

# United States of America

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### ***THE HUMAN RIGHTS CRISIS IN THE AFTERMATH OF HURRICANE KATRINA***

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1. This submission provides information pertaining to the US Government's violation of human rights in connection with Hurricane Katrina. This submission is prepared by Advocates for Environmental Human Rights, a non-governmental public interest law firm based in New Orleans, Louisiana that is dedicated to upholding the human right to live in a healthy environment, and the Gulf States Human Rights Working Group, a coalition of non-governmental organizations dedicated to advocating for adoption by the US Government of the UN Guiding Principles on Internal Displacement as a domestic legal standard. Non-governmental organizations that contributed to this submission are as follows: ACLU-Mississippi, Alabama Arise, Center for Fair Housing, Community Justice Clinic at Loyola University New Orleans College of Law, Gert Town Revival Initiative, Katrina Citizens Leadership Corps, Mississippi Immigrants Rights Alliance, Mississippi NAACP, Mossville Environmental Action Now, South Bay Communities Alliance, Steps Coalition, and Women's Health & Justice Initiative.
2. This submission documents certain decisions, policies, and actions by the US Government and its political subdivisions in connection with Hurricane Katrina in 2005 and subsequent storms that have violated and continue to violate the human rights of people who lived or live in states bordering the Gulf of Mexico, including Texas, Louisiana, Mississippi, and Alabama (hereinafter "the Gulf Region"). This submission discusses critical areas in which the United States Government has disregarded its international human rights obligations.

**I. The U.S. Government's National Disaster Mitigation, Preparation, Response, and Recovery Policies Create Racial Disparities and Prolong Internal Displacement**

3. The United Nations Human Rights Committee and the United Nations Committee on the Elimination of Racial Discrimination issued separate Concluding Observations detailing the actions that the U.S. Government should implement in the aftermath of Hurricane Katrina in relation to Articles 6 and 26 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR") and Article 5(e)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD"). The July 2006 Concluding Observations by the UN Human Rights Committee recommended, among other things, that the U.S. Government implement the United Nations Guiding Principles on Internal Displacement and "ensure that the rights of poor people, in particular African Americans are fully taken into consideration in the reconstruction plans with regard to access to housing, education, and healthcare." The March 2008 Concluding Observations by the UN Committee on the Elimination of Racial Discrimination recommended that the U.S. Government "increase its efforts in order to facilitate the return of people displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence." Additionally, the UN Committee on the Elimination of Racial Discrimination recommended that the U.S. Government ensure that displaced persons can meaningfully participate in the design and implementation of all decisions affecting them.
4. Notwithstanding the recommendations of these two UN treaty-monitoring committees, which conform with the demands of non-governmental organizations based in the Gulf Region, as evidenced by their letters to governmental officials, published reports, public demonstrations, and lawsuits, the U.S. Government has not implemented these recommendations. Instead, the U.S. Government has implemented policies in the aftermath of Hurricane Katrina and subsequent storms affecting the Gulf Region that exacerbate racial disparities and prolong internal displacement.

5. It is estimated that approximately 1,000,000 residents of the Gulf Region were physically displaced during the events of Hurricane Katrina. This is the largest population of internally displaced people in the modern history of the United States. However, the U.S. Government does not recognize displaced Gulf Region residents as internally displaced persons.
6. For several years prior to Hurricane Katrina, the U.S. Government supported the work of the United Nations to develop the UN Guiding Principles on Internal Displacement as the standard of care for people who are forced to flee their communities as a result of a natural or human-induced disaster. In October 2004, nearly one year prior to Hurricane Katrina, the U.S. Government issued the *United States Agency for International Development Assistance to Internally Displaced Persons Policy* (PD-ACA-558, October 2004) (hereinafter “USAID policy”). The USAID policy adopts the UN Guiding Principles on Internal Displacement, and is intended to assist people in foreign countries. According to this policy, the US Government acknowledges that the UN Guiding Principles on Internal Displacement are “an important tool for dealing with situations of internal displacement” and encourages governments to incorporate these principles in their domestic policies. However, the U.S. Government has failed to follow its own recommendation, and demonstrates an unconscionable disregard for the fact that there are hundreds of thousands of internally displaced U.S. residents in the aftermath of Hurricane Katrina and subsequent storms striking the Gulf Region.
7. Under the UN Guiding Principles on Internal Displacement, displacement is not merely defined by physical space but by need. Thus, displacement ends when one no longer has needs associated with his/her displacement (Brookings Institution-University of Bern Project on Internal Displacement, *When Displacement Ends: A Framework for Durable Solutions*, June 2007). Both the UN Guiding Principles and the USAID policy recognize housing, education, healthcare, and employment opportunities as vital to ending displacement and rebuilding communities. Without these measures to adequately address the needs of displaced people, recovery is unlikely. People of color and other marginalized groups typically encounter the injustice of post-disaster plans that remove them from their communities. Women and children are more likely to face abuse and exploitation during displacement when the social safety net has been torn away. Such adverse conditions are exacerbated by prolonged displacement, which as recognized in the USAID policy, creates significant setbacks in a person’s education, healthcare, and livelihood that can have detrimental effects on future generations (USAID Policy, p. 3). The ramifications of prolonged displacement are especially dire for poor people in the Gulf Region who are predominantly African American, Asian American, Latino, and Native American children and families suffering from racial injustice in governmental disaster recovery plans as well as the abuse, neglect, and exploitation that arise from the social breakdown.
8. The need for the UN Guiding Principles is particularly critical for single women who have children and/or care for relatives. According to the Women’s Health & Justice Initiative, the number of families headed by single mothers in New Orleans fell from 51,000 to 17,000; and poor families headed by single mothers fell from 18,000 to 3,000 in the first year following Hurricane Katrina. The group has documented the consequences of inadequate governmental assistance to the significant number of displaced women-headed households.
9. Pursuant to a domestic law known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter “the Stafford Act”), the U.S. Government has developed and implements policies and programs that deprive Gulf Region residents of their human rights and are contrary to the UN Guiding Principles on Internal Displacement. The Stafford Act places virtually all governmental decisions regarding a national disaster, such as Hurricane Katrina, at the discretion of the President of the United States (Title 42 United States Code Section 5148). Given the entirely discretionary nature of the Stafford Act, an individual harmed by a national disaster has **no right** to any assistance at all,

including “essential assistance,” such as the reduction of life-threatening risks, emergency medical care, and shelter (Title 42 United States Code Section 5170b). Governmental officials and non-governmental organizations have criticized the Stafford Act as inadequate and ineffective for addressing a catastrophic disaster that results in population displacement, such as Hurricane Katrina.<sup>1</sup> In contrast to the UN Guiding Principles on Internal Displacement, the Stafford Act does not prohibit governmental decisions that alter the racial demographic or composition of a disaster-affected area. The Stafford Act also does not establish the provision of housing, health care (including trauma counseling), and education for the duration of displacement. Nor does this domestic law adequately address the needs for permanent recovery of displaced people and the reconstruction of communities devastated by a national disaster. In sum, under the Stafford Act, displaced Gulf Region residents have ***no right to recovery*** as recommended by the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination.

10. Further analysis of the contrasts between the Stafford Act and the UN Guiding Principles on Internal Displacement, prepared by Advocates for Environmental Human Rights, a non-governmental organization, is provided in the table below.

Recovery Issue	Robert T. Stafford Disaster Relief and Emergency Assistance Act	UN Guiding Principles on Internal Displacement
<b>Should the federal government have primary responsibility for disaster recovery?</b>	<b>No.</b> The federal government’s responsibility is limited to matters under exclusive federal control as established by the U.S. Constitution or federal law. All other federal responses to a disaster are discretionary acts that are completely immune from lawsuit. (42 USC §5148 & §5191)	<b>Yes.</b> National governments have the primary duty to provide protection and humanitarian assistance to people who are displaced by a natural or man-made disaster. (Principles 3 & 25)

Recovery Issue	Robert T. Stafford Disaster Relief and Emergency Assistance Act	UN Guiding Principles on Internal Displacement
<b>Should people who have been displaced by a disaster have a right to humanitarian assistance and assistance to either return to their residences or resettle?</b>	<b>No.</b> Individuals do not have a legal right to assistance. The federal government is not required to provide essential assistance, which includes emergency medical care, reduction of immediate life-threatening risks, and housing. (42 USC §5170b)	<b>Yes.</b> All displaced persons have the right to request and receive protection and humanitarian assistance from governmental authorities as well as the right to voluntarily return or resettle in safety and with dignity. (Principles 3, 25 & 28)
<b>Should displaced people be protected from governmental actions that result in discriminatory impacts?</b>	<b>No.</b> Federal courts have limited the prohibition against discrimination to an intentional act of discrimination, not an act that results in a discriminatory impact. ( <i>Sandoval v. Alexander</i> , US Supreme Court, 2001)	<b>Yes.</b> Displacement that is aimed at or results in “ethnic cleansing” or altering the racial, ethnic or religious composition of an affected people is prohibited. Displaced persons have a right to governmental assistance and protection that does not intentionally discriminate or result in a discriminatory impact. (Principles 4, 6, 18 & 24)

**Should displaced people have the right to housing, education, and healthcare?**

**No.** Housing assistance, temporary educational facilities, and healthcare services are provided at the discretion to the federal government. (42 USC §5174(b), §5174(c) & §5170b.a.3.D)

**Yes.** Displaced persons have the right to housing, education, and medical services that requires the government to provide temporary housing for the duration of the displacement, support for the rebuilding of permanent homes; educational and training facilities, and medical services, including mental health care and social services. (Principles 18, 19, 23, 28 & 29)

**A. The Human Rights to Life, Freedom from Racial Discrimination, and Protection from Bodily Harm and Violence Without Distinction as to Race**

11. Article 6 of the ICCPR protects the human right to life, Article 26 of the ICCPR protects the human right to freedom from racial discrimination, and Article 5(b) of the CERD protects the human right to protection from bodily harm and violence without distinction as to race. These human rights are also recognized in the Universal Declaration of Human Rights (Articles 2 and 3). The protection of these human rights is essential to disaster mitigation and disaster response efforts undertaken by the U.S. Government.
12. The U.S. Government and its political subdivisions are investigating the shooting deaths and beatings of predominantly African American victims by law enforcement personnel in the wake of Hurricane Katrina. These investigations have not produced any results nearly five years since the shootings and beatings occurred. (See Monique Harden *et al*, *Racial Discrimination and Ethnic Cleansing in the Aftermath of Hurricane Katrina: A Report to the UN Committee on the Elimination of Racial Discrimination*, Advocates for Environmental Human Rights, Nov. 30, 2007, pp. 4-5, available at <http://www2.ohchr.org/english/bodies/cerd/cerds72-ngos-usa.htm> (click “Hurricane Katrina”)).
13. The non-governmental organization, Mississippi Immigrants Rights Alliance, has documented the racial profiling of Latinos and those perceived to be immigrants, who have been subjected to unwarranted arrests and abusive treatment by law enforcement personnel.
14. In advance of Hurricane Katrina, the U.S. Government had information that levees and floodwalls could be breached by the storm surge causing catastrophic loss of life and damage. However, the U.S. Government failed to warn the public of the likelihood that levees and floodwalls would be breached by the storm surge.<sup>2</sup> Additionally, the U.S. Government failed to inform the public that floodwalls and levees were of substandard construction that made them vulnerable to breaches and overtopping by the storm surge.<sup>3</sup> By withholding this critical information, the U.S. Government failed to protect the lives of people in the Gulf Region.
15. It is estimated that 1,833 people died from drowning in floodwaters, injuries from falling objects caused by strong hurricane winds, and shootings. The approximate number of deaths by state: Louisiana – 1,577; Mississippi – 238; Florida – 16; Alabama -2; Georgia – 2.<sup>4</sup> The actual number of people who died remains unknown. The Katrina death toll is the third highest death toll among hurricanes in the history of the United States. It is important to note that the two highest death tolls resulting from hurricanes occurred during the 1920’s,<sup>5</sup> decades before significant developments in meteorological forecasting, telecommunications, transportation infrastructure, and hurricane protection systems.

16. With regard to disaster mitigation, the U.S. Government designed and constructed substandard flood walls and levees that were breached by the Hurricane Katrina storm surge, which resulted in the drowning deaths of people in the Gulf Region, flooding 80% of the city of New Orleans, Louisiana for several days, devastating coastal and rural communities, and causing extensive property damage that remains largely unrepaired in many areas. Under domestic law, the U.S. Government, in particular the U.S. Army Corps of Engineers, is immune from liability for the deaths and extensive property damage caused by its substandard design and construction of levees and floodwalls.
17. The U.S. Government authorized the U.S. Army Corps of Engineers to conduct repairs and upgrades to flood walls and levees that failed in the immediate aftermath of Hurricane Katrina. However, the Corps' work has resulted in racial disparities that jeopardize the lives of predominantly African American residents. A June 2007 report by the U.S. Army Corps of Engineers documented that its efforts to upgrade and repair floodwalls and levees would significantly reduce the level of floodwater that inundated predominantly white neighborhoods during Hurricane Katrina, but exclude predominantly African American neighborhoods from any similar reductions in flood water. Specifically, the report shows that the predominantly white neighborhoods of Lakeview in New Orleans and Old Metairie which is adjacent to New Orleans would both have a 5.5 feet (1.68 meters) reduction in floodwater, while the predominantly African American neighborhood of New Orleans East, which also has the largest population of Vietnamese Americans in the city, would have no reduction in floodwater; the predominantly African American neighborhood of Gentilly would have a 6 inch (15.24 centimeters) reduction in floodwater, and the predominantly African American neighborhood of the Lower 9<sup>th</sup> Ward would have 1.5 feet (0.46 meters) reduction in floodwater.<sup>6</sup> Without adequate flood protection — a critical part of disaster mitigation in flood prone areas — predominantly African American neighborhoods are exposed to life-threatening conditions.
18. People living in coastal areas are made vulnerable by the combination of the U.S. Army Corps of Engineers' flood and navigation projects and offshore oil and gas operations in the Gulf of Mexico that continually erode the coastline and destroy wetlands. The U.S. Army Corps of Engineers is not required by law to mitigate the destruction of wetlands and coastal areas that results from its flood and navigation projects, and oil and gas companies are likewise not required to mitigate coastal erosion. Without mitigation, significant areas of wetlands and the coast in the Gulf Region which serve as natural defenses to hurricanes by reducing storm surge and absorbing wind and wave energy, have been destroyed and the lives of residents remain threatened.

## **B. The Human Rights to Housing and Housing Without Distinction as to Race**

19. Article 26 of the ICCPR protects the human right to freedom from racial discrimination and Article 5(e)(iii) of the CERD protects the human right to housing without distinction as to race. These human rights are also recognized in the Universal Declaration of Human Rights (Articles 2 and 25). The protection of these human rights is essential to disaster response and disaster recovery efforts undertaken by the U.S. Government.
20. In the aftermath of Hurricane Katrina, the U.S. Government has developed policies and practices that deny recovery for the internally displaced residents of the Gulf Region, who are predominantly African American, Asian American, Latino, and Native American. Such governmental programs deny or reduce access to adequate housing for renters, including renters of government-subsidized housing, and homeowners. As a result, there has been a substantial increase in the number of homeless people.

21. In its one-year follow-up reports to the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination regarding Hurricane Katrina, the U.S. Government presents some of its federal expenditures for so-called recovery programs without providing context as to the effectiveness of such funding to ensure recovery for internally displaced residents of the Gulf Region and their devastated communities (United States Responses to Select Recommendations of the Human Rights Committee, Oct. 10, 2007, paragraph 26, pp. 14-16; United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination, Jan. 13, 2009, paragraph 31, pp. 11-14). The vast majority of federal disaster response and recovery programs are managed by the U.S. Government's Federal Emergency Management Agency (hereinafter "FEMA") which also implements the Stafford Act, and the U.S. Department of Housing and Urban Development (hereinafter "HUD"). The U.S. Government failed to disclose to the UN committees that both FEMA and HUD have been widely criticized by governmental officials and civil society because of their actions that:
- failed to direct federal funds to meet the needs of the Gulf Region and failed to ensure accountability and meaningful participation by internally displaced persons in the design and implementation of recovery programs;
  - unreasonably restricted and underfunded housing assistance to internally displaced Gulf Region residents (as evidenced by FEMA's evictions of internally displaced people living in temporary rental housing based on arbitrarily set expirations for assistance; deeply flawed recovery assistance programs managed by HUD that were designed to provide little support to homeowners and renters; HUD's waiver of a federal rule that requires HUD Community Development Block Grants to benefit people with low to moderate income, which has allowed significant amounts of federal funds to be diverted to commercial and industrial development projects; and the failure to provide language translation of governmental assistance programs, which shuts out internally displaced people who are not proficient in English from accessing assistance ); and
  - placed 143,000 homeless Gulf Region residents in unsafe and unhealthy temporary housing known as "FEMA campers" or "FEMA trailers" that exposed people to dangerous levels of formaldehyde (a toxic substance emitted from the interior wood cabinets and other furnishings that can cause eye, nose, and throat irritation; lung damage; wheezing and coughing; fatigue; skin rash; and severe allergic reactions).

**i. Alabama**

22. A portion of the State of Alabama borders the Gulf of Mexico, where Hurricane Katrina and subsequent hurricanes devastated the lives of residents and their communities. The hurricane-damaged communities in Alabama are the most overlooked areas by the U.S. Government, and are not mentioned in the U.S. Government's reports to the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination regarding Hurricane Katrina.
23. The responses by the U.S. Government and its political subdivisions are inadequate and ineffective for ensuring the recovery of coastal Alabama residents who suffer from unmet needs arising from their displacement. The denial of housing has created the majority of these unmet needs. In the aftermath of Hurricane Katrina, there were over 3,400 occupied housing units that were severely damaged and 45,000 occupied housing units that incurred minor damage. However, under the housing assistance fund program managed by HUD and local agencies, only 1,020 housing units were eligible for funds to repair or rebuild; and of these eligible housing units, the paltry amount of federal funds would afford assistance to less than 300 households (letter by U.S. Congressman Artur Davis (D-AL) to U.S. Speaker of the House of Representatives Nancy Pelosi (D-CA), Nov. 13, 2008). For the several thousand households that suffered major and minor damage, there is insufficient funding to assist with the repair or rebuilding of homes. For example, the Mobile County Commission which manages

housing assistance recovery funds, documented that since March 2007 it has been forced to not accept any new applications for funds because it did not have adequate funds to assist all of the 1,170 applications submitted by residents that had been previously accepted (letter by Mike Dean, President of the Mobile County Commission to Doni Ingram, Executive Director of the Alabama Department of Economic and Community Affairs, Feb. 22, 2010).

24. Consequently, there are thousands of individuals and families who are either homeless or living in damaged homes — some without roofs and some infested with mold that grew from the dampness remaining after flood waters receded. Among the 1,020 families who are eligible for federal home rebuilding assistance, 39% earn less than \$15,000 a year; 31% care for elderly and disabled family members; and 58% have children who are cared for by single parents or grandparents (South Bay Communities Alliance, Open Letter to President Obama and other elected governmental officials, Feb. 26, 2009). Numerous requests by Alabama officials, coastal Alabama residents, and non-governmental organizations for increased federal funding to repair and rebuild affordable housing have been met with inaction.
25. The Center for Fair Housing, a non-governmental organization in Mobile, Alabama, reported that access to affordable and adequate housing without distinction as to race is denied as African Americans, in particular families headed by a single mother, are steered to rent homes in need of repair and find themselves living in squalor; are provided sub-prime loans with excessive interest rates for the purchase of homes; and are provided less information and fewer opportunities than whites when looking for homes to rent or buy.
26. In the small Alabama coastal community of Coden, the South Bay Communities Alliance, a non-governmental organization, conducted a survey of residents that revealed 150 Coden families reported significance unmet needs; and 70 Coden families responded that their homes had major damage, but they received little assistance or no assistance from the government. A member of South Bay Communities Alliance documented the deaths of residents whose homes were destroyed by hurricanes:

*“Coden has never seen so many people pass away in such a short time. My neighbor Delaphine Barber, age 75 lost her home and died from a heart attack about a year after Katrina. Other neighbors who died, trying to survive in the [formaldehyde emitting] FEMA campers, and hoping to see their homes rebuilt were: Sally Dismukes, age 72, died of a heart attack; Tommy Barbour age 56, died of lung cancer; Michael Goleman, age 36 father of two teenage daughters, suicide; Shirley Clark, age 65, complications from a staph infection; Randy Hall, age 45, lung cancer; Nancy Maples, age 57. Most have spouses or children who are still hoping to see their family homes rebuilt. My mother Hilda Nelson died after living in a FEMA camper over a year and hoping for assistance to rebuild the family that never came . . . .”*— Paul Nelson
27. Pursuant to the post-Katrina waiver by the federal government of a federal rule that HUD Community Development Block Grants are to benefit people with low to moderate incomes, the State of Alabama diverted a reported \$24 million USD to construct a new wastewater treatment facility that will not benefit poor and predominantly people of color residents who live nearby, and will pollute a local water body used for subsistence fishing with the facility’s wastewater discharges (letter from Alabama Arise, a non-governmental organization, to Jessie Handforth Home, US Department of Housing and Urban Development, Oct. 8, 2008).

## ii. Mississippi



28. The State of Mississippi borders the Gulf of Mexico, where Hurricane Katrina devastated the lives of residents and their communities. In its 2009 report to the UN Committee on the Elimination of Racial Discrimination, the U.S. Government predicts that the State of Mississippi “will not only have replaced lost housing stock, but will have created more affordable housing in South Mississippi than existed before Hurricane Katrina” (United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination, Jan. 13, 2009, paragraph 31, p. 14). However, the possibility of this occurring is not likely given the fact that the State of Mississippi, with the approval of HUD, devised a flawed housing assistance grant program that prolongs the internal displacement of its residents.
29. According to the 2007 report, *The Unaccountability Gap: Unanswered Questions Two Years After Hurricane Katrina* by the Mississippi NAACP, the housing assistance recovery program managed by the State of Mississippi creates an inequitable recovery for displaced residents who rented homes and are predominantly African American. Specifically, the report documents that the Mississippi Homeowner Assistance Grant Program:
- provided federal funds to repair and rebuild for rental housing and government-subsidized housing at a level that was 10 times less than the funding provided to homeowners;
  - provided grants to 86.9% of the homeowner applicants and only 8.5% of the renter applicants as of August 22, 2007;
  - lengthened the waiting period for renters to receive housing assistance to up to five years, whereas nearly all homeowners received assistance within one year;
  - failed to account for the 25-34% rise in rental rates in the hurricane-affected area that make access to rental properties unaffordable to residents who work in low-wage service jobs that form the basis of the Mississippi Gulf Coast economy; and
  - failed to make publicly available the process and the outcomes of the work performed by the Reznik Group which was awarded an \$88 million USD contract to manage the program.
30. The State of Mississippi rescinded its commitment to provide 8,000 affordable rental units, and is evicting residents from temporary housing; and denied some 7,000 residents emergency assistance funds based on an arbitrary rule that excluded people whose homes were damaged by hurricane winds.
31. Pursuant to HUD’s waiver of the federal rule that requires HUD Community Development Block Grants to benefit people with low to moderate incomes, the State of Mississippi has allocated \$570 million USD to expand its port which will displace existing neighborhoods where residents are struggling to rebuild.

### **iii. Louisiana**

32. The State of Louisiana borders the Gulf of Mexico, where Hurricane Katrina devastated the lives of residents and their communities in coastal areas and substandard levees and floodwalls ruined 80% of the City of New Orleans. In its one year follow-up report to the UN Committee on the Elimination of Racial Discrimination, the U.S. Government provides a relatively lengthy discussion of its expenditures in Louisiana following Hurricane Katrina (United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination, Jan. 13, 2009, paragraph 31, pp. 12-14), but the information presented is misleading because it omits any discussion of the severe flaws in how funds were applied.
33. HUD entered into contracts with private developers to demolish 70% of the public housing developments in New Orleans, Louisiana,<sup>7</sup> many of which sustained little or no damage from the hurricane. The residents of public housing in New Orleans are all African American, the vast majority

of whom are women and their children. The governmental contracts require private developers to replace the public housing developments with market rate housing<sup>8</sup> that will eliminate 82% of public housing apartments that were lived in prior to the storm. Specifically, the HUD-approved redevelopment plan reduces the number of low-income apartments in the Lafitte housing development from 896 to 276; the St. Bernard housing development from 1,436 to 160; the B.W. Cooper housing development from 1,550 to 154; the C.J. Peete housing development from 723 to 154. The demolition of public housing has created a crisis for approximately 5,000 African American families who lived in public housing prior to the storm.

34. HUD's poor oversight and funding of a home repair assistance program in Louisiana, known as the Louisiana Road Home Program, have contributed to the shortage of affordable housing. Louisiana entered into a contract that paid over \$900 million USD to the private company ICF to manage the Louisiana Road Home Program, but that program provided only 19% of homeowner applicants with sufficient funds to cover the costs of repairing hurricane-damaged homes, and provided no direct assistance to renters, many of whom cannot afford the post-Katrina 40% increase in rents. By the time the Louisiana Road Home Program expired in 2009, there were not nearly enough affordable rental units on the market to meet the needs of internally displaced residents.
35. The design of the Louisiana Road Home grant formula exacerbates racial disparities for African American homeowners because it is based on the lower of the estimated pre-storm home value assessment and the estimated cost of damage. Because of racially discriminatory practices, home values in predominantly African American neighborhoods are lower than those in predominantly white neighborhoods. Thus, applying this discriminatory grant formula to calculate the grant awards assured that African American applicants would typically receive insufficient funds to rebuild their homes. In addition, the grant formula arbitrarily mandates that grants cannot be more than \$150,000.
36. As documented in the 2008 report, *A Long Way Home: The State of Housing Recovery in Louisiana*, by the non-governmental organization Policy Link, the Louisiana Road Home Program created barriers to the recovery of internally displaced Louisiana residents:
  - In New Orleans, four of every five people received grants from the Louisiana Road Home Program that were insufficient to pay for the necessary repairs to their flood-damaged homes. Statewide, more than two of every three people face the same predicament.
  - The average Road Home Program applicant fell more than \$35,000 short of the money they need to rebuild their home. The shortfall hit highly flooded, historically African-American communities particularly hard.
  - Renters continue to face huge hurdles because only two in five damaged affordable rental units statewide will be repaired or replaced with recovery assistance. In the New Orleans metro region, the more dismal rate is one in three.
  - The national credit crunch and personal financial vulnerability precludes the benefits of the program for many landlords who own small rental properties. Of the 10,000 rental homes that were budgeted to receive assistance, only 82 have received assistance.
  - Nearly 28,000 internally displaced households that are located across the United States continue to rely on disaster rental assistance for homes, including 14,000 households in the greater New Orleans metro region alone.

### **III. Conclusion**

37. Although flood protection and housing are the two most critical needs of internally displaced residents of the Gulf Region, significant unmet needs also persist regarding healthcare, education, employment opportunities, and environmental protection. (*See* Endnote #1 reference to the following reports:

*What It Takes to Rebuild a Village after a Disaster: Stories from Internally Displaced Children and Families of Hurricane Katrina and Their Lessons for Our Nation and Hurricane Katrina and the UN Guiding Principles on Internal Displacement: A Global Perspective on a National Disaster.*)

38. The predicted effects of climate change on the Gulf Region in the form of increasingly intensive hurricanes, sea level rise, and land subsidence will only worsen the extant adverse conditions suffered by internally displaced residents, and the U.S. Government has thus far taken no action to address these predicted effects.
39. The U.S. Government must uphold its human rights obligations to ensure a just and equitable recovery for internally displaced Gulf Region residents by:
- recognizing that residents who are or become displaced by a national disaster are internally displaced persons; and adopting the UN Guiding Principles on Internal Displacement as the domestic legal standard;
  - appropriating adequate funds for the Gulf Region to invest in the restoration of natural flood protection, disaster mitigation, rehabilitation of blighted properties, construction of affordable and environmentally sustainable housing, workforce development and employment of local residents, and supporting disadvantaged and small businesses; and
  - prohibiting the use of federal funds to finance, create an incentive for, or otherwise assist any public or private program or project related to any type of disaster recovery efforts that would entail the exacerbation of displacement-related issues pertaining to US residents affected by a national disaster.

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## ENDNOTES

<sup>1</sup> See, e.g., U.S. federal court decisions: “[FEMA] must free evacuees from the ‘Kafkaesque’ housing assistance application process they have had to endure . . . . It is unfortunate, if not incredible, that FEMA and its counsel could not devise a sufficient notice system to spare those beleaguered evacuees the added burden of federal litigation to vindicate their constitutional rights.” *ACORN v. Federal Emergency Management Agency*, N06cv1521, Nov. 29, 2006. “[This Court] has seen scant evidence that desire for openness and clarity guided any of FEMA’s communications, and this obfuscation has acted much to the detriment of the plaintiffs, and indeed the entire country.” *McWaters v. Federal Emergency Management Agency*, No. 05-5488 (Eastern District of Louisiana) 2006.

See also the US Conference of Mayors, *Report of the Stafford Act Reform Task Force*, Jan. 2010, available at <http://www.usmayors.org/pressreleases/uploads/StaffordActReformTaskForceReport.pdf>; Monique Harden & Tracie Washington, *What It Takes to Rebuild a Village after a Disaster: Stories from Internally Displaced Children and Families of Hurricane Katrina and Their Lessons for Our Nation*, The Katrina Citizens Leadership Corps, 2009, available at <http://www.childrensdefense.org/child-research-data-publications/data/rebuild-village-hurricane-katrina-rita-children.html>; and Chris Kromm, *et al*, *Hurricane Katrina and the UN Guiding Principles on Internal Displacement: A Global Perspective on a National Disaster*, Institute of Southern Studies, Jan. 2008, available at <http://www.southernstudies.org/iss/2008/11/hurricane-katrina-and-human-rights.html>.

<sup>2</sup> Joby Warrick, *White House Got Early Warning on Katrina*, THE WASHINGTON POST, Jan. 24, 2006, p. A2.

<sup>3</sup> U.S. Army Corps of Engineers, *Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System*, June 1, 2006.

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<sup>4</sup> Alex Grauman *et al*, *Hurricane Katrina: A Climatological Perspective*, National Climatic Data Center of the U.S. National Oceanic and Atmospheric Agency, Technical Report 2005-01, Oct. 2005, p. 3, available at [http://www.preventionweb.net/files/1539\\_techreport200501z.pdf](http://www.preventionweb.net/files/1539_techreport200501z.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> US Army Corps of Engineers, Inter-Agency Performance & Evaluation Task Force, *Risk and Reliability Report*, June 2007, available at <http://nolarisk.usace.army.mil/#map>. See also The Times-Picayune Newspaper graphic illustrations of the flood risk maps prepared by the US Army Corps of Engineers available at <http://blog.nola.com/graphics> (click “The Risk of Hurricane Flooding Today”).

<sup>7</sup> US Department of Housing and Urban Development, *News Release: Housing Authority of New Orleans Approves Firms to Redevelop of St. Bernard, B.W. Cooper, and C.J. Peete*, Mar. 28, 2007, available at <http://www.hud.gov/news/release.cfm?content=pr07-030.cfm>.

<sup>8</sup> *Id.* (see HANO Developer Fact Sheet, available at <http://www.hud.gov/news/releases/pr07-030b.cfm>).