

Mandates of the Independent Expert on the enjoyment of all human rights by older persons; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: AL OTH 13/2023
(Please use this reference in your reply)

7 March 2023

Dear Mr. Feinberg,

We have the honour to address you in our capacity as Independent Expert on the enjoyment of all human rights by older persons; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 51/4, 44/15, 51/21, 43/14 and 45/17.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company information we have received concerning the ongoing demolition of affordable and social residential buildings and threats of forced evictions of their residents, the majority of them being older persons, persons with disabilities and persons with complex medical conditions, the building being located in the London borough of

Cerberus Capital Management, L.P

Hammersmith and Fulham, United Kingdom. In particular, the involvement of your company in a redevelopment project resulting in the demolition of at least two buildings of social rental homes may be in violation of the human right to adequate housing.

According to the information received:

In 2013, an agreement to redevelop the area of the Hurlingham Retail Park, 362 Wandsworth Bridge Road and 1-3 Carnwath Road, London, United Kingdom was made between the Hammersmith and Fulham Council and London Newcastle and Royal London Asset Management, one of the United Kingdom's leading investment companies.

The project included the redevelopment of Hurlingham Retail Park as well as the construction of new residential units, retail and leisure facilities such as shops, restaurants and bars, two new public open spaces and upgrading of the Thames path for pedestrians and cyclists.

This agreement also involved Co-op Homes (South) Ltd, a United Kingdom registered housing provider and building management company in charge of affordable and social housing around London. Indeed, to allow the redevelopment project, social and affordable residential dwellings located on 1-3 Carnwath Road were identified for demolition. Each block contains eight apartments, homes to several families, with many of them being older persons and persons with disabilities, some of them having lived for more than 23 years in these buildings. On 9 April 2014, the Hammersmith and Fulham Council took a decision to dispose of the social rented dwellings at 1-3 Carnwath road and relocate Co-Op tenants on 5 Carnwath road. Tenants living at 1-3 Carnwath Road were allegedly not properly consulted by neither Co-op Homes (South) Ltd, nor Hammersmith and Fulham council, about the different redevelopment projects affecting their residential units.

On 19 December 2014, the Hammersmith and Fulham Council granted planning permission 2013/02870/FUL for the redevelopment of area. At the acceptance of the deal with London Newcastle and Royal London Asset Management, Co-op Homes (South) Ltd informed the tenants that they needed to vacate their apartments to allow for the implementation of this redevelopment project, otherwise legal measures would be taken against them. Following complaints of several residents of these affordable and social homes, the investment company London Newcastle and Royal London Asset Management suggested not to demolish the affected residential buildings and offered to build the project around them. This suggestion was accepted by most tenants. Co-op Homes (South) Ltd reportedly rejected this suggestion.

In 2019, the redevelopment plan was amended and in 2020, a mixed-use planning consent granted by the Hammersmith and Fulham Council. London Newcastle and Royal London Asset Management subsequently exited the project, selling their stake to Cerberus Capital Management, L.P (Cerberus), a United States based private equity firm, and Rockwell Property Ltd, as United

Kingdom based property developer, in February 2022.

In June 2022, without the tenants being informed, workers started drilling and hammering down walls of residential blocks located on 1 and 3 Carnwath Road.

Only a month later, on 27 July 2022, Co-op Homes (South) Ltd and the Hammersmith and Fulham council held a meeting to inform Carnwath Road residents that a tripartite agreement had been concluded with new developers, Rockwell Property and Cerberus, to redevelop the area by building new luxurious flat buildings instead of affordable social homes. Tenants were informed that the drilling and holes made in June were for exploratory purposes. The tenants reportedly did not have the opportunity to discuss the project which had already been approved through the tripartite agreement. Following this meeting, some tenants reportedly sent several unanswered emails to their landlord, Co-op Homes (South) Ltd, and experienced verbal abuse when voicing their concerns during meetings about the redevelopment project.

Since June 2022, regular drilling has been occurring and the holes in the walls of the residential blocks were not repaired. As a result, the tenants have been experiencing cold and humidity in their homes. Older residents with arthritis and osteoporosis, who are particularly vulnerable to cold and humidity, have had to warm themselves up with blankets and hot water bottles during the winter season. Construction has also resulted in possible releases of hazardous waste in the rubble, along with exposure to outside noise and air pollution due to the holes in the walls. Due to these precarious living situations, several tenants have been forced to find temporary shelter outside their homes.

It is reported that the tenants have not been informed on the timelines for the project implementation, nor have they received any clarification regarding the continued imposition of rent. Indeed, tenants are still expected to pay their rents in full, along with the utilities, to Co-op Homes (South) Ltd and their taxes to the Hammersmith and Fulham Council.

On 26 January 2023, developers from Rockwell Property Ltd forcibly took over the parking space rented by tenants. The car park was then reportedly fenced off. Tenants, who are all paying for parking spots, have been advised to park their vehicles on a construction site covered in mud, concrete, and torn metal, making it unsafe for older persons, people with disabilities and people with complex medical conditions to access. Tenants with disabilities have been urged by developers and Co-op Homes (South) Ltd to give up their disabled parking spots.

On 2 February 2023, structures supporting the walls, the roof and the insulation of the block 1 were removed from the concerned buildings by the demolition company.

Since July 2022, it is reported that meetings have been organised by the landlord, Co-op Homes (South) Ltd, to provide information about the timeline of the redevelopment project agreed with Rockwell Property Ltd but without the opportunity to further engage or discuss alternative solutions. Residents have complained that the meetings were held during their working hours, thus not allowing most of them to attend. In addition, it is alleged that no Impact Assessment, nor Disability Assessment were carried out to issue legal permission for the redevelopment project.

Tenants have not been provided with alternative affordable housing, nor have they received any information about compensation for their eventual relocation. The Hammersmith and Fulham council only sent them adverts about rentals in the area.

Without prejudging the accuracy of the information received, we wish to reiterate as a matter of principle that private investment companies, such as Cerberus Capital Management, L.P, have obligations to respect human rights and to ensure, at a minimum, that they do not finance projects that contribute to human rights violations and abuses. To this end, it is incumbent on Cerberus Capital Management, L.P to carry out human rights due diligence in order to identify, prevent or mitigate any adverse human rights impacts of projects that they finance.

In the present case, we express our serious concern that Cerberus Capital Management, L.P. may be financing a project that would result in the forced eviction and eventual demolition of affordable and social homes without any prior consultation with the residents, nor provision of alternative affordable housing. As such, it would constitute a violation of the right to an adequate housing, of the tenants, most of whom are older persons, people with disabilities and persons with complex medical conditions. In particular, tenants were only informed unequivocally that their homes would be demolished after the drilling had already started.

We are concerned that the affected residents were not involved in the development of the restructuring plans and instead were given the impression that the demolition of their homes was a “fait accompli”. Furthermore, the current process does not include any entitlements or adequate measures to guarantee the right to adequate housing for persons at risk of marginalization due to their older age, disability, and social status.

We are deeply concerned that the demolition of these homes and threats of forced evictions of these families without assistance for alternative housing options would place them in more precarious situations than they already are and exacerbate their risk of poverty and homelessness.

We are further concerned that such situation does not guarantee the enjoyment of the core content of the right to adequate housing to the residents living in this building, as well as it may impact the enjoyment of other human rights, including their right to equality and non-discrimination based on their older age, disability or social status, their right to security and to health. It should be noted that ensuring essential minimum content of the right to adequate housing is an immediate obligation

under international human rights law, not subject to progressive realization and extends to all persons that are living in the territory. Rendering homeless those people who previously enjoyed adequate housing by demolishing their homes would violate the prohibition of retrogressive measures in international human rights law.

We are also concerned that the current living conditions of tenants have considerably deteriorated since June 2022 due to the start of the demolition of their building and drilling in the isolation halls.

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 our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on how your company has ensured that residents of Carnwath Road are protected from forced evictions in the context of implementation of the Hurlingham Retail Park redevelopment project and related construction plans.
3. Please describe the measures that your company has taken, or is planning to take, to prevent recurrence of such situations in the future.
4. Please provide information about the human rights due diligence policies and processes put in place by Cerberus Capital Management, L.P to identify, prevent, mitigate and remedy adverse human rights impacts of Hurlingham Retail Park redevelopment project and related projects, in line with the UN Guiding Principles on Business and Human Rights. In particular, please provide information about specific due diligence measures taken by your company before deciding to finance the project and, please highlight how your company conducted meaningful consultation with residents of Carnwath Road and explored feasible alternatives to their eviction in the context of implementation of Hurlingham Retail Park redevelopment project and related projects.
5. Please provide information on the impact studies carried out by your company prior to the approval of and/or during the course of the development project, and whether those studies were prepared with a human rights-based approach.
6. Please provide information on the measures taken to consult with affected people and to monitor the effects of the development project on their human rights.

7. Please specify the measures taken by your company to ensure the public's right to receive timely and accessible information on the development project.
8. Please indicate the measures taken by your company to ensure the implementation of the UN Guiding Principles on Business and Human Rights, including information on whether your company has established or participates in any operational-level grievance mechanisms, to provide access to remedy for affected individuals and communities.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from you 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.

Please note that the allegations contained in this letter will also be sent to the United Kingdom of Great Britain and Northern Ireland, the United States of America as host country of your company's headquarters, as well as the other involved businesses which are United Kingdom based, Co-op Homes (South) Ltd. and Rockwell Property Ltd.

Please accept, Mr. Feinberg, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human

rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (guiding principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).

We would like also to recall that the right to adequate housing is enshrined in article 25 of the Universal Declaration of Human Rights and in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights (CESCR), clarifies that merely having a roof over one's head but entails the following aspects: *Legal security of tenure; Availability of services, materials, facilities and infrastructure; Affordability; Habitability; Accessibility; Location; and Cultural adequacy*. The element of affordability requires that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States must ensure legal protection against forced evictions in all forms of housing tenure, including formal rental agreements with public and private providers, and take all appropriate measures to ensure adequate alternative housing and resettlement as outlined by the CESCR in its General Comment No. 7. Appropriate procedural protection in cases of forced eviction include

among others: an opportunity for genuine consultation with those affected; adequate and reasonable notice; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Furthermore, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

As several of the persons at risk of eviction are persons with disabilities, the housing demolition and eviction would as well raise serious questions relating to its compliance with provisions of the Convention on the Rights of Persons with Disabilities (see, *inter alia*, article 28 on adequate standard of living and social protection, and article 19 on living independently and being included in the community). In particular, article 19 allows individuals with disabilities a right to live (and to continue to live) connected to their communities and underscores the importance of community connectedness in housing. As noted by the Special Rapporteur on adequate housing, “persons with disabilities should not be required to move from the centres of cities, where there are services and opportunities for participation in social networks and employment, to outlying areas, where opportunities for meaningful social participation are fewer, leading to isolation” (A/72/128, para 51).

In light of all the above, we would like to refer to article 25 of the Universal Declaration of Human Rights that recognizes the right of everyone to health and well-being of himself and of his family. We would like to bring to your attention articles 12 and 2.2 of ICESCR, which enshrine the right of everyone, without discrimination to the enjoyment of the highest attainable standard of physical and mental health. The CESCR interprets the right to health as “an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe housing, among others (CESCR, General Comment No. 14, para. 11).

Regarding the lack of information and prior and meaningful consultation with tenants about the redevelopment project, these actions have deprived residents from security of tenure as provided by the right to adequate housing under international human rights law. As analysed by the Independent Expert on the enjoyment of all human rights by older persons in her 2022 thematic report (A/77/239), “Older persons with disabilities, in particular those with an intellectual or psychosocial disability, may be exposed to insecure tenure if they have been denied legal capacity and if this has led to difficulties in entering formal housing contracts. In such cases, these individuals may have to resort to informal arrangements, which make them more vulnerable to forced evictions” (para. 30).

Regarding the current living situation of tenants following the start of the building demolition by involved businesses, older persons often face difficulties in carrying out necessary maintenance work or repairs to their housing in case of deterioration or damage due to external factors, or to fix poor insulation, as examined by the Independent Expert on the enjoyment of all human rights by older persons in her 2022 thematic report (A/77/239). Housing conditions in affected buildings do not guarantee physical safety nor protection against the cold, damp, heat, rain, wind and other threats to health caused by construction-related hazardous waste and pollution, putting tenants in a vulnerable situation, disproportionately affecting older persons, persons with disabilities and those with complex health conditions. This deteriorating situation also hinders one of the core elements constituting “adequate housing” which is habitability as stated under General Comment No. 4 on “the right to adequate housing” of the Committee on Economic, Social and Cultural Rights.