise the mortgage and to recover their debts by selling the property. Mortgage possession proceedings are subject to a Pre Action Protocol which requires lenders to prove to the courts that they have exhausted every possible option before applying for a repossession order.

Owners of properties may rent them out to tenants under a variety of tenancy and licence arrangements. The main ones are:

- For social housing, most tenants currently have either a “secure tenancy” or an “assured tenancy”. Both of these offer the tenant lifetime security of tenure and can only be terminated on specified grounds (e.g. prolonged period of not paying rent). Increasingly, social landlords are providing shorter term tenures (e.g. of five years), using ‘flexible tenancies’ or (see below) an assured shorthold tenancy.
- The assured shorthold tenancy (AST) is the main form of tenancy that is used for homes rented out by private landlords. If the landlord wishes to terminate the arrangement (other than for certain very limited circumstances, mainly related to default in rental payments or other breaches by the tenant or foreclosure by the mortgagee), then it can only do so after six months (or such longer period as the landlord and tenant agree) and subject to two months’ notice.
- In addition, there are various forms of licence arrangement whereby the licensee does not have exclusive rights to the property. For example, a lodger may live in their landlord’s own home under a licence arrangement.
- In particular an owner of a mobile home (caravan) is granted a licence by the landowner to station the home on a plot. This type of licence is subject to statutory controls giving the home owner security of tenure.
- In addition, there are also ‘fully mutual housing co-operatives’, whose members are tenants. Tenants are explicitly excluded by the Housing Act 1988 from having assured tenancy status. The structure of fully assured mutuals requires tenants to be members, who have collective decision making responsibility.

2. Are there laws or regulations offering protection from forced eviction or involuntary resettlement? Describe briefly the content of the laws/regulations.

The processes for public authorities, owners and lenders seeking possession of a property are subject to various legal safeguards. In particular:

- If a public body wishes to enter into a compulsory purchase of a property, then it must obtain a compulsory purchase order. A series of steps is undertaken, including giving people the right to object and holding an inquiry. Approval is required from the

Secretary of State. Similarly, the Housing Act 1985 sets out processes which must be followed if a local authority wishes to declare an area as a slum clearance area.

- If the freeholder wishes to terminate a lease following a breach by the leaseholder, then they must satisfy certain criteria prescribed by law before being able to do so, including (a) applying to an independent tribunal to have a breach determined before (b) seeking to terminate the lease through the courts, which has powers to grant relief from forfeiture.
- If a mortgage lender wishes to foreclose on a mortgage, following a default by the borrower, then it must seek a court order to do so.
- Once the landlord of an assured tenancy or assured shorthold tenancy gives notice, he cannot evict without obtaining a possession order from the court. There are a range of grounds on which the courts must agree to the landlord being granted possession, and other situations in which the courts may agree to the landlord having possession.
- In other tenures where security of tenure applies, such as statutory or secure tenancies or mobile home ownership, possession can only be obtained if the court is satisfied that certain grounds for possession are made out.

The processes by which an occupier of a property is evicted are governed by the Protection from Eviction Act 1977. It is an offence to unlawfully evict or harass the residential occupier of a property. A wide range of occupiers are covered by this legislation, although there are exceptions for certain types of licences such as lodgers.

3. Which groups/individuals does the legislation mentioned in questions 1 and 2 protect? For instance: tenants; informal settlers; those with mortgage defaults; other groups mentioned in question 5.

See questions 1 - 2.

Data on those with insecure tenure:

4. Is there any data or estimated figure for the number of those with insecurity of tenure? For instance: households living in informal settlements; minorities living in informal settlements (e.g. Roma); internally displaced persons; undocumented migrants, refugees or asylum seekers; households that were evicted or are under eviction orders due to mortgage default.

There are no significant informal settlements of urban poor in this country.

For data on housing need and homelessness, see www.statistics.gov.uk/hub/people-places/housing-and-households/housing-need-and-homelessness/index.html

For data on rough sleeping (i.e. homeless people with no tenure at all), see www.gov.uk/government/publications/rough-sleeping-in-england-autumn-2012

For an estimate of numbers of gypsy and traveller caravans, see:

www.gov.uk/government/publications/gypsy-and-traveller-caravan-count-january-2013

Data on undocumented migrants is difficult to obtain. However, legitimate migrants such as those with refugee status, and those in the asylum process, do have access to housing.

The Ministry of Justice publish quarterly statistics on the number of mortgage and landlord possession actions in the County Courts of England and Wales at www.gov.uk/government/publications/mortgage-and-landlord-possession-statistics--2

The statistics include numbers of mortgage possession claims made by a mortgage lenders or a landlord to County Courts, and the number of possession claims which lead to an order. Total figures for mortgage repossession are also included.

There were 14,375 mortgage possession claims in Q1 2013, up 2% on the previous quarter and down 15% on the same quarter in 2012. There were 10,206 mortgage possession claims leading to an order in Q1 2013, up 1% on the previous quarter but down 20% on the same quarter in

2012. There were 7,700 repossessions in total in the fourth quarter of 2012. This figure includes repossessions carried out by county court bailiffs, but also includes other repossessions.

Urban poor living in informal arrangements (in particular informal settlements)

5. What kind of tenure rights are foreseen or recognized in legal or administrative instruments for those informally occupying land or housing (e.g. 'temporary permits,' 'right to possession', 'leasehold rights over a definite or indefinite period', etc.)? Can informal settlers accrue rights to their land or housing over time (e.g. through 'adverse possession')? Please cite relevant regulations and instruments. Are there conflicting claims between formal (private and public) owners of the land and people having informally settled on that same land, or conflicts between informal settlers and environmental or planning laws/regulations? Please refer to regulations and administrative and judicial case law addressing those conflicts, if available.

The law allows a trespasser who occupies land for an extended period of years without the consent of the owner to acquire ownership. The period is 12 years for unregistered land (s.15 and s.17 Limitation Act 1980). For registered land, occupation for 10 years gives the right to apply to be registered. On receipt of such an application, the Land Registry gives the registered owner the chance to object to the application (Land Registration Act 2002, schedule 6). In most circumstances, the objection will be sufficient to defeat the application and the owner will then take possession proceedings to recover the land if the trespasser does not leave voluntarily.

Since September 2012 it has been a criminal offence (under the Legal Aid, Sentencing and Punishment of Offenders Act 2012) to 'squat' in a residential building (i.e. where a person is in a residential building as a trespasser, having entered as such, knows - or should know - that they are trespassing, and are living in the building or intend to live in the building for any period).

The squatting offence was introduced following public concern about the harm that trespassers can cause. The offence protects owners and lawful occupiers of any type of residential building. This includes homeowners and tenants who might have been excluded from their homes by trespassers, but it also protects landlords, second homeowners and local authorities who discover trespassers living in a residential building that they own or control even if no one is living there at the time. For more information, see:

<http://www.legislation.gov.uk/ukpga/2012/10/section/144/enacted>

<http://www.legislation.gov.uk/ukpga/2012/10/notes/division/5/5/13/3>

Whilst primarily a rural rather than urban issue, the Government is concerned about unauthorised traveller encampments and the effect they can have on local communities. Local authorities and the police have a range of available powers that enable them to take enforcement action against unauthorised traveller encampments on both public and private land. We have reviewed those powers and in August last year, we sent all council leaders new guidance, advising how to act swiftly and setting out the strong powers councils and landowners have to remove illegal and unauthorised sites. We have published the summary of powers on the Government's website at: <http://tinyurl.com/n7poa7x>

The overarching objective of our Planning Policy for Traveller Sites, published in March 2012, is to ensure fair and equal treatment for travellers in a way which facilitates their traditional and nomadic way of life whilst respect the interests of the settled community.

It is for local councils to assess traveller needs and provide appropriate sites in whichever way is best locally, taking account of national planning policy in doing so.

Local Planning Authorities should plan carefully for traveller sites, ensuring that they are well designed and their impacts on the local environment are appropriate.

The Government has secured £60m Traveller Pitch Funding to 2015 to help local authorities and other registered providers build and refurbish authorised traveller sites. The funding allocated to date is forecast to provide around 600 new pitches and refurbish around 450 pitches.

The Government is very concerned about the poor social outcomes experienced by Gypsies and Travellers, particularly in health and education. In November 2010 the Secretary of State for Communities and Local Government set up a Ministerial Working Group to help tackle these issues. The Working Group published a progress report in April 2012 which included 28 commitments from across Government.

6. Are there any policy, project, or programme in place or being developed to recognize, record or regularize tenure rights of urban poor living in informal tenure arrangements, including in informal settlements? Do these policies / projects / programmes include 'slum upgrading' or other *in-situ* urbanization investments? What have been the results of such policies/ programmes? For instance, what number of households who have been regularized / whose

people, are available to help people meet their accommodation needs without the need for informal urban settlements to be built.

15/10

Local authorities have slum clearance powers under the Housing Act 1985. The Government does not actively monitor use of these powers.

The Government believes that local people and businesses are best placed to understand their needs. Therefore, central government investment is being allocated for decision making locally. In addition, the government is working with local areas to give them the right tools and incentives to unlock barriers to their local growth. This includes:

- The Homes and Communities Agency is working in partnership with Local Enterprise Partnerships and others to optimise the benefits from land assets.
- The Local Infrastructure Fund, currently managed by the Homes and Communities Agency, will provide loans development projects in Enterprise Zones and major housing sites across the country.
- The Coalfields Regeneration Trust, currently government grant funded but working towards self sustainability, works with former coalfields communities to provide access to training and education, get people back to work and develop community facilities.
- The Coalfields Funds, part funded by the Government, invest in growth-oriented companies and encourage entrepreneurship in former-coalfield areas.

7. Is there any land reform programme or policy in place or being developed (for instance, land management systems, changing land regimes)? Does it include specific provisions or processes to recognize and register the rights of urban poor, in particular those living in informal settlements?

See above.

Urban planning and housing policies

9. Do urban planning laws / regulations, at national or local level, include pro-poor land use instruments, such as inclusionary zoning, quota for social housing in residential developments or other?

Central government requires local planning authorities in England to plan for housing needs in their area (for market and affordable housing). They set their own local policies in response to that identified need. These typically take the form of a policy in the local plan setting out a contribution towards the provision of affordable housing, which the local planning authority will request from a developer seeking planning permission for one or more houses. The amount of affordable housing required is typically presented as a percentage of the overall housing supply for that scheme; for example, a policy may request that 40% of the units on a site are 'affordable'.

Where a site is small, and the specified percentage would be less than a single home, financial contributions are sought as an alternative. Developers with larger schemes may also seek to negotiate a financial contribution instead of on-site provision. Financial contributions are collected together and spent by the local authority on the provision of affordable housing elsewhere in their area.

Developers have the right to challenge the level of affordable housing contributions sought by the authority, where they can demonstrate that the imposition of this policy on their scheme would render it financially unviable. Local authorities may be willing to negotiate, to some extent, on the basis that providing some affordable housing (and allowing the scheme to go ahead) is better than imposing such an onerous affordable housing requirement that the scheme is stalled and provides no homes at all.

10. Please provide information on any housing policies or programmes aimed at promoting forms of tenure alternative to individual freehold, such as rental, communal or cooperative tenure.

Rented homes are an increasingly important part of the housing market. We are promoting the growth of the high quality rented sector. A £200 million Build to Rent Fund has been developed to allow us to support a range of viable purpose built private rented housing schemes across England that have the potential to attract a range of investors. In addition, a Private Rented Sector Housing Guarantee Scheme is intended to help expand the provision of large scale professionally managed rented housing and support economic growth. The scheme will use the Government's fiscal credibility to reduce the cost of borrowing for housing providers. It will also attract institutional investment from fixed income investors seeking a stable, long term return on their investment without exposure to residential rental property risk.

Commonhold is a new communal tenure introduced in 2002 (see question 1).

Government supports Community Land Trusts (CLTs). These are independent non-profit trusts which own or control land and facilities in perpetuity for the benefit of the community. Many provide affordable housing for people with local connection, which will be offered under existing tenure types. People who live and work in the defined local community, including occupiers of the properties that the CLT owns, must have the opportunity to become members of the CLT.