



COHRE

# Written Submission of the Center on Housing Rights and Evictions (COHRE) to the Committee on the Elimination of Racial Discrimination (CERD) at its 72<sup>nd</sup> Session (2008)

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## I. Introduction

1. The following report is respectfully submitted to the Committee on the Elimination of Racial Discrimination (CERD) in order to provide information for consideration in the context of the Committee's review of the periodic report of the Government of the United States.

2. This report addresses housing issues that rise to violations of Article 1 (prohibition of racial discrimination), Article 3 (prevent and end racial segregation) and Article 5(e)(iii) (the right to housing) of the International Convention on the Elimination of Racial Discrimination.

## II. Article 1

3. The definition of unlawful racial discrimination found in Article 1 provides a highly relevant, overarching principle in the United States context.

In this Convention, the term "racial 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.

4. In particular, the U.S. Supreme Court has held that unconstitutional racial discrimination is limited to intentional or purposeful discrimination. Article 1 of ICERD, however, also prohibits acts and omission that have a discriminatory effect or impact. As such, the disproportionate effect on racial minority of lack of access to affordable housing as



well as racial segregation should rise to violations of obligations to condemn and eliminate racial discrimination in the U.S.

### **III. Article 3**

5. Article 3 of ICERD requires that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

6. Policies and practices in the U.S. result in racial segregation, whether intentionally or effectively. COHRE incorporates and endorses by this reference the joint submission entitled *Residential Segregation and Housing Discrimination in the United States* submitted by the US Human Rights Network et al.

### **IV. Article 5(e)(iii)**

10. Article 5(e)(iii) read in conjunction with Article 2 requires the United States to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms” and “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notable in the enjoyment of ..., *inter alia*, economic, social and cultural rights, in particular... *inter alia*, the right to housing.”

11. In the United States, racial minorities disproportionately make up the ranks of the homeless and those whose lives are jeopardized or otherwise threatened due to inadequate housing. Indeed, the impact of Hurricane Katrina highlights the fact that racial minorities disproportionately live in the most vulnerable housing conditions and that such conditions threaten not only a life with dignity but life itself.

12. The response to Hurricane Katrina was wrought with problems, it must also be recognized that Hurricane Katrina is but one example of a consequence of the disproportionate exclusion of racial minorities from the enjoyment of social rights in the United States. The Committee should address the underlying issue of racism in the housing

sector with existed prior to Hurricane Katrina and which exacerbated the effect of that disaster.

13. Furthermore, there are still tens of thousands of persons internally displaced due to Hurricane Katrina, mostly as a result of substandard flood protection. The United States fails to accord these internally displaced persons the protections of the United Nations Guiding Principles on Internal Displacement nor the Government of the United States' own policy in IDPs as articulated in the USAID Assistance to Internally Displaced Persons Policy.

14. Also relevant, and ignored by the U.S., are the United Nations Principles on Housing and Property Restitution for Refugees and Other Displaced Persons (“Pinheiro Principles”).<sup>1</sup> These Principles guarantee not only the right to return, but the right to return to adequate housing, including habitability.

15. Inadequate housing conditions affect not only those in the Gulf region of the United States. Indeed, racial and ethnic minorities in all parts of the United States have been disproportionately affected by this lack of affordable housing and inadequate living conditions. They have also suffered discrimination in the housing sphere that precludes them from accessing markets for adequate housing — especially African Americans, Hispanics, and Native Americans.

16. Indeed, in 2000, the Government of the United States admitted to CERD that “While the scourge of officially sanctioned segregation has been eliminated, *de facto* segregation and persistent racial discrimination continue to exist. The forms of discriminatory practices have changed and adapted over time, but racial and ethnic discrimination continues to restrict and limit equal opportunity in the United States.”<sup>2</sup> In the same report, the Government also admitted to “continued segregation and discrimination in housing, rental and sales of homes, public accommodation and consumer goods. Even

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<sup>1</sup> Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

<sup>2</sup> Third Periodic Report of the Government of the United States to CERD, UN Doc. CERD/C/351/Add.1 at para. 18 (10 October 2000).

where civil rights laws prohibit segregation and discrimination in these areas, such practices continue.”<sup>3</sup>

17. The *de facto* discrimination admitted by the Government of the United States may not be deemed to be unconstitutional, given the narrow interpretation that is applied to the Constitution of the United States – namely that to be unconstitutional discrimination must be the result of a discriminatory intent or purpose. However, under the International Convention on the Elimination of Racial Discrimination, such discrimination does indeed violate the prohibition on discrimination, as the Convention definition of “discrimination” includes discriminatory effect.

18. According to a December, 2000 report of the US Conference of Mayors, the homeless population is about 50 percent African-American, 35 percent white, 12 percent Hispanic, 2 percent Native American and 1 percent Asian. In the United States, African Americans make up approximately 12 percent of the general populations and Native Americans make up less than 1 percent.

#### **IV. Conclusion and Recommended Concluding Observations**

19. The Committee is concerned about racial discrimination resulting in persistent disparities in the enjoyment of economic, social and cultural rights, in particular, the right to adequate housing. The Committee recommends that the State party take all appropriate measures, including special measures according to article 2, paragraph 2, of the Convention, to ensure the right of everyone, without discrimination as to race, colour, or national or ethnic origin, to the enjoyment of the rights contained in article 5 of the Convention.

20. The Committee is concerned that racial minorities disproportionately make up the ranks of homeless and those whose lives are jeopardized or otherwise threatened due to inadequate housing. The Committee recommends that the State party take all appropriate measures, including special measures according to article 2, paragraph 2, of the Convention,

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<sup>3</sup> *Id.* at para. 71(f)

to ensure the right of everyone, without discrimination as to race, colour, or national or ethnic origin, to the enjoyment of the rights contained in article 5 of the Convention.

21. The Committee is concerned that thousands of internally displaced persons in the context of Hurricane Katrina have yet to return home. The Committee urges the State party take all appropriate measures to expedite facilitation of the right to return and the right to restitution of adequate housing for persons displaced by Hurricane Katrina.