

***Hurricane Katrina and Violations of ICCPR  
Articles 6 and 26: A Response to the Third Periodic  
Report of the United States of America***

***Report Submitted to the 87<sup>th</sup> Session of the Human Rights Committee  
By the US Human Rights Network***

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## *Hurricane Katrina and Violations of ICCPR Articles 6 and 26: A Response to the Third Periodic Report of the United States of America<sup>1</sup>*

### **Introduction**

1. Hurricane Katrina ripped through the Gulf Coast area of the United States on August 29, 2005.<sup>2</sup> The resulting floods, deaths, displacement, and humanitarian crisis made this hurricane one of the most devastating the United States has ever experienced. The public watched on their televisions as death and destruction unfolded in New Orleans and its surrounding areas. The question asked by nearly every viewer during those days was, “if the media can get there, why can’t any assistance? Why are these people dying?” The fact was that assistance *could* reach the people of New Orleans. It simply didn’t.
2. Although death and destruction was inevitable given the magnitude of this hurricane, a great many deaths were a direct result of the State party’s failure to provide adequate evacuation plans, evacuation assistance, and humanitarian aid.<sup>3</sup> These failures constitute a violation to the State’s obligation under **article 6** of the International Covenant on Civil and Political Rights (the “Covenant”) to protect, and fulfill the right to life. Further, the failure of the State party to provide appropriate remedies to the victims of article 6 violations constitutes a separate violation under article 2, paragraph 3 of the Covenant.<sup>4</sup>
3. In addition to violations of the right to life, the State party also violated **article 26** by violating the principle of non-discrimination in the way it prepared for Hurricane Katrina. The State party’s evacuation plans discriminated on the basis of property ownership, which resulted in discrimination based on race.<sup>5</sup>

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<sup>1</sup> This response is to the following report: United States of America. *Third Periodic Reports of States Parties due in 2003*. U.N. Doc. No. CCPR/C/USA/3 28 November 2005 (hereinafter “US Report”).

<sup>2</sup> The Brookings Institute. *Hurricane Katrina Timeline*. Available at: <http://www.brookings.edu/fp/projects/homeland/katrinatimeline.pdf>.

<sup>3</sup> A bipartisan Congressional report found that the Bush Administration failed to take the needed initiative required for adequate governmental response to Hurricane Katrina. See Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina. *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. U.S. House of Representatives 102<sup>nd</sup> Session (February 2006) (hereinafter “Failure of Initiative”). For a copy of this report and all other sources cited in this Response, please see the enclosed CD-ROM.

<sup>4</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49 (hereinafter “Covenant”). See also United Nations Human Rights Committee. *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (hereinafter “HRC General Comment 31”): 26/05/2004; CCPR/C/21/Rev.1/Add.13 at paragraph 15.

<sup>5</sup> United Nations Human Rights Committee. *General Comment 18: Non-Discrimination*. 10/11/89. (hereinafter “HRC General Comment 18”)

## The Legal Framework

4. The legal basis for holding the United States responsible for deaths associated with Hurricane Katrina stems from article 6, paragraph 1, which reads: “*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*”<sup>6</sup> The right to life should be interpreted broadly.<sup>7</sup> Like other rights, the right to life does not entail the right to be *alive*, but instead entails an obligation on the part of the government to do everything possible to prevent arbitrary loss of life within its jurisdiction.<sup>8</sup> The obligation focuses on what measures a government takes to respect, protect, and fulfill the right to life. In all instances, the State must ensure that the right is carried out “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>9</sup>
5. The State has an obligation to **respect** the right to life by ensuring measures it undertakes to prevent arbitrary deprivation of life do not entail discrimination of any kind. A State party violates its obligation to respect the right to life when the measures it takes to prevent arbitrary deprivation of life are defined along discriminatory lines, or when those measures result in discriminatory impact.<sup>10</sup>
6. When a State enacts measures that threaten life along discriminatory lines, the State may also violate the obligation in **article 26** to ensure that all persons receive equal protection of the law without discrimination.<sup>11</sup> By disproportionately exposing one group of people rather than another to deprivation of life, the State party will violate the right to life. By disproportionately favoring one group over another in terms of receiving the benefit of government policy, the State party will violate article 26. Thus, in the case of natural disasters, evacuation plans may give rise to both article 6(1) and

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<sup>6</sup> Covenant, *supra* note 4 at article 6.

<sup>7</sup> United Nations Human Rights Committee. *General Comment No. 06: The right to life (art. 6)*. 30/04/82 (hereinafter “HRC General Comment 6”). Article 6 paragraph 1 reads: “The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.”

<sup>8</sup> *See, e.g.* Committee on Economic, Social and Cultural Rights. *General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12)*. Paragraph 8 of that Comment provides a similar analysis to the right to health: “The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”

<sup>9</sup> Covenant, *supra* note 4 at article 2(1).

<sup>10</sup> HRC General Comment 18, paragraph 9 urges State parties to report on discrimination in *fact* in addition to discrimination in *law* when reporting on article 26.

<sup>11</sup> Covenant at article 26(1).

article 26(1) if they both discriminate in their provisions and result in discriminatory exposure to arbitrary deprivation of life.

7. A State must take all possible measures to **protect** against loss of life in cases of natural disaster, in the same way it should enact those measures in cases of epidemics and infant mortality.<sup>12</sup> The United States has interpreted its obligation to protect the right to life broadly in accordance with the Committee's recommendations in General Comment 6. Thus, the U.S. interpretation of the right to life includes protecting the life of fetuses,<sup>13</sup> the terminally ill,<sup>14</sup> and victims of crime.<sup>15</sup> By including this broad array of instances in which life may be threatened in its understanding of its obligation to protect the right to life, the State party provides a broad interpretation of that obligation in its Report to the Committee.
8. In addition to taking measures to prevent arbitrary deprivation of life in instances where the State does not control threats to life, a State must **fulfill** the right to life. The United States has also interpreted this obligation broadly in accordance with the recommendations of the Committee in General Comment 6. Thus, the US Report to the Committee includes under its evaluation of article 6 those laws that provide assistance and compensation to victims.<sup>16</sup> By interpreting article 6 to include provision of compensation and assistance for victims of crime, the State party demonstrates both its broad interpretation of article 6 requirements and its interpretation that article 6 violations require the State to implement appropriate remedies for victims under article 2, paragraph 3 of the Covenant.
9. The broad interpretation applied to article 6 by the State party applies in the context of natural disasters. This is true regardless of whether the State party declares a state of national emergency, because article 6 is a non-derogable right according to article 4, paragraph 2 of the Covenant.<sup>17</sup> Thus, in the context of a natural disaster the government has a broad set of obligations including but not limited to (1) taking non-discriminatory measures to prevent loss of life from the disaster, (2) taking all possible measures to minimize loss of life in the aftermath of the disaster, and (3) providing assistance and compensation for victims of Covenant violations that arise in conjunction with the disaster.

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<sup>12</sup> HRC General Comment 6, *supra* note 7 at paragraph 5.

<sup>13</sup> US Report, *supra* note 1 at paragraphs 97 and 98.

<sup>14</sup> *Id.* at paragraphs 99 – 101.

<sup>15</sup> *Id.* at paragraphs 115 – 119.

<sup>16</sup> *Id.* at paragraph 115, 120-125; 42 U.S.C. 10601 et. seq.

<sup>17</sup> Covenant, *supra* note 4 at art. 4.

**The State party failed to respect the right to life and the principle of non-discrimination by creating an evacuation plan that was discriminatory in nature**

10. As discussed below, the State party failed to **respect** the right to life because its hurricane evacuation plan discriminated on the basis of property by only providing a policy for those residents who owned personal vehicles.<sup>18</sup> In Orleans Parish, discriminating on the basis of ownership of private vehicles equated to discrimination on the basis of race, since African Americans were over twice as likely to be without a personal vehicle than whites.<sup>19</sup>
11. Americans have long been aware of the threat faced by the low-lying city of New Orleans from large floods.<sup>20</sup> The City faces particular dangers because it lies below sea level and because it is protected by levees that are not designed to withstand large storms.<sup>21</sup> Because of these threats, the State party had an evacuation plan for many of the people living in the New Orleans metropolitan region, and in the forty-eight hours leading up to the hurricane, it successfully executed that plan so that over 1.2 million residents who owned personal vehicles were able to evacuate from the region.<sup>22</sup> The scale of the evacuation plan reflects the State party's concern about the potential for life-threatening damage in the event of a Category 3 or above storm, which officials knew would be likely to result in a levee breach that would swamp the city of New Orleans.<sup>23</sup>
12. Nonetheless, the State party's evacuation plan made a clear distinction on the basis of property ownership by only providing for the evacuation of those residents who owned personal vehicles.<sup>24</sup> Those who lacked personal transportation – approximately 19% of the City's residents – were not provided for in the evacuation plan constructed by the State of Louisiana and associated federal agencies.<sup>25</sup> The message to the most vulnerable New Orleans residents from those responsible for evacuating residents was so clear that local newspapers told vehicle-less residents “in the event of a major hurricane, you're on your

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<sup>18</sup> State of Louisiana Emergency Operations Plan Supplement 1A: Southeast Louisiana Hurricane Evacuation and Sheltering Plan (revised January 2000) (hereinafter “Louisiana Hurricane Plan”) at II-2, paragraph 5. Available at: <http://www.letxa.com/katrina/EOPSupplement1a.pdf>.

<sup>19</sup> U.S. Census Bureau. Census 2000 Summary File 3 (SF 3). Tables HCT033A001, HCT033A002, HCT033A003, HCT033B001, HCT033B002, HCT033B003.

<sup>20</sup> For example, Mark Twain noted in 1883 that, “ten thousand River Commissions, with the mines of the world at their back, cannot ... save a shore which [the Mississippi River] has sentenced”. Mark Twain, LIFE ON THE MISSISSIPPI at 302 (1883). Although Twain was referring to the New Orleans levees being built on the Mississippi side of the city, his observation nonetheless illustrates the awareness many Americans have had that New Orleans is particularly susceptible to severe flooding.

<sup>21</sup> See e.g. Louisiana Hurricane Plan at II-1.

<sup>22</sup> Failure of Initiative, *supra* note 3 at 82.

<sup>23</sup> *Id.* at 81.

<sup>24</sup> Louisiana Hurricane Plan at II-2, paragraph 5.

<sup>25</sup> *Id.*

- own.”<sup>26</sup> Recognizing the threat, the State party distributed DVDs to those residents without transportation, urging them to find a nearby charity in the event of a large storm.<sup>27</sup>
13. Those persons who lacked personal transportation were disproportionately African American. According to the 2000 U.S. Census, 39,340 (35%) of African American households did not have a personal vehicle, while only 10,286 (15%) of white households in New Orleans were without a vehicle.<sup>28</sup> African Americans in New Orleans before Hurricane Katrina were approximately 228% more likely to be without a personal vehicle than whites.<sup>29</sup> Therefore, an evacuation plan that discriminated on the basis of personal vehicle ownership disproportionately impacted African Americans. Because the State party’s plans entailed discriminatory impact that constituted a direct threat to the right to life, that plan violated the State’s obligation to **respect** the right to life under article 6(1) of the Covenant. It also violated article 2(1) because the State party failed to apply the rights of the Covenant without discrimination.<sup>30</sup>
  14. Since the evacuation plans created discrimination in fact, the State party also violated **article 26** because it created a policy that failed to provide equal protection without discrimination. African Americans were significantly more likely than others to be affected in some way by the hurricane because of the evacuation plan in place. The fact that African Americans were significantly less likely to own personal vehicles than whites is directly related to the systemic poverty that faces African Americans throughout the United States.<sup>31</sup> In the case of Hurricane Katrina, 73% of the people affected in Orleans Parish were African American.<sup>32</sup> According to the 2000 Census, African Americans made up 67% of the population of New Orleans.<sup>33</sup>
  15. A Congressional investigation into Hurricane Katrina concluded that the failure to fully evacuate the New Orleans area was directly responsible for hundreds of deaths and severe suffering for thousands of people.<sup>34</sup> The failure to provide evacuation for such a large portion of the African American population of New

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<sup>26</sup> Bruce Nolan. *In storm, N.O. wants no one left behind: Number of people without cars makes evacuation difficult*. Times-Picayune. 24 July 2005. Available at: <http://www.nola.com/search/index.ssf?/base/news-10/1122184560198030.xml?nola>.

<sup>27</sup> *Id.*

<sup>28</sup> U.S. Census Bureau. Census 2000 Summary File 3 (SF 3). Tables HCT033A001, HCT033A002, HCT033A003, HCT033B001, HCT033B002, HCT033B003.

<sup>29</sup> *Id.*

<sup>30</sup> Covenant, article 2(1).

<sup>31</sup> Human Rights Committee. *Consideration of Reports Submitted by States Parties under article 40 of the Covenant: Comments of the Human Rights Committee, United States of America* (1995). CCPR/C/79/Add.50; A/50/40, paragraphs 266-304 at 270.

<sup>32</sup> Congressional Research Service, Library of Congress. *Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas*. CRS Report for Congress, 4 November 2005. Order Code RL33141 (hereinafter “CRS Report”).

<sup>33</sup> U.S. Census Bureau, *Statistics for New Orleans* (2000).

<sup>34</sup> Failure of Initiative, *supra* note 3 at 114.

Orleans was a violation of the State party's obligation to protect the right to life in accordance with article 6 of the Covenant. Since the State party was aware of the risk to life from a large hurricane, and since it was aware of the significant portion of the population that would not be able to evacuate in the event of that hurricane, the State party had an obligation under the Covenant to protect the lives of those in New Orleans by providing for a means of evacuation in the event of a large hurricane.

**The State party failed to protect the right to life by failing to provide effective levees to protect residents from a known threat of flood and by failing to evacuate residents whose lives were known to be in danger following the breach of levees**

16. The State's obligation to protect the right to life in New Orleans includes protecting the city from flooding to the extent technologically possible and having an evacuation plan for those residents who would be threatened by flooding should the protections fail.
17. After Hurricane Katrina passed over New Orleans, the country heaved a premature sigh of relief that the city had not been destroyed.<sup>35</sup> Soon, however, it became clear that the city would not escape a storm of this magnitude: the levees meant to protect New Orleans were not designed to withstand such a large in poor condition as a direct result of the State party's failure to provide funds for their upkeep, so that the heavy rain and wind soon overwhelmed the city's protections and swamped the city.<sup>36</sup> There were three reported levee breaches by August 30<sup>th</sup>, totaling approximately 233 meters (700 feet) of area through which water flowed into the city. About 80% of the city of New Orleans flooded because of the levee breaches.<sup>37</sup>
18. The State party failed to protect the right to life for people living in New Orleans because it failed to ensure the levees protecting the city were in good repair. According to a May 2006 report by a team of engineers who investigated the New Orleans levee system, there were two technical reasons behind the massive levee failures: first, that the final stage of the levee system had not yet been constructed because funds to build it had been denied by the federal government, and second, that the State agency responsible for constructing the levee system used "dredge spoil" (i.e. materials highly susceptible to erosion, including lightweight sand) to

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<sup>35</sup> John Riley. *Hurricane Katrina Path of Destruction; Spared from Catastrophe*. Newsday. 30 August 2005.

<sup>36</sup> Joby Warrick and Michael Grunwald, *Investigators Link Levee Failures to Design Flaws: Three Teams of Engineers Find Weakened Soil, Navigation Canal Contributed to La. Collapses*. Washington Post. October 24, 2005; A01.

<sup>37</sup> Louisiana State University Geographic Information Systems Information Clearinghouse: CADGIS Research Lab, Louisiana State University, Baton Rouge, LA. 2005/2006. Available with permission at: <http://www.katrina.lsu.edu>.

construct the levee system.<sup>38</sup> Both of the reasons for the levee failure are directly related to the State party's failure to keep the flood barriers in good repair.

19. New Orleans did not just flood; it filled. While the levees allowed water into the city in some parts, it restricted water flow in others, producing a "bowl" effect that created massive damage throughout the region.<sup>39</sup> For the thousands of people still in New Orleans, rising floodwaters constituted a direct threat to life. Floodwaters drowned people in their attics, trapped people on rooftops without water or food, and washed away houses, boats, and vehicles. The floodwater was a hazard in itself, and residents trying to reach safety had to swim through toxins, sewage, dead bodies, and other dangerous elements.<sup>40</sup>
20. Anticipating further flooding after the initial levee breach, New Orleans Mayor Ray Nagin spoke on Tuesday, August 30<sup>th</sup> to urge the few residents left in dry areas of the city to evacuate as soon as possible. Another surge of water would swamp those areas that had remained dry, he warned, because of failed attempts to fill a 200-yard breach in the levee with sandbags dropped from helicopters.<sup>41</sup>
21. Those residents trapped in nursing homes and hospitals were in particular danger. Among countless stories of needless deaths comes one story from the President of Jefferson Parish.<sup>42</sup> Mr. Aaron Broussard cited the many promises from federal officials that assistance would soon arrive in the flooded city and described one of the many deaths that occurred because of the failure of the United States to enact such promises:

The guy who runs this building I'm in, emergency management, he's responsible for everything. His mother was trapped in St. Bernard nursing home and every day she called him and said, 'Are you coming, son? Is

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<sup>38</sup> Independent Levee Investigation Team, *Investigation of the Performance of the New Orleans Flood Protection Systems in Hurricane Katrina on August 29, 2005 (Draft Report)*. Executive Summary at xviii-xvii. Available at: [http://www.ce.berkeley.edu/~new\\_orleans/](http://www.ce.berkeley.edu/~new_orleans/).

<sup>39</sup> Dave Walker. *Radio Catches the Horror, Exhaustion*. The Times-Picayune, 31 August 2005. Available at [http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola\\_Times-Picayune/archives/2005\\_08\\_31.html](http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_08_31.html).

<sup>40</sup> *Id.* For example, clusters of biting red ants formed "ant balls" to avoid drowning which quickly became known in New Orleans as something to look out for in the water. Doug MacCash. *Ant balls not an urban myth*. The Times-Picayune, 31 August 2005. Available at [http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola\\_Times-Picayune/archives/2005\\_08\\_31.html](http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_08_31.html).

<sup>41</sup> Brian Thevenot, Gordon Russell, Keith Spera and Doug MacCash. *City a Woeful Scene*. The Times-Picayune, 30 August 2005. Available at [http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola\\_Times-Picayune/archives/2005\\_08\\_30.html](http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_08_30.html). The Mayor notified residents later on August 30<sup>th</sup> that efforts to repair the breach in the 17<sup>th</sup> Street canal levee had failed and that pumps would soon fail so that flooding would be inevitable. *Water Rising at 17<sup>th</sup> Street canal*. The Times-Picayune. 30 August 2005.

<sup>42</sup> In Louisiana, the administrative divisions of government are termed "parish" instead of "county" as is customary in other states in the United States. The President of the Parish is the elected representative of that administrative unit. The Mayor of the City of New Orleans is also considered the President of Orleans Parish. See Appendix for a chart of relevant U.S. Government responsibilities and agencies.



somebody coming?’ And he said, ‘Yeah, Mama, somebody’s coming to get you. Somebody’s coming to get you on Tuesday. Somebody’s coming to get you on Wednesday. Somebody’s coming to get you on Thursday. Somebody’s coming to get you on Friday.’ And she drowned Friday night. She drowned Friday night.<sup>43</sup>

22. The State party did rescue some of the thousands of people trapped in nursing homes and hospitals, on rooftops or newly created islands.<sup>44</sup> However, it failed to evacuate many more who were trapped in hospitals, nursing homes, and inadequate shelters.
23. Since the city had so many people trapped in the rising floodwaters, immediate rescue efforts focused on airlifting those who were not able to previously evacuate rather than those who were in rapidly deteriorating shelters.<sup>45</sup> Indeed, many of the residents who were “rescued” from their rooftops or from floodwaters were deposited in other areas of New Orleans (such as the Superdome or Convention Center) where their lives and health were still very much at risk from inhuman conditions and lack of food or water.<sup>46</sup> The one official shelter in the city – the Superdome – housed an estimated 60,000 people<sup>47</sup> with food supplies that were only sufficient for 15,000 people per day.<sup>48</sup> Conditions in the Superdome were better than those in other ad-hoc shelters around the city, but even they were dismal. According to the Congressional committee that investigated Katrina, conditions included shortages of food and water, open sewage, extreme overcrowding, lack of personal safety, and growing risk of disease contamination due to the failed generator and unhealthy conditions.<sup>49</sup> These conditions were a threat to the lives of those seeking shelter in the Superdome, and similar or worse conditions in other ad-hoc shelter areas also threatened the lives of evacuees from flooded areas of New Orleans.
24. Even before Hurricane Katrina hit, the government anticipated the insufficiency of the Superdome as the only shelter space available for New Orleans.

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<sup>43</sup> Transcript for September 4, 2005. Meet the Press. NBC News. Michael Chertoff, Marc Morial, Mike Tidwell, Mark Fischetti, David Wessel, Haley Barbour & Aaron Broussard. Available at: <http://www.msnbc.msn.com/id/9179790/> (hereinafter “Meet the Press Transcript”).

<sup>44</sup> Failure of Initiative, *supra* note 3 at 116.

<sup>45</sup> *Id.* at 118.

<sup>46</sup> *Id.*

<sup>47</sup> *Hotels tell Guests to go to Dome Shelter*. The Times-Picayune, 30 August 2005. Available at [http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola\\_Times-Picayune/archives/2005\\_08\\_30.html](http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_08_30.html).

<sup>48</sup> *26,000 shelter at Superdome*, The Times-Picayune, 28 August 2005. Available at: [http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola\\_Times-Picayune/archives/2005\\_08\\_28.html#074657](http://www.nola.com/newslogs/breakingtp/index.ssf?/mtlogs/nola_Times-Picayune/archives/2005_08_28.html#074657).

<sup>49</sup> Failure of Initiative, *supra* note 3. Appendix 8. *Supplementary Report to the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. Rep. Cynthia A. McKinney (hereinafter “McKinney Report”) at 62: “The conditions at the Convention Center, the Superdome, the I-10 / Causeway Cloverleaf resembled concentration camps—days of internment without adequate food, water or sanitation, and a growing sense of hopelessness.”

Governmental experts reported that residents who fled to the Superdome would need to be evacuated because it would be insufficient as a shelter space.<sup>50</sup> The Federal Emergency Management Agency also warned that the “disaster teams” that would need to carry out such an evacuation were not in place and therefore would be unable to do so.<sup>51</sup>

**The State party failed to fulfill the right to life by failing to provide adequate humanitarian relief in the form of food, drinking water, and medical services during the week of August 29 – September 3, 2005.**

25. In addition to failing to evacuate residents of New Orleans before Katrina and after the city flooded, the State party also failed to fulfill the right to life by failing to provide adequate food, water, and medical services to those residents left in the city. The failure to provide such humanitarian relief resulted from (1) an inadequate supply of relief based on failure to adequately plan for the disaster and (2) the fact that the U.S. turned away aid that was trying to reach the affected area.

*Inadequate supply of relief*

26. The lack of available food, drinkable water, and medical services resulted in numerous deaths following Hurricane Katrina. Deaths at shelter sites or because of infection from toxic floodwater<sup>52</sup> were the direct result of the failure to provide adequate food, water, and medical services to the evacuees.

27. As the only official shelter site in New Orleans Parish, the Superdome was supplied with emergency provisions of food and water.<sup>53</sup> However, these provisions were adequate for approximately 15,000 people per day, while there were between 26,000 and 60,000 people at the Superdome for a period of at least five days.<sup>54</sup> In addition to the lack of food and water, there was also a severe lack of medical personnel available to assist with the elderly and sick persons.<sup>55</sup> At least six deaths resulted from the conditions within the Superdome.<sup>56</sup>

28. The Superdome was only one of the many places in New Orleans where people gathered to wait for evacuation and were in need of food, water, and medical services. Other places included the Convention Center, the Interstate 10 Causeway junction bridge, the Industrial Canal, Broad Street, and Mississippi River levees, and various “high ground” locations.<sup>57</sup> Since these locations were

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<sup>50</sup> Margaret Ebrahim and John Solomon, Associated Press. *Tape: Bush, Chertoff Warned Before Katrina*. 1 March 2006. Available at: [http://news.yahoo.com/s/ap/20060301/ap\\_on\\_go\\_pr\\_wh/katrina\\_video](http://news.yahoo.com/s/ap/20060301/ap_on_go_pr_wh/katrina_video).

<sup>51</sup> *Id.*

<sup>52</sup> Failure of Initiative, *supra* note 3 at 74.

<sup>53</sup> *Id.*

<sup>54</sup> 26,000 shelter at the Superdome, *supra* note 48; Hotels tell Guests to go to Dome Shelter, *supra* note 37;

<sup>55</sup> Jan Moller. *Special Needs Patients to be Transferred to Baton Rouge*. Times-Picayune, 30 August 2005.

<sup>56</sup> Failure of Initiative, *supra* note 3 at 248.

<sup>57</sup> *Id.* at 118.

not pre-determined places of shelter, they were not equipped with food and water before the storm.<sup>58</sup>

29. Those areas that were on high ground had no shelter from the intense heat of the sun. One of those high-ground areas, known as the “Cloverleaf”, had the worst conditions with 6,000 to 7,000 evacuees and no food, water, or security.<sup>59</sup> People scattered around New Orleans in ad-hoc shelter sites like the Convention Center or the interstate causeway junction were not provided with medical services.<sup>60</sup> Although the National Guard attempted to deliver some emergency provision to people scattered around the city, the deliveries were ad-hoc and frequently failed to reach their intended recipients.<sup>61</sup>
30. Despite predictions from various sources of extensive flooding, there were no preparations made to supply additional shelters with the resources they would need to house residents and protect those residents from substantial threats to the lives of those camped out in those locations.<sup>62</sup>
31. Despite a few deliveries of needed food and water to areas of high ground,<sup>63</sup> the vast majority of residents were left for up to five days without life sustaining resources because of failure of the government to act.<sup>64</sup> The lack of vital aid contributed to the risk of arbitrary deprivation of life that already existed because of environmental hazards. Given the dangerous qualities of the surrounding floodwater, the risk of death for those remaining in New Orleans was high. The failure to provide those persons with needed medical services, food, and water made the risks significantly higher.

*Turning away aid trying to reach the affected area*

32. The State party not only failed to deliver adequate humanitarian aid to its citizens in flooded New Orleans; it also took actions to prevent such aid from reaching

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<sup>58</sup> *Id.*

<sup>59</sup> Failure of Initiative, *supra* note 3 at p. 119. Although the Cloverleaf was initially set up for medical triage and had some food for those requiring medical assistance, the provisions soon proved inadequate for the large numbers of people who arrived there by helicopter, boat, or other means. *Id.*

<sup>60</sup> *Id.* at 280. The General Manager of the Convention Center, Warren Reuther, estimated the number of evacuees at the Convention Center to be between 18,000 and 25,000, and perhaps as many as 30,000. *Id.*

<sup>61</sup> Doug MacCash. *Along Esplande, pleas for Help*. Times-Picayune, 31 August 2005. The article describes a situation where one woman was given water by the National Guard: “The Black Hawk chopper dropped bottles water in front of one woman’s home. She couldn’t get to it because it fell in the floodwaters, however, and she couldn’t enter the water because of her chemotherapy.”

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 139

<sup>64</sup> *Id.* at 183. In addition to failure to deliver food, water, and medical services, the United States failed to move equipment needed in the effort, such as the fire and rescue equipment placed “strategically” throughout the country in case of catastrophe. Five days after Katrina, that equipment still had not been pressed into service. See Mike M. Ahlers, CNN. *Firefighting Gear Stockpile Unused*. 3 Sept. 2005. Available at: <http://edition.cnn.com/2005/WEATHER/09/03/katrina.unusedgear/index.html>.

those citizens.<sup>65</sup> Reports were widespread of aid workers being turned away from the city as they attempted to reach those evacuees in need of life support services. For example, according to the President of Jefferson Parish, federal officials turned away trucks bringing food and water donated from Wal-Mart.<sup>66</sup>

33. Turning away humanitarian aid workers who wanted to reach the hurricane victims violated article 6 obligations to protect the right to life because individuals died due to lack of adequate supplies. It is a basic principle of international humanitarian law that relief consignments be permitted to access victims in need of humanitarian aid.<sup>67</sup> In times of natural disasters, if a government is unable or unwilling to provide aid to those impacted by the disaster, then its obligation to protect the right to life requires that it accept humanitarian assistance offered by outside parties.<sup>68</sup> Therefore, prohibiting aid workers from reaching the victims of Hurricane Katrina constituted a violation of the right to life under the ICCPR.

## Recommendations

34. On a positive note, the United States Congress has conducted a thorough investigation into the government's responsibility for the deaths that occurred in conjunction with Hurricane Katrina. That report is welcomed as a domestic investigation into governmental responsibility, and as a first step to fulfilling the State party's obligations under article 2 to provide an adequate remedy for violations under the Covenant.
35. In the case of violations of article 6 and 26, the State party should provide appropriate compensation to the victims.<sup>69</sup> The State has not yet fulfilled its obligation to provide a remedy for the victims of article 6 and 26 violations. The State party should ensure that those persons whose rights were violated have an effective remedy, and it should ensure that the competent authorities enforce that remedy in accordance with its obligations under article 2, paragraph 3 of the Covenant.
36. In addition to an appropriate remedy for families of the victims, the State should ensure that future evacuation plans for the New Orleans area include a reliable

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<sup>65</sup> Meet the Press, *supra* note 43.

<sup>66</sup> *Id.*

<sup>67</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War. article 61: "All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories."

<sup>68</sup> *Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin, 27 February to 5 March 2005* at 13.

<sup>69</sup> Paragraph 16 of HRC General Comment 31, *supra* note 4 calls for a general interpretation of article 2, paragraph 3 to include appropriate compensation. That paragraph further interprets the article 2 obligation to include "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."

means of evacuation for those residents who do not have their own vehicles. Although the City of New Orleans has a 2006 evacuation plan that specifically addresses the needs of residents who do not have personal vehicles,<sup>70</sup> that plan requires the city bus system, and that system is currently facing deep cuts in service and personnel because of a decrease in federal funding.<sup>71</sup> The State party should ensure that all measures taken to protect residents from future hurricanes are fully funded and in accordance with human rights standards.

37. In addition to ensuring a non-discriminatory evacuation plan, the State party should ensure that the levees protecting New Orleans are rebuilt in a technologically appropriate way so that they will provide as much protection as possible to the people of New Orleans.
38. Finally, the State party should ensure that those persons who remain displaced as a result of Hurricane Katrina are provided with the full range of their rights under the Covenant.

## Conclusion

39. The failure to evacuate residents before Hurricane Katrina made landfall did not result from impossibility or a lack of awareness about the result of a large hurricane in the region. Rather, according to a Congressional investigation, the failure came from inadequate preparations, inadequate communication, and decisions that resulted in preventable death.<sup>72</sup> In other words, many of the people who died did so because the government failed to take all possible measures to protect against the arbitrary loss of life, in direct violation of its obligations under article 6.
40. The Third Periodic Report by States Parties submitted by the United States fails to take into account violations of the right to life and violations of the principle of non-discrimination in the context of natural disasters. In Louisiana alone, the death toll from Hurricane Katrina is 1,296.<sup>73</sup> Given the storm's magnitude, it was perhaps inevitable that some people would die. However, the residents of New Orleans should not have died because they did not own vehicles or because they were African American, nor should they have died because their government failed to deliver appropriate emergency provisions and medical aid. The government's obligation to protect the right to life is all the more important in the context of a natural disaster, when lives are under direct threat. Given recent

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<sup>70</sup> City of New Orleans. *The New Orleans City Assisted Evacuation Plan*. May 2006. Available at: <http://www.cityofno.com/Portals/Portal46/portal.aspx?portal=46&tabid=38>.

<sup>71</sup> Due to federal budget cuts, the New Orleans city bus system will be making drastic cuts in its work force. The bus system is one of the primary means for evacuating residents without vehicles in the City's plan. Gordon Russell, *RTA prepares for big cuts in June: Routes would vanish; layoffs would ensue*. The Times-Picayune, 27 May 2006.

<sup>72</sup> *Id.* at 4.

<sup>73</sup> Louisiana Department of Health and Hospitals, *Katrina Missing: Reports of Death and Deceased*. 12 May 2006. Available at: <http://www.dhh.louisiana.gov/offices/page.asp?ID=192&Detail=5248>.

predictions that the upcoming hurricane season will also involve large storms in the Gulf region,<sup>74</sup> the need for the United States to fulfill its obligations under the Covenant is all the more pressing.

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<sup>74</sup> Reuters-MSNBC. *3 Major Hurricanes to hit US this year: AccuWeather*. YahooNews. Available at: [http://news.yahoo.com/s/nm/20060515/sc\\_nm/hurricanes\\_forecast\\_accuweather\\_dc;\\_ylt=AmDNJPTaPL2iyITkb\\_zuKIOs0NUE;\\_ylu=X3oDMTA3ODdxHhBhBHNIYwM5NjQ-](http://news.yahoo.com/s/nm/20060515/sc_nm/hurricanes_forecast_accuweather_dc;_ylt=AmDNJPTaPL2iyITkb_zuKIOs0NUE;_ylu=X3oDMTA3ODdxHhBhBHNIYwM5NjQ-).

**APPENDIX: U.S. GOVERNMENT STRUCTURE**  
*AS RELEVANT TO HURRICANE KATRINA*

