

## **UN HABITAT Submission for the Universal Periodic Review<sup>1</sup> United States of America – Ninth Session, November 2010**

### **I. Background and Framework**

#### A. Scope of international obligations (international human rights legal obligations etc.)

- The U.S. has signed, but not ratified, the **International Covenant on Economic, Social, and Cultural Rights** – the most relevant international human rights legislation relating to housing rights. The historical justification of the U.S. government for avoiding granting socioeconomic guarantees with non-rights status is that they are aspirations, not justiciable rights. Though the current Presidential administration has shown a slight shift from this position – for example, by publicly acknowledging that affordable housing is a basic need – it has yet to demonstrate a concrete commitment to this principle by championing the crucial ratification of the ICESCR.<sup>2</sup>
- **Universal Declaration of Human Rights (UDHR)** (voted as a member of the General Assembly to adopt the declaration on 10 December 1948): Article 25(1) states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including...housing”.
- **International Covenant on Civil and Political Rights (ICCPR)** (signed 5 Oct 1977; ratified 8 Jun 1992; U.S. has not ratified the Optional Protocol that allows individual complaints against its violation). Relevant sections include: Art. 2: right to non-discrimination; Art. 6: right to life; Art. 26: rights of minorities; Art. 17: right to protection from arbitrary or unlawful interference with one's home.
- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** (signed 28 Sep 1966; ratified 21 Oct 1994): Prohibits actions with respect to housing that have the effect of discriminating as to race, colour or national origin.

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<sup>1</sup> *This submission is based solely on a research initiative under the UN Housing Rights Programme, implemented by UN-HABITAT and OHCHR. It is not drawn from country-level activities. UN-HABITAT does not have projects in the USA. In 2009, UN-HABITAT supported a fact-finding mission by the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT (AGFE), to document possible forced evictions in New Orleans in the post-Katrina reconstruction. UN-HABITAT also collaborates with the Special Rapporteur on the Right to Adequate Housing, who recently conducted a visit to the U.S. to assess the realization of the right to adequate housing in the country. As part of ongoing relations between relevant U.S. executive branch and UN-HABITAT (facilitated through its office in Washington, D.C.), the main World Habitat Day celebrations in 2009 were jointly organized in Washington, D.C.*

<sup>2</sup> “...there are some needs that are simple...[including] affordable housing.” President Barack Obama, Remarks to the U.S. Conference of Mayors (21 January 2010).

- **Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)** (signed 18 Apr 1988; ratified 21 Oct 1994): Article 16 states: Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- **International Convention Relating to the Status of Refugees Protocol** (on 1 Nov 1968 acceded to the Protocol, which incorporates Arts. 2-34 of the Convention): Article 21 states “As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

#### B. Constitutional and legislative framework (charters, laws and regulations etc.)

*Note that the report by the Special Rapporteur on adequate housing, “Section II. Institutional and legal framework”, gives a more extensive overview of the history of U.S. housing programmes and federal law.*

- The U.S. Constitution’s 5th and 14th Amendments provide federal due process rights, which helps to ensure security of tenure by requiring state and local eviction laws to protect these rights.
- The Fifth Amendment of the U.S. Constitution serves as a limitation upon the exercise of governmental acquisition of land through the exercise of eminent domain by providing that no person shall be deprived of property "without due process of law, nor shall private property be taken for public use, without just compensation".
- Under the Due Process Clause found in the Fourteenth Amendment of the U.S. Constitution tenants have a due process right to a pre-deprivation process before eviction, even if state law provides post-deprivation remedies. Thus, as a general rule, an eviction must be preceded by notice and an opportunity to be heard. Furthermore, for a court to enforce an unlawful-detainer action (a legal proceeding to evict a tenant, usually when a tenant remains after a lease term, in which the landlord obtains a “judgment for possession”), the landlord must show that he or she properly served the tenant with notice and followed other procedural requirements provided by local law.
- The 1934 National Housing Act and 1937 Wagner-Steagall Housing Act created a dual federal housing programme that combined public rental housing and the availability of subsidies in the form of credit for home ownership. The National Housing Act of 1949 was a sweeping federal law that widened housing programmes and included a goal of “the implementation as soon as feasible of a decent home and suitable living environment for every American family.” The Housing Acts of 1968, 1974, and 1990 reiterated this goal, however, the provision of public housing has never been an “entitlement” of the poor under federal regulations and U.S. case law.

- The major federal law prohibiting discrimination in housing is the Fair Housing Act of 1968, amended 1988 (42 U.S.C. 3601 et seq.), which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, colour, national origin, religion, sex, familial status (including children under 18), and handicap (disability). State and local laws also bar discrimination on the basis of other personal characteristics, including source of income and more recently, sexual orientation.
- The Civil Rights Act of 1871 (42 U.S.C. § 1983) also provides a cause of action to persons whose rights under the Federal Constitution or laws are infringed under “color of state law”. The “color of state law” concept is similar to a constitutional notion of "state action", which identifies situations in which the government’s actions are so intermingled with a private actor’s that they are considered to be complicit in the activity.
- The American with Disabilities Act of 1990, amended 2008 (42 U.S.C. §§ 12101 et seq.) is the landmark disability rights legislation that contains construction and design requirements regarding accessibility in multi-family housing complexes. It also requires landlords to make necessary accommodations to housing provided to residents with disabilities.
- Preservation, Enhancement and Transformation of Rental Assistance (PETRA) Act, currently under Congressional Review, if signed into law will streamline HUD’s rental assistance programs in order to enhance housing choice, link housing investments to surrounding neighbourhoods, and preserve HUD-funded public and assisted housing.

C. Institutional and human rights structure (institutions, bodies and committees etc.)

- Individuals may assert their housing rights through the state and federal civil court system and appeals process. Actions against illegal discrimination may be filed through a complaint process administered by the U.S. Dept. of Housing and Urban Development (HUD), as well as through the state and federal court systems. The U.S. Department of Justice Civil Rights Division occasionally prosecutes civil rights violations in the access or provision of housing. The U.S. Dept. of Health and Human Services is the primary federal agency that addresses issues of homelessness; however, HUD also provides support and access mechanisms to affordable housing for low-income residents.

D. Policy measures (national action plans, strategies and human rights education etc.)

- The **U.S. Dept. of Housing and Urban Development** runs a number of programmes aimed at providing affordable and accessible housing to vulnerable and disadvantaged communities, including: Housing Choice Vouchers; Public Housing; Homeless programmes; Continuum of Care (provides supportive housing for vulnerable populations such as homeless and disabled individuals); Housing Opportunities for Persons with AIDS; programmes for Seniors and the Disabled; and Community Development Block Grants.
- Recently, the **Helping Families Save Their Homes Act of 2009** (also known as Protecting Tenants at Foreclosure Act of 2009) became law on 20 May 2009. It aims to prevent mortgage foreclosures and enhance mortgage credit

availability and contains provisions protecting tenants living in foreclosed buildings, including a nationwide 90 day pre-eviction notice requirement for tenants in foreclosed properties.

- The **Human Rights Enforcement Act of 2009** became law on 22 December 2009. It established a section within the U.S. Department of Justice Criminal Division to enforce human rights laws, to make technical and conforming amendments to criminal and immigration laws pertaining to human rights violations, and for other purposes; however, the Act limits its functions to “serious human rights offenses”, which currently do not include violations of housing rights.
- In June 2010, the U.S. Interagency Council on Homelessness (an independent agency composed of 19 Cabinet Secretaries and agency heads who deal with homelessness) issued “Opening Doors: Federal Strategic Plan to Prevent and End Homelessness,” a plan to work with Congress, State and Local legislatures, mayors, business and philanthropic leaders, etc. The plan builds upon the Homeless Prevention and Re-Housing Program, funded through the Federal Stimulus Package, that, as of May 2010 has served more than 350,000 through prevention services.
- **The Choice Neighborhoods Initiative**, a signature programme of Secretary Donovan, will build upon the 18-year-old HOPE VI program that tore down 100,000 units of the worst public housing projects in the U.S. Though HOPE VI lowered crime rates and increased property values in the worst neighbourhoods during the Clinton Administration, it was downgraded during the Bush Administration. The successor program, Choice Neighborhoods, will link housing improvements in poverty neighbourhoods with appropriate services, schools, transportation through closer coordination among HUD, the Departments of Education, HHS, Transportation, and EPA.

## **II. Promotion and protection of human rights on the ground**

### A. Cooperation with international human rights mechanisms

- In its 2008 Concluding Observations on the U.S., the Committee on the Elimination of Racial Discrimination expressed deep concern in its concluding observations that minority groups are disproportionately concentrated in poor areas that are characterized by substandard housing conditions. The U.S. Government’s 2009 response to the Committee’s recommendation outlined the ongoing efforts of and financial assistance provided by the Federal Emergency Management Agency (FEMA) (\$7.8 billion) and the U.S. Dept. of Housing and Urban Development (HUD) (\$20 billion) to address the housing needs of Gulf Coast residents since Hurricanes Katrina, Rite, and Wilma through cooperation with the Louisiana, Mississippi and Alabama State governments.<sup>3</sup>
- In its 2006 Concluding Observations in response the Report Submitted by the United States, the UN Human Rights Committee expressed concern about the treatment of the poor and African American communities in the post-Katrina reconstruction efforts.
- Other international human rights representatives who have expressed concern for or criticized the impact of redevelopment efforts on New Orleans residents

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<sup>3</sup> CERD/C/USA/CO/6/Add.1 Paras. 27-33.

include the UN Special Rapporteur on the Right to Adequate Housing (February 2010); the Representative of the Secretary General on the Human Rights of Internally Displaced Persons (March 2009), the UN Special Rapporteur on Racism, Racial Discrimination, Xenophobia, and Related Intolerance (May 2009); the previous UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, and the UN Independent Expert on Minority Issues, Gay McDougall (February 2008).

## B. Implementation of international human rights obligations

*Considering that the US has not yet signed/ratified the ICESCR, the UN-HABITAT submission focuses on the right to adequate housing as a component of the right to an adequate standard of living, as expressed in the UDHR.*

- In October-November 2009, the Special Rapporteur on adequate housing undertook a mission to the United States to examine the realization of the right in the country and the achievements and difficulties encountered in its fulfilment, in particular in relation to the existing subsidized housing programmes, the homeless situation, and the foreclosure crisis. The mission report expressed concerns about the effect of the foreclosure crisis on American homeowners and renters, availability of affordable housing, the effect of discrimination and zero-tolerance housing policies on minority communities, homelessness, access to adequate housing for vulnerable populations such as the disabled and indigenous communities, and lack of participation in public housing decisions.
- In July 2009, the Advisory Group on Forced Evictions (AGFE), which advises the Executive Director of UN-HABITAT, conducted a fact-finding mission to the city of New Orleans and found allegations of instances of forced evictions caused by such activities as the demolition of public housing, inadequate supply of housing vouchers and affordable private market units, and the unequal distribution of hurricane recovery funds. It also commented on a dramatic rise in the population of homeless individuals in New Orleans, which may have been aggravated by these activities.<sup>4</sup>
- Affordability: Federal funding for low-income housing has been cut over the past decades, which has negatively impacted the supply and quality of affordable housing. Further, the demolition of public housing and introduction of mixed-use housing developments has resulted in a deficit of affordable housing units.
- Homelessness: the rising population of homeless individuals is a serious concern, especially in the wake of the home foreclosure crisis and high rate of joblessness across the U.S.
- Access to legal aid: the United States does not guarantee a right to counsel in non-civil cases and as such, stands in contrast to other countries that guarantee such a right in high stakes that implicate human rights, such as eviction proceedings.

## **III. Achievements, best practices, challenges and constraints**

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<sup>4</sup> The AGFE Report on New Orleans is available from UN-HABITAT upon request.

- A major challenge of the last decade has been predatory lending practices by creditors and lending institutions and the wide growth of sub-prime loans. Discrimination against certain groups, notably racial minorities, has been found to have occurred in the lending market. The Obama administration has demonstrated a commitment to increased fair lending enforcement at the Department of Justice. Assistant Attorney General Thomas Perez has stated that “fair lending is a top priority for the Civil Rights Division” and has established a dedicated fair lending unit in the Division’s Housing Section (Remarks to the Rainbow PUSH Coalition on 14 January 2010 at its Annual Wall Street Conference).
- As a result of predatory lending, financial crisis and unemployment foreclosure rates have exploded. The Obama Administration established the Home Affordable Modification Program (HAMP) providing over 1.2 million borrowers offers for modification trials leading to possible permanent modification with one-third already approved for permanent modification. HAMP will last from March 2009 to December 2012 with a target of assisting 3 million homeowners. To help unemployed homeowners, HAMP and the Federal Housing Agency (FHA) program are being adjusted for some homeowners who become unemployed so that mortgage lenders will have added flexibility to assist them. Costs shared by the private sector and the Federal government (through \$50 billion allocated under the Trouble Asset Relief Program (TARP) are intended to help 4 million people who have become unemployed and whose homes have suffered from falling home values. Eligible homeowners will be offered a forbearance period (of at least 3 months) that will temporarily reduce their monthly mortgage payments while they seek new employment. During that period, the monthly mortgage payment must be reduced to no more than 31 percent (or less) of their gross monthly income. The servicer can also decide to temporarily suspend their payments in full. Non-discrimination: recently, fourteen states and hundreds of local governments have introduced further fair housing protections based on sexual orientation and gender identity. Other protections introduced by states and municipalities include: source of income (covering public housing voucher holders), military status, survivors of domestic violence, and marital status. HUD and the Department of Justice enforce the Fair Housing Act and other civil rights laws affecting housing. The Act prohibits discrimination in housing on the basis of: race, colour, national origin, religion, sex, familial status (including children under 18), and disability. During Fiscal Year 2008, HUD and the state and local fair housing agencies that HUD funds received a record-breaking total of 10,552 housing discrimination complaints of which 3,472 were based on race, 1,225 based on national origin (including being Hispanic or Latino), 218 based on religion, and 142 based on colour. (Some complaints contained multiple bases.)
- Following a mission to the United States, the Special Rapporteur on adequate housing emphasized that low-income housing assistance programmes should receive additional funding.
- Housing discrimination still occurs in many communities. Overt discriminatory preferences in electronic housing advertisements and solicitations have increased in recent years and will continue to be a challenge.
- The criminalization of activities relating to homelessness must be avoided and alternatives to these measures must be considered. Further, barriers to rental

housing and for individuals with poor credit histories or criminal records must be addressed.

- Veteran housing rights: veterans historically constitute a disproportionate share of the homeless population and are considered an at risk population as regards access to affordable housing. On 3 June 2010, Secretary Donovan announced that HUD's Veterans Affairs Supportive Housing Program (HUD-VASH) will provide local public housing agencies with \$58.6 million to assist about 8,000 homeless veterans in their areas. A second-round to be announced in July will provide another 1,750 rental vouchers. All those eligible will receive supportive services and case management. The program is now in its third year involving \$225 million aimed at sustaining about 30,000 rental assistance vouchers.

#### **IV. Key national priorities, initiatives and commitments**

- The AGFE fact-finding mission report recommends that the U.S. government adopt a nationwide rights-based approach to housing that aims to make adequate housing available for all who require it. This should include the promotion and support of national programmes to ensure affordable housing for all.
- The U.S. should ratify the ICESCR, arguably the most important international instrument on housing rights, the Optional Protocols to the ICESCR and ICCPR, and the American Convention on Human Rights, among other core human rights instruments.
- With regard to wide-scale disasters and other causes of internal displacement, the U.S. should adopt the UN Guiding Principles on Internal Displacement and the Pinheiro Principles as framework for a national strategy.
- U.S. Congress should pass House Resolution 582, introduced in the U.S. House of Representatives on 25 June 2009, by Rep. Maxine Waters, recognizing that children have a right to adequate housing.
- The Senate should pass S.Con.Res.39, a concurrent resolution to H.Con.Res.137, a resolution passed by the House of Representatives on 24 May 2010 stating that stable and affordable housing is an essential component of an effective strategy for the prevention, treatment, and care of human immunodeficiency virus, and that the United States should make a commitment to providing adequate funding for the development of housing as a response to the HIV pandemic.
- The U.S. should develop and adopt quantitative and qualitative indicators to measure the realization of the right to adequate housing.

#### **V. Capacity-building and technical assistance**

(Technical assistance provided and/or recommended by UN entities.)