

International Human Rights Obligations and Post-Katrina Housing Policies

Briefing Paper to the Technical Experts for the Advisory Group
on Forced Evictions United States Mission July 26-31, 2009



Submitted by

The Center for Constitutional Rights and the Loyola University New Orleans College of Law



INTRODUCTION

In August 2005, Hurricane Katrina hit the Gulf Coast and forever changed the lives of tens of thousands of residents. Four years after the storm, thousands face the prospect of permanent displacement due to problematic redevelopment plans, prolonged delays in rebuilding, unfair redevelopment policies and demolitions of public housing communities. Federal, state and local government agencies and officials have caused and exacerbated the forced evictions and instability in the region.

In the housing policies and practices following the disasters of Hurricanes Katrina and Rita, the glaring disregard for international human rights values and obligations has shamed the nation. The human rights violations described in this report document another bitter episode in the ongoing tragic embrace of racism, poverty and gender discrimination in the United States. One million people were displaced by Hurricane Katrina. Tens of thousands never returned. Who made it home after the disaster? Race, income and gender combined to inhibit the ability of victims to return to their homes. Unfortunately, as this report shows, these human rights violations, especially in the area of housing, continue despite repeated criticism by the international community.

In the context of internally displaced persons, the right to housing (including residential stability and security of tenure) is best articulated within the United Nations Guiding Principles on Internal Displacement (U.N. Guiding Principles). The 30 Guiding Principles have been affirmed repeatedly by Member nations of the United Nations and integrated into the treaty bodies' interpretation of State parties' obligations. The United States has embraced the Guiding Principles in its policies toward other nations.¹ In co-sponsoring two relevant resolutions, the U.S. Government recognized the U.N. Guiding Principles as "an important tool for dealing with situations of internal displacement" and welcomed "the fact that an increasing number of States. . . are applying [the U.N. Guiding Principles] as a standard."² Despite a call from human rights and environmental advocates for the incorporation of the Guiding Principles into U.S. policies regarding housing, humanitarian relief, and assistance in the Gulf Coast,³ the U.S. Government has continued the troubling practice of American exceptionalism⁴ and thoroughly ignored this framework in its redevelopment plans for the Gulf Coast. Recently, in response to these

¹ See *USAID Assistance to Internally Displaced Persons Policy*, U.S. Agency for International Development, October 2004 (encouraging the use of the Guiding Principles); see also G.A. Res. 58/177, U.N. Doc. A/RES/58/177 (2004); Heads of State and Government, Draft outcome document ¶132 (Sept. 13, 2005), available at www.un.org/summit2005/Draft_Outcome130905.pdf.

² Commission on Human Rights, Resolution 2003/51, U.N. Doc. E/CN.4/2003/L.11/Add.4, ¶7 (Apr. 23, 2003).

³ Letter from Monique Harden, Co-Director, Advocates for Environmental Human Rights et al, to Secretary Janet Napolitano, U.S. Department of Homeland Security, Secretary Shaun Donovan, U.S. Department of Housing and Urban et al (Mar. 17, 2009) (on file with authors).

⁴ William Shultz, *The Power of Justice*, Center for American Progress 1 (June 2009) (describing this exceptionalism with regard to human rights as "the coupling of unparalleled leadership with frequent resistance to the implications of that leadership for the United States itself).

calls, the U.S. Department of Housing and Urban Development replied that it would take these suggestions into consideration in future policy planning.⁵ The positive response may provide the international community an opportunity to engage and educate government officials on the human right to housing.

The human right to housing, enumerated in multiple international human rights instruments, is fundamental to the principle of human dignity and equitable development. As recognized by the Governing Council of UN-HABITAT in creating the Advisory Group on Forced Evictions, a fundamental component in the realization of this right is residential stability and the security of tenure.⁶ The ability to realize these rights is extremely limited for thousands of men, women and children impacted by Hurricanes Katrina and Rita due to U.S. Government policies following the storms. Given the local, state and federal governments' failure to adhere to human rights principles regarding the right to return, the right to meaningful participation in re-development decisions, and the right to adequate housing and shelter, the Technical Experts to the Advisory Group on Forced Evictions' visit to New Orleans comes at a critical time.

This briefing paper is submitted to the Advisory Group on Forced Evictions for the mission its experts are conducting to provide an overview of the international human rights principles' application to the forced eviction and homelessness crisis in the Gulf Coast region. Human rights instruments offer a framework for developing an approach to resettlement and reconstruction that is capable of meeting the needs of the impacted communities. The submission is divided in three parts: an international human rights background; review of the various international mechanisms' treatment of the right to housing for Hurricane Katrina victims; and documentation and human rights analysis of the current crisis in New Orleans. This submission provides extensive documentation supporting a finding that in mid-2009 the United States continues to grossly disregard international human rights standards in its treatment of survivors of Hurricanes Katrina and Rita.

⁵ Letter from Nelson Brégon, General Assistant Deputy Secretary, Dep't of Housing and Urban Development, to Monique Harden, Co-, Advocates for Environmental Human Rights (June 23, 2009) (on file with authors).

⁶ UN-HABITAT, Terms of Reference, Advisory Group on Forced Evictions, ¶3 Preamble, available at http://www.unhabitat.org/downloads/docs/AGFEmandate_revised2008.pdf. The United Nations Human Settlements Programme, UN-HABITAT, is the United Nations agency for human settlements. G.A. Res. 56/206, U.N. Doc. A/RES/56/206 (Feb. 26, 2002).

1. HUMAN RIGHTS BACKGROUND: THE RIGHT TO HOUSING FOR INTERNALLY DISPLACED PERSONS INCLUDES THE RIGHT TO RESIDENTIAL STABILITY AND THE SECURITY OF TENURE

A discussion of the Government's human rights obligations must begin with the instruments signed and ratified by the United States. The United States has signed and ratified both the International Covenant on Civil and Political Rights (ICCPR)⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);⁸ this commitment creates legal obligations under international and domestic law.⁹

As such, the United States has a duty to respect and fulfill the rights recognized therein, as set out in Article 2.1 of the ICCPR. General Comment 3 to the ICCPR explains that “the obligation under the Covenant is not confined to the respect of human rights, but that State parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.”¹⁰ Though it has not yet ratified the treaty, the United States has also signed the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹ Customary international law obligates the United States, as a signatory, not to act in contravention of the object and purpose of the Covenant.¹² The international community has further expressed support for these rights and norms in numerous declarations, resolutions, guidelines, and statements of principles, as discussed in some detail below.

In order to realize these rights and norms, a State has the responsibility to perform three key duties: respect, protect, and fulfill. The obligation to *respect* requires states to refrain from interfering with the enjoyment of a right. The obligation to *protect* requires

⁷ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, S. Exec. Doc. 102-23 [hereinafter ICCPR].

⁸ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195, S. Exec. Doc. 103-29 [hereinafter ICERD].

⁹ U.S. Const., art. VI (establishing treaties as “the supreme Law of the Land”); Vienna Convention on the Law of Treaties art. 26, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”).

¹⁰ Human Rights Committee, CCPR General Comment No. 3 (Implementation at the National Level), Thirteenth Sess. (July 29, 1981).

¹¹ International Covenant on Economic, Social and Cultural Rights art. X, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

¹² Vienna Convention on Treaties, *supra* note 9, art. 18(a) (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.”). Though the United States has not signed the Vienna Convention, it “considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties.” U.S. Dep’t of State website, Treaty Affairs, <http://www.state.gov/s/l/treaty/faqs/70139.htm> (last visited July, 23, 2009).

States to prevent violation of rights by third parties. The obligation to *fulfill* is generally understood to include requirements to facilitate, to provide, and to promote rights.¹³

Central to the human rights analysis in this discussion of the rights of hurricane victims is the evolving recognition of the status and rights of internally displaced persons (“IDPs”). The rights of IDPs are recognized in multiple human rights instruments and have been repeatedly affirmed by member nations of the United Nations, including the United States.¹⁴ Two instruments, the U.N. Guiding Principles for Internal Displacement (“Guiding Principles”)¹⁵ and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”)¹⁶ express the human rights norms related to IDPs already enumerated in other treaties and instruments. The U.N. Guiding Principles define IDPs as:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of . . . natural or human-made disasters, and who have not crossed an internationally recognized State border.¹⁷

Human rights bodies have recognized the importance of the Guiding Principles in construing State parties’ obligations toward victims of displacement. For example, the Human Rights Committee expressly encouraged the U.S. Government to apply the Guiding Principles in order to protect the rights of the hurricane victims.¹⁸ Unfortunately, to date, the U.S. Government has not recognized the right of the hurricanes’ victims as IDPs.

Divided into four categories, this Part sets out the relevant human rights standards governing forced or illegal evictions and residential stability and security of tenure for victims of Hurricanes Katrina and Rita. Part 1.1 examines treaties and norms governing the human right to housing; 1.2 describes the right to return; 1.3 sets out victims' right to participation in redevelopment; and 1.4 summarizes the United States government's obligations of non-discrimination in making and applying post-Katrina policies.

¹³ See Radhika Balakrishnan et al, *Rethinking Macro Economic Strategies from a Human Rights Perspective (Why MES with Human Rights II)*, U.S. Human Rights Network 6–7 (2009).

¹⁴ See *supra* note 1.

¹⁵ Representative of the Secretary-General, *Report on the Guiding Principles on Internal Displacement, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter U.N. Guiding Principles].

¹⁶ Special Rapporteur on Housing and Property Restitution, *Final Report on the Principles on housing and property restitution for refugees and displaced persons, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/Sub.2/2005/17 (June 28, 2005) [hereinafter Pinheiro Principles].

¹⁷ U.N. Guiding Principles, *supra* note 15, at ¶2.

¹⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee on the Report Submitted by the United States of America*, ¶26, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) [hereinafter ICCPR Concluding Observations].

1.1. The Right to Housing

The right to housing is enumerated in multiple international human rights instruments. Under the Universal Declaration of Human Rights (UDHR), the founding document of the modern human rights system, member States pledge to secure “the right to a standard of living adequate for the health and well-being of himself and of his family, including [the right to] housing [.]”¹⁹ Signed and ratified by the United States, ICCPR Article 12 obligates States to respect and ensure the freedom to choose one’s residence.²⁰ Article 24 of the ICCPR further obligates States to respect and ensure special protections to children on the part of his family, society, and the State. Article 11 of the ICESCR, signed by the United States, recognizes the right to an adequate standard of living, including adequate housing. Article 5(e)(iii) of CERD, also signed and ratified by the United States, expressly obligates States to guarantee “equality before the law [in] the right to housing.” The right to adequate housing is also protected in Article 14(2)(h) of the International Convention on the Elimination of Discrimination Against Women (CEDAW)²¹ and Article 27(3) of the Convention on the Rights of the Child (CRC).²²

The U.N. Guiding Principles and the Pinheiro Principles set out in detail the housing and property rights of IDPs. U.N. Guiding Principle 17 calls on authorities to “provide and ensure safe access to: essential food and potable water; basic shelter and housing; appropriate clothing; essential medical services and sanitation.” Pinheiro Principle 8 reiterates the right to housing and calls on States to “adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.”

Inherent in the right to housing is the right to adequate and affordable housing. The Committee on Economic, Cultural and Social Rights (CESCR), the reporting body of the ICESCR, notes that this right extends to all, “irrespective of income or access to economic resources.”²³ The General Comment continues, “In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.”²⁴ The Habitat Agenda, adopted by the Second

¹⁹ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., Art. 25, U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR].

²⁰ ICCPR, *supra* note 7, art. 12 (guaranteeing “the right to liberty of movement and freedom to choose one’s residence” subject only to certain narrow restrictions).

²¹ Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2)(h), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13660 (protecting the right to adequate housing for rural women).

²² Convention on the Rights of the Child art. 27(3), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; *see also* International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families art. 43(1)(d), *opened for signature* Dec. 18, 1990, Doc. A/RES/45/158 (right to equality of treatment with nationals with respect to access to housing, including social housing schemes and protection against exploitation in terms of rents).

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 4 (Right to Adequate Housing), Sixth Sess. (Dec. 13, 1991) [hereinafter CESCR General Comment 4].

²⁴ *Id.*, at ¶8(c).

United Nations Conference on Human Settlements (Habitat II) on June 14, 1996, affirms States' commitment "to achieve adequate shelter for all, especially the deprived urban and rural poor...."²⁵

Additionally, the international community recognizes that residential stability and the security of tenure and freedom from forced or unlawful evictions are fundamental components to the right to housing. According to General Comment 27 on Article 12 of the ICCPR "the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement."²⁶ The CESCR has noted: "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."²⁷ Reflecting the evolving norms of the right to adequate housing, the Istanbul Declaration on Human Settlements ("Istanbul Declaration"), also signed in 1996 during Habitat II, seeks cooperation from member States to "ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families,"²⁸ a call that echoes the goals and principles of the Habitat Agenda.²⁹ Moreover, the Terms of Reference (ToR) for the Advisory Group on Forced Evictions emphasizes that "[o]ne fundamental component in the realisation of the human right to adequate housing is promoting residential stability and security of tenure."³⁰

Echoing the CESCR's comments on forced evictions,³¹ Pinheiro Principle 5.4 calls on authorities to ensure that both state and non-state actors refrain from "carrying out or otherwise participating in displacement." The CESCR has explained States' responsibilities in the event that evictions do occur: "Evictions should not result in individuals being rendered homeless or vulnerable to violations of other human rights." In light of these obligations and norms, State parties should work to prevent development-driven displacement and to ensure that reconstruction plans do not undermine the right to adequate and affordable housing.

Accordingly, the United States should fulfill its obligation under the ICCPR to permit IDPs to live in the place of their choosing and meet all other relevant international norms. In doing so, it should take into consideration the growing international consensus

²⁵ United Nations Conference on Human Settlements (Habitat II), June 3-14, 1996, Habitat Agenda, ¶3, U.N. Doc. A/CONF.165/14 (June 14, 1996) [hereinafter Habitat Agenda].

²⁶ Human Rights Committee, CCPR General Comment No. 27 (Freedom of Movement) (Nov. 2, 1999).

²⁷ CESCR General Comment 4, *supra* note 23, ¶8.

²⁸ United Nations Conference on Human Settlements (Habitat II), June 3-14, 1996, *Istanbul Declaration on Human Settlements*, ¶8, U.N. Doc. A/CONF.165/14 (June 14, 1996) [hereinafter Istanbul Declaration].

²⁹ United Nations Conference on Human Settlements (Habitat II), June 3-14, 1996, *Habitat Agenda*, ¶40(b), U.N. Doc. A/CONF.165/14 (June 14, 1996) [hereinafter Habitat Agenda].

³⁰ UN-HABITAT, Terms of Reference, Advisory Group on Forced Evictions ¶3, *available at* http://www.unhabitat.org/downloads/docs/AGFEmandate_revised2008.pdf.

³¹ Committee on Economic, Social and Cultural Rights, General Comment No. 7 (Right to Adequate Housing – Forced Evictions), ¶7, Sixteenth Sess. (May 20, 1997) [hereinafter CESCR General Comment 7].

towards adequate and affordable housing, residential stability and protection from forced evictions, as expressed in the declarations and guidelines discussed in this report.

1.2. The Rights of Internally Displaced Persons to Return

IDPs have a right to return to their places of habitual residence enshrined within the Guiding Principles and the corollary Pinheiro Principles.

For those displaced by conflict or natural disasters, the U.N. Guiding Principles and the Pinheiro Principles embody the right of IDPs to return to their places of habitual residence. This is not a right that authorities can put off indefinitely: U.N. Guiding Principle 6.2 mandates that displacement should last no longer than required by the circumstances, and Pinheiro Principle 10.2 emphasizes that the right to return cannot be “subject to arbitrary or unlawful time limitations.” Authorities must ensure the right of IDPs to return to their residences and property voluntarily, in dignity and safety (U.N. Guiding Principle 28; Pinheiro Principle 10). In order to fully realize a dignified and safe return, Pinheiro Principle 10 requires that “displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.” Under Guiding Principle 15, IDPs enjoy the right to be free from forced return or resettlement, particularly when conditions threaten their health or safety. Read in conjunction with the principles around the right to housing, the right to a dignified and safe return requires authorities to facilitate the return of IDPs to adequate and affordable housing.

Human rights standards include protections while IDPs are displaced. During the period of displacement, Guiding Principle 21 states that authorities have the responsibility to ensure that property and possessions are protected against destruction and arbitrary and illegal appropriation, occupation or use. In the event that displaced persons are unable or elect not to return to their residences, they retain the right to recover their property or possessions, or to receive just compensation if recovery is impossible (Guiding Principle 29). Pinheiro Principle 16 explicitly extend this right to tenants and non-owners: “To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land, and property in a similar manner to those possessing formal ownership rights.” As such, it is not just property owners that are entitled to protection, compensation, and the opportunity to return, but all displaced persons.

Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, criticized the disparate rates of return to post-Katrina New Orleans following his 2008 visit to the region: “The overwhelming majority of the persons who several years later were still displaced from Hurricane Katrina were from socio-economically disadvantaged areas, whereas according to city officials the

Representative met, the vast majority of the middle class income earners had returned to New Orleans within 6 to 8 months of the disaster.”³²

1.3. Right to Participate in Reconstruction Planning and Implementation

Another significant concern to the victims of Hurricanes Katrina and Rita has been the federal, state, and local governments’ failure to permit meaningful participation in the redevelopment, demolition, and disaster relief policies and plans.

The right to participation in public affairs is enshrined in the major human rights treaties: Under Article 21 of the UDHR, member States pledge to secure the right to participate in government, directly or through freely chosen representatives. Article 25 of the ICCPR guarantees to every person the right to participate in public affairs. General Comment to Article 25 covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.³³ In addition, Article 5(c) of CERD calls on States to ensure the right of all persons to participate in “the conduct of public affairs at any level and have equal access to public service” free from discrimination; Article 7(b) of CEDAW calls on States to ensure the non-discriminatory participation of women in the formulation and implementation of government policy. The Istanbul Declaration further reflects the commitment by State parties to work to ensure effective participation of all people in the development of sustainable human settlements.³⁴

The Guiding Principles and the Pinheiro Principles stipulate the right of those affected by displacement to participate in reconstruction and resettlement planning (U.N. Guiding Principle 28; Pinheiro Principle 14). Indicating concern over the U.S. government’s failure to engage with those most affected by the storms, the CERD Committee, in its Concluding Observations, requested that the United States “ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.”³⁵

³² Representative of the Secretary-General, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Protection of Internally Displaced Persons in Situations of Natural Disaster*, ¶33, delivered to the Human Rights Council, U.N. Doc. A/HRC/10/13/Add.1 (Mar. 5, 2009) [hereinafter Report on Natural Disasters and IDPs].

³³ Human Rights Committee, CCPR General Comment No. 25 (The right to participate in public affairs, voting rights and the right of equal access to public service), Fifty-Seventh Sess. (July 12, 1996).

³⁴ Istanbul Declaration, *supra* note 28, at ¶7.

³⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination on the Report Submitted by the United States of America*, ¶31, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008) [hereinafter CERD Concluding Observations].

Effective participation in reconstruction planning by those most affected by displacement is critical to protect against forced evictions and additional displacement. Local, state, and federal authorities should do more to ensure the effective participation of those most affected by the storm, including those that are still displaced, in reconstruction and redevelopment plans.

1.4. Right to Non-Discriminatory Treatment

Underlying the rights and responsibilities discussed above is the firmly rooted principle of non-discrimination. Under international law, individuals enjoy equal protection of the law and the right to be free from discrimination, and States bear the responsibility of upholding this guarantee. This right is articulated in Article 7 of the UDHR. Article 26 of the ICCPR further sets out the right to equal protection, guaranteeing “equal and effective protection against discrimination.” Article 1 of ICERD defines discrimination in the following manner:

[R]acial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

ICERD specifically prohibits the discriminatory application of the law, including in the housing context. The same definition of discrimination is used Article 1 of CEDAW to describe gender discrimination. The Human Rights Committee has affirmed this definition in General Comment 18.³⁶ Moreover, the CESCR has recently affirmed the obligation of states to guarantee non-discrimination in the exercise of economic, social, and cultural rights, including the right to housing.³⁷ It is important to note that, as distinct from most U.S. law, discrimination under human rights law does not require the intent to discriminate; rather, discriminatory effect can be sufficient to establish discrimination.

The principle of non-discrimination extends to the context of housing rights and the rights of IDPs. U.N. Guiding Principle 1 prohibits discrimination against IDPs on the basis of their status as IDPs. Principle 4 mandates that the principles it sets forth on internal displacement be “applied without discrimination of any kind, such as race,

³⁶ Human Rights Committee, CCPR General Comment No. 18, ¶7 (Non-Discrimination), Thirty-Seventh Sess. (Nov. 10, 1989) (“While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”).

³⁷ CESCR General Comment No. 20, ¶7 (Non-Discrimination in Economic, Social and Cultural Rights), Forty-second Sess. (June 10, 2009).

colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.” Reiterating the right to non-discrimination in the resettlement of IDPs, Pinheiro Principle 3 calls on States to prevent both *de facto* and *de jure* discrimination and to ensure that all persons, including refugees and displaced persons, are considered equal before the law. U.N. Guiding Principle 29 emphasizes the importance of States ensuring equal access to public services for returned or resettled IDPs. In addressing forced evictions, CESCR General Comment 7 states, “The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.”³⁸

Recognizing the centrality of these principles in the redevelopment process, the Human Rights Committee has called on the United States to “increase its efforts to ensure that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare.”³⁹ In assessing the U.S. Government’s response to Katrina, the CERD Committee also noted its concern over the “disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane.”⁴⁰ Multiple human and civil rights organizations submitted reports to the CERD Committee documenting the discriminatory impact on African Americans, immigrant communities, and women and children.⁴¹ The U.N. Special Rapporteur on Racism, Doudou Diène found post-Katrina statistics revealing:

[D]ata indicate[s] the disproportionately high impact of Katrina for African-Americans. For example, whereas the population of whites in New Orleans decreased approximately 39 percent after Katrina, the population of African-Americans declined around 69 percent. The ethnic makeup of the city also changed: African-Americans formed around 67.3 percent of the population before Katrina and comprised only 58.8 percent after the hurricane.⁴²

³⁸ CESCR General Comment 7, *supra* note 31, ¶10.

³⁹ ICCPR Concluding Observations, *supra* note 18, at ¶26.

⁴⁰ CERD Concluding Observations, *supra* note 35, ¶31.

⁴¹ See, e.g., Center on Housing Rights and Evictions (COHRE), *Written Submission to the Committee on the Elimination of Racial Discrimination (CERD) at its 72nd Session* (2008), available at <http://www.cohre.org/store/attachments/COHRE%20US%20Shadow%20Report%20to%20CERD.pdf>; ACLU, *U.S. Violations of the Convention on the Elimination of All Forms of Racial Discrimination: Turning a Blind Eye to Injustice, Race and Ethnicity in America* (2007); Advocates for Environmental Human Rights and Peoples’ Hurricane Relief Fund, *Racial Discrimination and Ethnic Cleansing in the United States in the Aftermath of Hurricane Katrina: A Report to the United Nations’ Committee for the Elimination of Racial Discrimination* (2007) (all critical of the failure by the U.S. Government to address discrimination issues in the post-Katrina response).

⁴² Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Report on Mission to the United States*, ¶73, delivered to the Human Rights Council, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter Report on Racism].

The U.S. Government should do much more to meet its obligations and protect IDPs against discriminatory post-Katrina policies and actions by third parties.

2. INTERNATIONAL ASSESSMENT OF U.S. GOVERNMENT RESPONSE TO THE VICTIMS OF HURRICANES KATRINA AND RITA AND THE RIGHT TO HOUSING

International human rights reporting and monitoring bodies have applied the instruments and principles outlined in Part 1 to assess the U.S. Government's obligations toward the thousands of residents and displaced persons affected by Hurricanes Katrina and Rita. Given the number and scope of the reports issued by these bodies, it is clear that the international community has taken very seriously the U.S. Government's responsibility toward the hurricanes' victims.

2.1. Human Rights Committee

In 2005, the United States submitted its Periodic Report to the Human Rights Committee (HRC) regarding its obligations under the ICCPR. In its Concluding Observations, the HRC noted that it "remains concerned about information that the poor, and in particular African-Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States, and continue to be disadvantaged under the reconstruction plans."⁴³ As mentioned above, the HRC called on the United States to "increase its efforts to ensure that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare."⁴⁴

2.2. CERD Committee

The CERD Committee also highlighted the shortcomings of the U.S. Government's response following the hurricanes in its 2008 Concluding Observations on the United States' May 2007 Periodic Report. It noted that it "remains concerned about the disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane."⁴⁵ The CERD Committee called on the United States to ensure the housing rights of displaced hurricane victims and asked the government to report back on its efforts to follow up on the Committee's recommendations within one year.⁴⁶ Post-Katrina discrimination in housing and displacement was one of only five issues on which the

⁴³ HRC Concluding Observations, *supra* note 18, ¶26.

⁴⁴ *Id.*

⁴⁵ CERD Concluding Observations, *supra* note 35, at ¶31.

⁴⁶ *Id.*, at ¶31, 45.

CERD Committee asked the U.S. Government to report back, signaling the importance placed by the Committee on the need to improve housing conditions for hurricane victims. The U.S. Government's response to the CERD Committee's request for follow-up information failed to recognize the disparate impact of its reconstruction policies and its failure to provide participation in the redevelopment and reconstruction process.⁴⁷

Significantly, in its Concluding Observations to the United States' Periodic Review in 2007, the CERD Committee called-on the United States to "guarantee [hurricane victims] access to adequate and affordable housing, where possible in their place of habitual residence."⁴⁸

2.3. Other International Bodies

In addition to the pronouncements of the treaty bodies reporting on the international legal obligations of the United States, numerous other experts and special procedures bodies have addressed the adequacy of the United States' response to the housing rights and continued displacement of hurricane victims.

- In March 2006, the Independent Expert on Human Rights and Extreme Poverty, Arjun Sengupta, published a report based on his October 24th through November 4th, 2005 mission to the United States, including New Orleans, describing the difficulties faced by victims in returning to their homes and making their voices heard in reconstruction decisions.⁴⁹
- In February 2008, the U.N. Special Rapporteur on Adequate Housing, Miloon Kothari, and the U.N. Independent Expert on Minority Issues, Gay McDougall, issued a statement calling for a halt to the public housing demolition in New Orleans.⁵⁰
- In March 2009, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, criticized post-Katrina redevelopment efforts for prioritizing economic viability over

⁴⁷ Committee on the Elimination of Racial Discrimination, *Information provided by the Government of the United States of America on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination*, ¶¶27–33, U.N. Doc. CERD/C/USA/CO/6/Add. 1 (Feb. 5, 2009) [hereinafter CERD U.S. One-Year Response].

⁴⁸ CERD Concluding Observations, *supra* note 35 at ¶31.

⁴⁹ Independent Expert on the question of human rights and extreme poverty, Report on Mission to the United States, ¶¶49–52, delivered to Commission on Human Rights, U.N. Doc. E/CN.4/2006/43/Add.1 (Mar. 27, 2006) [hereinafter Report on Extreme Poverty].

⁵⁰ Press Release, Commission on Human Rights, Adequate housing is right of every woman, man, youth and child, says Special Rapporteur on World Habitat Day (Oct. 4, 2005), available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/2B47BE3A0DA81AF1C12570900041B8C5?opendocument>.

residents' needs.⁵¹ He conducted a working visit to the Gulf South from January 14th through 18th in 2008.

- In May 2009, Doudou Diène, the U.N. Special Rapporteur on Racism, Racial Discrimination, Xenophobia, and Related Intolerance issued a report critical of the U.S. Government's efforts to facilitate the return of hurricane victims and the demolition of public housing.⁵² His mission to the U.S., from May 19th-June 6th, 2008, included site visits to New Orleans and the Gulf Coast

The background provided here should inform the mission to New Orleans and any investigation into the U.S. Government's failure to satisfy its obligations to ensure the right to housing, the rights afforded to IDPs, and protection from discrimination.

3. Post-Katrina Violations of Housing Rights

Human rights instruments and declarations set forth the rights of and responsibilities to victims of natural disasters. Time after time in the nearly four years since Hurricanes Katrina and Rita, the U.S. Government failed to honor these principles and continues to ignore the international consensus regarding its unacceptable treatment of IDPs. This Part examines and assesses the human rights implications of the rising homelessness, lack of affordable housing, demolitions, evictions, discrimination, and failure to integrate IDPs into the decision-making process following Katrina.

3.1. Homelessness, Lack of Affordable Housing and Displacement

In 2005, prior to Katrina, New Orleans had a homeless population of about 6,000.⁵³ Since Katrina, the homeless population in southern Louisiana has doubled, with the number of homeless persons reaching 12,000 in 2008.⁵⁴ Representing nearly 4% of the city's post-hurricane reduced population, the homelessness rate is nearly four times higher than most American cities.⁵⁵ Many of the newly homeless are residents who never received federal assistance, or have run out of federal assistance and cannot afford higher rents, or immigrant workers with families who came to assist in the rebuilding.⁵⁶ Many of

⁵¹ Report on Natural Disasters and IDPs, *supra* note 32 at ¶33.

⁵² Report on Racism, *supra* note 42, at ¶74.

⁵³ *Housing Options in the Aftermath of Hurricanes Katrina and Rita: Hearing before the Subcomm. on Housing and Community Opportunity of the H. Comm. on Financial Services*, 109th Cong. 125 (2006) (statement of Martha Kegel, Executive Director, UNITY for the Homeless).

⁵⁴ Kalima Rose et al, *A Long Way Home: The State of Housing Recovery in Louisiana*, PolicyLink, at 6 (2008), available at <http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/EQUITYATLAS.PDF>.

⁵⁵ Rick Jervis, *New Orleans' homeless rate swells to 1 in 25*, USA Today, Mar. 17, 2008, at 2A.

⁵⁶ Bill Sasser, *Surge in homeless hits New Orleans*, Christian Science Monitor, Mar. 28, 2007, at 3.

the homeless are children; more than 1,500 homeless children enrolled in Orleans Parish schools last year.⁵⁷

The ever growing number of homeless people in New Orleans is the most extreme manifestation of the broader displacement of hurricane victims. Many thousands of individuals and their families remain displaced in other areas of Louisiana and scattered across other cities around the country. Before Katrina, the population of New Orleans was 484, 674.⁵⁸ The latest U.S. Census reports the population is 311,853, a loss of over 170,000 people.⁵⁹

The U.S. Government's own disaster policies have contributed to higher rents, shortages in affordable housing, and continued displacement. Specifically, this homelessness crisis is a direct result of demolition of affordable and public housing (detailed below) and inequitable re-building policies (some of which are also detailed below). Data from 2009 shows that housing in the Greater New Orleans area remains unaffordable for both homeowners and renters with a significant portion of residents paying more than 30 per cent of their income on housing costs.⁶⁰ Post-Katrina, renters have experienced housing cost increases that outpaced the increase renters faced nationwide.⁶¹ In the metro New Orleans area, the average rent has increased more than 52% since pre-Katrina.⁶²

3.1.1. Renters

Though the general moratorium on evictions expired two months after Katrina, a November 2005 court order required landlords to attempt to provide renters with eviction notices.⁶³ Following two federal lawsuits against the City for its demolition of homes without due process, more stringent procedures were agreed upon allowing homeowners notice and pre-demolition hearings. Even in cases where renters managed to receive eviction notices in their temporary locations, many were unable to return to inspect premises or retrieve possessions, as significant parts of the city remained closed for many

⁵⁷ Chandra R. Thomas, *Housing New Orleans: Still a Work in Progress*, The American Prospect, Feb. 23, 2009, available at http://www.prospect.org/cs/articles?article=housing_new_orleans.

⁵⁸ Press Release, U.S. Census Bureau, New Orleans was Nation's Fastest-Growing City in 2008 (July 1, 2008), available at <http://www.census.gov/Press-Release/www/releases/archives/population/013960.html>.

⁵⁹ *Id.*

⁶⁰ Allison Plyer, Joy Bonaguro, Elaine Ortiz, and Kathy Pettit, *Changes in New Orleans Metro Area Housing Affordability*, Greater New Orleans Community Data Center (GNOCDC), June 23, 2009.

⁶¹ *Id.*

⁶² GNOCDC, Metro New Orleans Fair Market Rent History, http://www.gnocdc.org/fair_market_rents.html.

⁶³ *Sylvester v. Bossiere*, Civ. No. 05-5527 (E.D. La. Nov. 22, 2005) (order setting out procedures for providing notice for eviction).

months.⁶⁴ Once they were able to return, many renters found their former residences uninhabitable and inaccessible even for the purpose of retrieving belongings.

With a significant pre-Katrina population of renters, New Orleans faced a shortage of affordable housing prior to 2005, but this problem has reached untenable proportions since Katrina. The storm caused serious damage to 51,000 rental homes in New Orleans, the majority of which were single or double family units.⁶⁵ In December 2006, the Louisiana Hurricane Task Force found an “urgent need” for 30,000 affordable rental apartments in New Orleans, with another 15,000 needed in the rest of the state.⁶⁶ Combined with the units that suffered less severe damage, Katrina wiped out seventy percent of the rental market.⁶⁷ As devastating as the effects of the storm were for the rental market, the policies pursued in Katrina’s aftermath have only exacerbated effects on renters, and particularly low-income renters. Notably, none of the Community Development Block Grant (CDBG) funds were allocated directly to renters.

Reconstruction plans, furthermore, continue to ignore the needs of the rental sector, as recovery assistance is proposed to repair or replace only two in five damaged affordable rental units, and only one in three in New Orleans.⁶⁸ As of May 2008, only 11% of the rental homes projected to receive assistance were open for occupancy.⁶⁹ Out of the 10,000 rental homes proposed for restoration under the small rental repair program, only 82 had been completed and occupied as of August 2008.⁷⁰ Moreover, the program, which relies on private credit, likely will face even more delays as the effects of the financial crisis continue to reverberate in credit markets.⁷¹ The shortages in the private rental market have been made worse by the demolition of public housing, as discussed in more detail below.

Furthermore, the U.S. Government itself caused evictions through its process of wrongful termination from its disaster assistance programs. The Federal Emergency Management Authority (FEMA) in the United States Department of Homeland Security was responsible for providing both post-disaster emergency housing and individualized assistance after the initial emergency program ended. Putting aside the many initial errors

⁶⁴ Press Release, City of New Orleans, Highlights from the Emergency Operations Center (Nov. 14, 2005), available at <https://www.cityofno.com/pg-1-66-press-releases.aspx?pressid=3263>.

⁶⁵ Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., *The Impact of Hurricanes Katrina, Rita, and Wilma on the Gulf Coast Housing Stock*, U.S. Housing Market Conditions 9 (May 2006).

⁶⁶ Deon Roberts, *Unaffordable Problem: N.O. needs 30,000 low-income rental units*, New Orleans CityBusiness, Dec. 4, 2006, at 25, 28.

⁶⁷ See Bill Quigley, *Obstacle to Opportunity: Housing that Working and Poor People Can Afford in New Orleans Since Katrina*, 42 Wake Forest L. Rev. 393, 400 (2007) (citing to PolicyLink, Louisiana, Rebuilding New Orleans).

⁶⁸ Rose, *A Long Way Home*, *supra* note 54, at 6.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

of evacuation and emergency sheltering, FEMA's policies and implementation of practices with providing individualized assistance was sorely inadequate.⁷² FEMA's system simply "did not perform as a system."⁷³ FEMA's failures forced residents into homelessness when it could not provide meaningful housing support. Those who most needed disaster housing suffered the most from this systemic breakdown.⁷⁴ Renters were particularly vulnerable.

Some examples of FEMA's policy errors that detrimentally impacted the housing of tens of thousands of displaced residents include: premature termination of rental assistance (primarily provided through voucher programs); failure to provide appropriate and sufficient housing for the disabled; wrongful recoupment of its own grant awards and rescission of this policy only after actually recouping funds and broad distribution of recoupment notices; confusing and misleading policies; and ever-changing procedures with substandard case management and customer service.

In the fall of 2007, the FEMA program transitioned to management by the Housing and Urban Development (HUD) office. Under the new Disaster Housing Assistance Program (DHAP) agreement, FEMA was still the arbiter of applicant eligibility for a voucher providing rental housing assistance. HUD was charged with assuming long-term management responsibility for hurricane displaced residents and with providing those individuals with case management.⁷⁵ Initially, the program transition to DHAP lacked functionality, which caused eligible persons to completely lose housing benefits as the federal agencies failed to communicate resulting in lost recipient names in the systems and missing rent payments. Under DHAP, tenants had to agree to pay an increasing sum of their tenant portion of the rent.

As of summer 2009, those still in the temporary DHAP program faced yet another botched program transition. Eligible recipients were supposed to move into the permanent Section 8 program overseen by the Housing Authority of New Orleans (HANO) in conjunction with HUD. Of the 4,000 families in HANO's service area that met the income requirements for the transition to Section 8, only 1,500 transitions were actually completed although DHAP participants' rents had begun to rise in March, 2009.⁷⁶ The steadily increasing tenant portion of rent under DHAP, as opposed to the

⁷² See, e.g., Staff of Ad Hoc Comm. on Disaster Recovery, S. Comm. on Homeland Security and Gov. Affairs, 111th Cong., *Far From Home: Deficiencies in Federal Housing Disaster Assistance After Hurricanes Katrina and Rita and Recommendations for Improvement* (Comm. Print 2009) [hereinafter *Far From Home report*].

⁷³ 1 Army Corps of Engineers, *Final Report of the Interagency Performance Evaluation Taskforce (IPET)* 3 (June 1, 2006).

⁷⁴ *Far From Home report*, *supra* note 72, at 4.

⁷⁵ Disaster Housing Assistance Program, Fact Sheet: HUD to Administer Continued Rental Housing Assistance for Residents Affected By Gulf Coast Hurricanes, <http://www.hud.gov/news/dhap.cfm> (last visited July 23, 2009).

⁷⁶ Katy Reckdahl, *Rents Rise as HANO Trudges Through Transition*, *Times-Picayune*, July 14, 2009, at National 1.

payment of 30% of income on Section 8 vouchers these families are eligible for, is forcing families who cannot afford the larger rent payments into homelessness. These failures are forcing families into homelessness.

3.1.2. Homeowners

Though homeowners had more recovery assistance available to them, they have also faced delays in returning and rebuilding. The State of Louisiana received federal Community Development Block Grant funds to distribute to Louisiana citizens through the Road Home Program. Now managed by Governor Bobby Jindal through the Louisiana Recovery Authority, The Road Home Program, which was privatized, has been plagued with delays and inequitable policies that have disadvantaged homeowners seeking to rebuild.

Notably, 81% of the New Orleans homeowners who received rebuilding assistance via the Road Home program did not receive resources sufficient to cover their damages.⁷⁷ Throughout Louisiana, Road Home recipients fell short an average of \$35,000 of the funds required to rebuild, a shortfall that hit “highly flooded, historically African-American communities particularly hard.”⁷⁸ The most heavily damaged areas, the Lower Ninth Ward, New Orleans East, and Gentilly were low income neighborhoods with significant African-American populations. These neighborhoods had higher average gaps in recovery assistance funds and actual rebuilding costs.⁷⁹ Because these residents face significant barriers in locating additional resources to make up for the funding gap caused by inequitable Road Home policies, these homeowners are facing extreme hardships in trying to prevent foreclosure.

3.2. Evictions: Public Housing and FEMA Trailers

As discussed in the previous section, the affordable housing shortage in pre-Katrina New Orleans has become an affordable housing crisis in the years since the storm. The lack of adequate public housing is one of the ongoing root causes of this crisis. While the private rental market has experienced delays in rebuilding and rising rents, the public housing stock has been decimated by the unnecessary demolition of viable housing.

⁷⁷ Rose, *A Long Way Home*, *supra* note 54, at 7.

⁷⁸ *Id.*

⁷⁹ *Id.*, at 51.

3.2.1. Demolitions: Replacing more with less

Prior to Katrina, public housing and subsidized voucher apartments housed about 14,000 families, or 49,000 individuals.⁸⁰ But the supply was insufficient to meet the high demand even then, with 17,000 families on the waiting list for public housing in pre-Katrina 2005.⁸¹

In June 2006, HUD announced plans to demolish four major public housing complexes containing 4,500 units.⁸² The plan called for the B.W. Cooper, C.J. Peete, Lafitte, and St. Bernard public housing complexes to be replaced with privately developed mixed-income housing that would contain only 800 units of traditional public housing.⁸³ The St. Bernard development will displace most of its former residents, demolishing 963 low cost units with only 153 that will be affordable to the families that used to live there.⁸⁴ Mixed-income developments in the Tulane Avenue corridor, on the other hand, have been more positive in that they did not displace residents and created “economically integrated communities that included very low-income households.”⁸⁵

Given that experts found the buildings of the four complexes sustained minimal damage from the storms,⁸⁶ it is important to note that the cost of demolition and redevelopment far exceeds the cost of repair and renovation. “Demolition of the facilities would cost \$450 million more than repairing them and \$174 million more than modernizing them.”⁸⁷ In fact estimates were that it would cost only \$10,000 per unit to repair them. The demolition of the four complexes, moreover, has been financed by federal funds and federal tax breaks *intended to aid Katrina victims* – despite protests on the part of displaced residents.⁸⁸

⁸⁰ Hous. Auth. Of New Orleans (HANO), Post-Katrina Frequently Asked Questions 1–2, <http://www.hano.org/FAQ.pdf>.

⁸¹ Editorial, *Speed Up Housing Case*, Times-Picayune (New Orleans), Nov. 28, 2006, at Metro 6.

⁸² Press Release, Dep’t of Housing and Urban Dev., HUD Outlines Aggressive Plan to bring Families Back to New Orleans (June 14, 2006), available at <http://www.hud.gov/news/release.cfm?content=pr06-066.cfm>.

⁸³ Chris Kromm and Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement*, Institution for Southern Studies 23 (Jan. 2008), available at <http://www.southernstudies.org/ISSKatrinaHumanRightsJan08.pdf>.

⁸⁴ Rose, *A Long Way Home*, *supra* note 54, at 22.

⁸⁵ *Id.*, at 21.

⁸⁶ Kromm and Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement*, *supra* note 83, at 23; see also Nicolai Ouroussoff, *All Fall Down*, N.Y. Times, Nov. 19, 2006, at Sec. 4, 1 (highlighting the solid construction and design of the complexes).

⁸⁷ Kromm and Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement*, *supra* note 83, at 23. See also Quigley, *Obstacle to Opportunity*, *supra* note 67, at 396.

⁸⁸ See Press Release, Dep’t of Housing and Urban Dev., HUD Outlines Aggressive Plan to bring Families Back to New Orleans (June 14, 2006), available at <http://www.hud.gov/news/release.cfm?content=pr06-066.cfm> (indicating the intention to use a mix of federal public housing funding for HANO, bond funds, and Low Income Housing Tax Credits); Gwen Filosa, *Tenants denounce HANO plans to demolish housing*;

The Tulane Avenue example illustrates the potential for development to occur without compounding displacement. Nonetheless, demolition has moved forward as planned, with most of the demolitions complete. These demolitions contribute to the continued displacement of families who remain uncertain of whether they will be able to remain in former public housing residences. Further, they create secondary, or compound, displacements, forcing families that returned to New Orleans after Katrina to search elsewhere for affordable housing.

Finally, even as late as summer 2009, despite the severe housing crisis, non-demolished units are not always being made available to those in need. For example, the public housing waiting list has not been revised since Katrina and was locked from accepting any new names although there are vacant units.⁸⁹

3.2.2. FEMA Trailer Evictions

As of June 2009, at least 3,450 families continued to live in 240 square foot trailers or temporary housing provided by FEMA in the New Orleans area.⁹⁰ Trailers remain in Texas, Mississippi, and Alabama with residents there facing the same, serious problems.

The federal government provided these trailers, despite the serious health hazard the presented for occupants because of excessive levels of toxic formaldehyde.⁹¹ FEMA had warnings about adverse health issues connected to the formaldehyde and failed to do additional testing because of concerns about liability the agency would incur.⁹² Trailer occupants, especially children and elderly people, have had significant health consequences, which some federal health authorities have linked to high levels of formaldehyde.⁹³ The U.S. government has not provided any direct medical assistance for these persons.

Hundreds attend meeting at John McDonogh High, Times-Picayune, Nov. 30, 2006, at Metro 1 (describing the frustrations of residents at the proposed demolition).

⁸⁹ Katy Reckdahl, *Many Wait for Public Housing as HANO Units Sit Empty*, Times-Picayune, June 1, 2009, at National 1.

⁹⁰ Shaila Dewan, *Katrina Victims Will Not Have to Vacate Trailers*, N.Y. Times, June 3, 2009, at A16 (reporting that occupants, many of whom are among the most vulnerable, will have an opportunity to purchase their trailers for \$5 or less, instead of being forced to vacate them before June 2009, as originally planned).

⁹¹ Press Release, FEMA, Formaldehyde and Travel Trailers (July 20, 2007), available at <http://www.fema.gov/news/newsrelease.fema?id=36730>.

⁹² *FEMA's Toxic Trailers: Hearing before the H. Comm. of Oversight and Gov. Reform*, 110th Cong. 108 (2007) (Urging against testing of formaldehyde levels, FEMA's Office of General Counsel explained that, "should they indicate some problem, the clock is running on our duty to respond.").

⁹³ Children's Health Fund, White Paper, *Preventing Further Trauma for Children and Families Relocated from FEMA Trailer Parks 4* (2008), available at <http://www.childrenshealthfund.org/sites/default/files/FEMA-Trailers-white-paper-final-0508.pdf>.

Next, surrounding the Greater New Orleans area, local governments did not agree to the continued placement of FEMA trailers even as FEMA was recertifying occupants to remain in the trailers. This created an untenable housing situation for trailer occupants. With limited viable housing options in the community, trailer occupants faced eviction from FEMA trailers that FEMA had placed on the occupants' own property or with consent, the property of another individual. FEMA did not assist the occupants it had certified for continuing trailer eligibility with keeping the trailer for shelter and the local government did not guarantee alternative housing following the forced eviction. Connected to this is the fact that FEMA closed trailer parks without creating any permanent housing solutions for those residents.

The U.S. Government's decisions and policies related to persons living in trailers is one example of the larger, systemic problems that have contributed to homelessness and continued displacement.

3.3. Lack of Participation in Redevelopment Plans

In addition to redevelopment plans for public sector housing, other development initiatives have also contributed and compounded the displacement of those impacted by the hurricanes. In Mid-City, a historic New Orleans neighborhood that had begun to rebuild after the devastation of Katrina, plans are afoot to demolish hundreds of homes and businesses to develop a large medical facility.

In 2007, the Mayor of New Orleans signed a Memorandum of Understanding with the Department of Veteran Affairs (VA) to build a VA hospital facility in Mid-City.⁹⁴ The agreement calls for the city to make the site "construction ready," requiring the demolition and clearance of homes, businesses, streets, and infrastructure.⁹⁵ The proposed development plan required the eviction of the neighborhood's residents and businesses that had already been affected by the impact of Katrina and were engaged in the rebuilding process, and the destruction of multiple historic structures.⁹⁶ The agreement requires the city to pay as much as \$5 million in penalties to the VA for any delays extending beyond the November 2009 deadline.⁹⁷ As one group has described it,

⁹⁴ Press Release, New Orleans Public Interest News Agency, Lawsuit charges that Mayor Nagin illegally promised to seize property, close streets for VA hospital (July 14, 2009); *Thurman v. Manuel*, Petition for Declaratory Judgment and Permanent Injunction, No. 09-7244, Civ. Dist. Ct. Parish of Orleans (Jul. 14, 2009).

⁹⁵ Press Release, New Orleans Public Interest News Agency, Lawsuit charges that Mayor Nagin illegally promised to seize property, close streets for VA hospital (July 14, 2009).

⁹⁶ *Id.*; see also National Trust for Historic Preservation, *Endangered Charity Hospital and Mid-City Neighborhood – and the Fight to Save Them*, <http://www.preservationnation.org/travel-and-sites/sites/southern-region/charity-hospital/endangered-charity-hospital.html> (last visited July 17, 2009).

⁹⁷ *Thurman v. Manuel*, Petition for Declaratory Judgment and Permanent Injunction, No. 09-7244, Civ. Dist. Ct. Parish of Orleans (Jul. 14, 2009).

“This is a classic Urban Renewal clear-the-land model, demolishing vast numbers of homes in a city desperately in need of more housing.”⁹⁸

In addition to the significant impact on housing for residents of the Mid-City neighborhood, the Mayor’s plan confirms the permanent abandonment of the historic Charity Hospital, a central feature of New Orleans life for decades and key medical provider for low income people that has not been reopened since the hurricanes. One of the oldest continuously operating hospitals in the country, Charity Hospital provided help to 350,000 people each year and was a medical provider of last resort for the most vulnerable communities in New Orleans. The hospital sustained severe flood damage as a result of Katrina, but military personnel cleaned it out as quickly as possible to return it to full functionality. General Honore, the Army General who oversaw the post-hurricane cleaning of Charity Hospital to ensure that it was up to medical-ready standards, informed the State of Louisiana that the hospital was properly cleaned in 2005.⁹⁹ General Honore has explained that the state government decided not to reopen the hospital almost immediately after Katrina, raising concerns that Katrina was an excuse to introduce these development plans.¹⁰⁰ The closing of Charity “forced needy residents to turn to the few overcrowded, private hospitals still operating” straining the budgets of those already left vulnerable by Katrina.¹⁰¹

The Mayor’s plan for Mid-City was completed without meaningful public participation or consultation. The Mayor failed to hold timely public hearings to debate the proposal or to bring it before the City Council or City Planning Commission.¹⁰² Efforts to obtain public records regarding the proposed development have provided difficult and public records requests regarding hospital issues remain outstanding.

3.4. Assessing the Post-Katrina Housing Response

Government policies in the aftermath of Katrina continue to demonstrate, at minimum, a lack of respect for the rights to housing, return, participation, and non-discrimination described in Part 1. Federal, state, and local authorities should do more to ensure respect for and protection of these rights.

⁹⁸ National Trust for Historic Preservation, *Endangered Charity Hospital and Mid-City Neighborhood – and the Fight to Save Them*, <http://www.preservationnation.org/travel-and-sites/sites/southern-region/charity-hospital/endangered-charity-hospital.html> (last visited July 17, 2009).

⁹⁹ Cain Burdeau, *Retired general Honore: Ex-La. governor halted plan to reopen Charity Hospital after Katrina*, Associated Press, July 14, 2009.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Thurman v. Manuel*, Petition for Declaratory Judgment and Permanent Injunction, No. 09-7244, Civ. Dist. Ct. Parish of Orleans (Jul. 14, 2009).

3.4.1. *Failure to Prevent Retrogression in the Availability of Housing and Shelter*

New Orleans currently has a homeless population of 12,000, a significant number of whom are children. Nearly 30,000 residents remain displaced almost four years after the storm.¹⁰³ A lack of affordable housing is a root cause of this crisis, with Government actions *creating* the problem: The Government limited the number and kinds of loans it provided to renters and rental units and elected to fund reconstruction for less than half of the damaged rental units. Moreover, both renters and homeowners have faced long delays in receiving allocated funds. Meanwhile, the Government has moved forward with plans to demolish thousands of units of public housing.

The Government refused to even attempt to rebuild the pre-storm level of affordable housing stock, which represents retrogression in the realization of the right to housing. Simultaneously, it affirmatively demolished perfectly habitable homes in the midst of one of the worst housing crisis in recent history, which constitutes forced eviction given the lack of participation, consultation and due process rights of residents in the process.

International human rights norms call on States to respect the principle of non-retrogression.¹⁰⁴ Once a particular level of enjoyment of rights has been realized, it should be maintained. As such, the U.S. Government should not reduce the level of enjoyment of a particular human right. In light of the Government's housing and reconstruction policies post-Katrina, the rising homelessness and prolonged displacement can only be characterized as a violation of the principle of non-retrogression. Under the UDHR and much of what is now considered customary international law, the U.S. Government should work to realize an adequate standard of living including adequate housing for all persons. The CESCR has specified that a State must show that it considered alternatives to retrogressive measures and the measures are justifiable by reference of the maximum of available resources and the totality of rights provided within the Covenant.¹⁰⁵ Given its signature to the Covenant, the U.S. has an obligation not to act in contravention to its object and purpose. Clearly, destroying desperately needed housing after a major disaster rises to the level of violating the object and purpose of the CESCR right to housing article.

¹⁰³ See Rose, *A Long Way Home*, *supra* note 54, at 6.

¹⁰⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 3 (The nature of States parties obligations), ¶9, Fifth Sess. (Dec. 14, 1990) (noting that “any deliberately retrogressive measures in that regard would require the most careful consideration”).

¹⁰⁵ *Id.*

3.4.2. Right to Return

The U.S. Government should recognize and take measures to secure the right to return for IDPs displaced following Hurricane Katrina. The lack of affordable housing and the redevelopment plans that eliminate the limited housing stock prevent Katrina victims from returning to their places of residence. The right to return includes reintegration to prevent instability and insecurity in housing tenure, and is a central aspect of the ICCPR's Article 12 which recognizes the right to choose one's own residence. Forced evictions and additional displacement due to redevelopment contribute to, rather than alleviate instability, inhibiting the ability of IDPs to exercise their right of return. The Government's eviction and demolition policies have demonstrated a lack of respect for these rights and principles.

3.4.3. Right to Participation

The right to participation in public affairs, including administrative and local decision making, is enshrined in Article 25 of the ICCPR and interpreted in General Comment 25 to that Article. The U.S. Government's failure to engage civil society in the redevelopment policies, the decisions to demolish public housing rather than rebuild affordable housing and the creation of funding programs that never reached those most in need contravenes its obligation to respect and ensure the right to participation. Indeed, there was strong civil society protest and outcry with regard to the demolition of public housing, in particular, with many residents asking to be heard and to be allowed to be present at the hearings where these decisions were made. Despite the predictable need for holding these hearings in an adequate public venue, residents were turned away at the door, and some arrested, for trying to attend the hearings. The decision to destroy the communities where many lived (and whose families had lived for generations) was for all practical effect made behind closed doors, without voice or vote from those who were directly affected.

3.4.4. Protection from Discrimination

Underlying all the dimensions of the right to housing, return and participation is the U.S. Government's duty to act in accordance with the principle of nondiscrimination. The overwhelming impact on low-income African American and immigrant communities in the housing policies following Katrina is a violation of the United States' obligations under Article 5(e)(iii) of CERD and Articles 6 and 26 of the ICCPR. In his report released in March 2009, Representative Kälin criticized post-Katrina development plans for failing to address the needs of the poorest African American and immigrant neighborhoods: "[W]hile the Representative was impressed with the overall reconstruction efforts, he witnessed the very slow rate of reconstruction in the lower 9th

Ward of New Orleans, the poorest part of the city.”¹⁰⁶ The continued displacement and lack of positive measures taken to provide for the return of low income African-Americans and immigrants shows the governments disregard for the principles of non-discrimination.

CONCLUSION

Following international human rights principles and standards in housing can allow survivors of Hurricane Katrina the opportunity to live fully human lives of the dignity which each person deserves.

Respectfully Submitted by:*

William Quigley
Sunita Patel
Meera Shah
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, New York 10012
spatel@ccrjustice.org

Davida Finger
Loyola University New Orleans College of Law
7214 St. Charles Ave.
Campus Box 902
New Orleans, LA 70118
dfinger@ccrjustice.org

*Special thanks to Cathy Albisa, Executive Director of the National Economic, Social, Economic Rights Initiative for her insightful comments and assistance with this submission.

¹⁰⁶ Report on Natural Disasters and IDPs, *supra* note 32, at ¶33.