



# Racial Discrimination in Housing and Homelessness in the United States

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## A Report to the U.N. Committee on the Elimination of Racial Discrimination

**National Law Center on Homelessness & Poverty and Los Angeles Community Action Network**

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Endorsed by: The Advocates for Human Rights | Chicago Anti-Eviction Campaign | Chicago Coalition for the Homeless | Chicago Independent Human Rights | Council Coastal Women for Change | FEANTSA, the European Federation of National Organisations working with the Homeless | Gillis Long Poverty Law Center, Loyola University New Orleans | Global Initiative for Economic Social, and Cultural Rights | Housing Research & Advocacy Center | International Alliance of Inhabitants | Minnesota Tenants Union | National AIDS Housing Coalition | National Alliance of HUD Tenants | National Center for Housing and Child Welfare | National Economic & Social Rights Initiative | National Fair Housing Alliance | National Health Care for the Homeless Council | National Low Income Housing Coalition | Northeast Ohio Coalition for the Homeless | Poverty & Race Research Action Center | Public Interest Law Project | Public Justice Center | Sacramento Regional Coalition to End Homelessness | Take Back the Land Leadership Committee | US-Canada Alliance of Inhabitants | Washington Legal Clinic for the Homeless | Western Regional Advocacy Project | Irv Epstein, Chair, Professor of Educational Studies, Director, Center for Human Rights and Social Justice | Ralph D. Fertig Professor, School of Social Work, University of Southern California | Brian Gilmore, Director - Michigan State University College of Law, Housing Law Clinic | Edward G. Goetz, Director, Center for Urban and Regional Affairs, Professor, Humphrey School of Public Affairs, University of Minnesota | Dr. Jacqueline Leavitt, Professor, Department of Urban Planning, UCLA School of Public Affairs | Florence Wagman Roisman, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School of Law | Len Sandler, Clinical Professor of Law, Director, Law and Policy In Action Projects, University of Iowa College of Law | Rev. Dr. Liz Theoharis and Larry Cox, Co-Directors, Kairos: The Center for Religions, Rights and Social Justice at Union Theological Seminary | Jürgen von Mahs, Associate Professor in Urban Studies, The New School | David Wagner, Ph. D., Professor of Social Work and Sociology, University of Southern Maine School of Social Work

## Summary

1. Homelessness and the lack of affordable housing in the United States of America have a disparate racial impact, in violation of the United States' obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>1</sup> Federal housing subsidies provided through the tax code disproportionately benefit high-income, predominantly white, homeowners, while the number of federally subsidized housing units only reaches one-quarter of the income-eligible population, leaving this predominantly minority and female-headed lower income population severely rent burdened and vulnerable to eviction.<sup>2</sup> Legal protections for renters in foreclosed properties, which primarily aid racial minorities, are in danger of expiring at the end of this year, threatening more people with homelessness.<sup>3</sup> Yet, rather than combating these causes of homelessness, many municipalities, with the acquiescence of the federal government, have used laws that criminalize life-sustaining activities to target homeless persons - in particular people of color.<sup>4</sup>

### **Racial Disparities in Access To Affordable Housing and Vulnerability to Foreclosure**

2. A household with worst case housing needs is defined as one that spends more than 50% of income on rent, making its members extremely vulnerable to eviction.<sup>5</sup> More than 50% of people with worst case housing needs are Black, Hispanic, or members of other racial minority groups.<sup>6</sup> This is a product of inadequate incomes and high rents; a person working a regular work week at the legal minimum wage cannot afford the fair market rent for a one-bedroom apartment anywhere in the United States.<sup>7</sup> Nearly seven of ten households with annual incomes of less than \$15,000 (roughly the equivalent of year-round minimum wage employment) face worst case housing needs.<sup>8</sup> Families headed by women of color are disproportionately affected due to their lower incomes.<sup>9</sup> One recent study found women in black neighborhoods in Milwaukee represented only 9.6% of the population, but 30% of the evictions.<sup>10</sup>
3. The United States asserts in its report that the Department of Housing & Urban Development ("HUD") provides affordable housing to a disproportionately high number of minorities.<sup>11</sup> However, while this may be the case, the State Party omits the critical fact that the United States expends more than \$70 billion annually on the mortgage income tax deduction, with 77% of its benefit going to predominantly white households with incomes over \$100,000 per year<sup>12</sup> - while only appropriating \$44.8 billion to the entire HUD budget directed at low-income populations, with the result that only 25% of the households eligible for HUD aid actually receive assistance.<sup>13</sup> Moreover, since the late 1970s, the HUD budget has been cut by more than 56%, leading to reductions of approximately 10,000 units per year in the stock of publicly assisted housing and further exacerbating housing inequality based on race.<sup>14</sup>

4. The National Housing Trust Fund was designed to be a permanent, dedicated funding source to increase and preserve the supply of rental units and increase homeownership for the lowest income households, funded by contributions from government-sponsored enterprises Fannie Mae and Freddie Mac. However, the Trust Fund lacks any resources; following the takeover of the GSEs by the Federal Housing Finance Administration in 2008, their contributions to the Trust Fund were suspended (before they had even begun) and no new funding has been provided.<sup>15</sup>
5. The foreclosure crisis has disproportionately affected racial minorities. For example, in New England, the foreclosure rate per unit is more than five times higher in largely non-white, high poverty neighborhoods than in predominantly white, low poverty neighborhoods.<sup>16</sup> In Chicago, the foreclosure rates between 2009 and 2013 were highest in communities comprised mainly of African American and Hispanic households.<sup>17</sup> These foreclosures affect more than homeowners: approximately 40% of families facing eviction due to foreclosure are renters.<sup>18</sup> Although the United States passed the Protecting Tenants at Foreclosure Act (PTFA) in 2009, which provides a minimum of 90 days' notice to most renters in buildings that are foreclosed upon, the law will expire on December 31, 2014.<sup>19</sup> Before the PTFA, renters could be unaware that their landlords had defaulted on their mortgage and be summarily evicted into homelessness – if the law is not extended or made permanent, this will recur.<sup>20</sup>
6. Despite the United States' assertion in paragraph 58 of its report that the Convention does not require ensuring the fulfillment of the rights enumerated in Article 5 (including the right to housing) but only requires prohibiting discrimination in the rights as they are codified in domestic law,<sup>21</sup> the Committee on the Elimination of Racial Discrimination's 2001 Concluding Recommendations state that the United States should review its existing laws and policies to “ensure effective protection against... any unjustifiable disparate impact.”<sup>22</sup> The Committee has held that to satisfy the equal enjoyment of housing for all races, a State Party must revise its housing plans to account for racial disparities and ensure that its policies do not perpetuate indirect discrimination.<sup>23</sup> Accordingly, where racial minorities suffer from poorer housing conditions than their white counterparts, a state is obligated under the Convention to adopt targeted policies to improve their situation. The federal policies that continue to result in housing related tax subsidies going disproportionately to wealthy white homeowners while limiting the availability of housing subsidies and eviction protections to poor minority renters are precisely the sort of policies that the Committee has indicated require adoption of special measures to “secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.”<sup>24</sup> By funding the National Housing Trust Fund and making the PTFA permanent, the United States would begin to remedy the racially disparate impact of government housing policies on poor minorities, or at a minimum

prevent further retrogression in violation of Articles 2(1)(c), 2(2), and 5(e)(iii) of the Convention.

### **Racial Disparities in Homelessness**

7. Lack of affordable housing results in an estimated 3.5 million people experiencing homelessness in the United States annually,<sup>25</sup> of whom 42% are African-Americans (despite being only 12% of the population overall); 20% Hispanic (12% overall); 4% Native American (1% overall); and 2% Asian (1% overall).<sup>26</sup> Despite the United States government's assertion that homelessness is decreasing,<sup>27</sup> HUD's figures only recognize people living on the street, in areas unfit for human habitation, or in shelters or transitional housing. The definition omits those who are doubled up in the homes of friends or family, a number which increased by 9.4% from 2010 to 2011, to 7.4 million people.<sup>28</sup> These people, including more than 1.1 million children, have no legal protection against being required to leave their living situation on a moment's notice, yet in nearly all cases they are not eligible for assistance through federal homelessness programs.<sup>29</sup>
8. Moreover, the United States' report neglects to mention the trend of cities across the country targeting homeless persons by making it illegal to perform life-sustaining activities as sleeping/camping, eating, sitting, and begging in public spaces. Accompanying strategies include disproportionately enforcing generally applicable laws, such as those against jaywalking and littering, against homeless persons. The discriminatory impact of criminalization of homelessness was specifically pointed out by the Special Rapporteur on Racism during his 2008 visit to the United States, citing the example of Los Angeles' Skid Row.<sup>30</sup> This 50 square-block area has approximately 4,500 homeless individuals and families living in it, 69% of whom are African American.<sup>31</sup> Beginning in September 2006, the City announced its "Safer City Initiative," bringing 50 new police officers to the area at a cost of \$6 million per year supposedly to target violent crime, while only spending \$5.7 million for emergency housing, services, and permanent housing in the remaining 464 square miles of the City.<sup>32</sup> However, in the first year of the SCI program, the police confiscated only three handguns, while issuing an average of 1,000 citations per month, primarily for jaywalking violations by African Americans - 48 to 69 times the number of citations in the city at large.<sup>33</sup> Officers also enforce an ordinance which prohibits sitting, lying and sleeping on the sidewalk. While a court-approved settlement prevents the City from enforcing this law from 9:00 pm to 6:00 am, people of all ages and abilities without a private place to rest are expected to walk or stand for the remaining 15 hours in a day or risk arrest. One older African American woman, Annie, has been arrested more than 100 times for these violations since the beginning of the Initiative. Many others have been arrested during "sweeps" that start at 6:01 AM.<sup>34</sup>

9. Criminalization of homelessness has been condemned as cruel, inhuman, and degrading treatment and as racially discriminatory by the Human Rights Committee and numerous rapporteurs, who have also called for federal funding incentives to discourage these practices.<sup>35</sup> The Committee's General Recommendation 31 states that State Parties should pay the greatest attention to indicators of discrimination that include the "proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime ... as indicators of the exclusion or the non-integration of such persons into society."<sup>36</sup>
10. The disparate impact of homelessness on racial minorities puts the United States in violation of Articles 1, 2, and 5 of the Convention. The federal government should take steps to remedy this impact, including by expanding the definition of homelessness and providing homeless persons with additional housing aid, and by creating funding incentives in federal housing and law enforcement grants to discourage local criminalization measures.

#### **Suggested Questions for the United States Government**

- 11. Will the State Party create an adequate and sustainable funding source for the National Housing Trust Fund, to meet the demand for affordable housing production?**
- 12. Will the State Party protect renters from immediate eviction following the foreclosures of their landlords by making the Protecting Tenants at Foreclosure Act permanent?**
- 13. Will the State Party create funding incentives in its federal grants to decrease the criminalization of homelessness?**

#### **Suggested Concluding Recommendation**

- 14. The Committee notes with deep concern the continuing racially disparate impact of the lack of affordable rental housing in the United States, due primarily to the foreclosure crisis and the shrinking supply of housing affordable to low-income populations. The Committee is further concerned with the growth of ordinances and law enforcement policies that criminalize homelessness, which exacerbates rather than alleviates these disparities.**

The Committee recommends that the State Party take immediate steps to reduce the disparate impact of housing rights violations, including by increasing the supply of affordable housing through an adequately and permanently funded National Housing Trust Fund, making permanent the Protecting Tenants at Foreclosure Act and creating adequate implementation policies, expanding HUD's definition of homelessness to include those doubled up due to economic necessity (and providing resources to house this population), and providing incentives in housing and criminal justice grants for communities to address homelessness by providing adequate housing and other services.

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- <sup>1</sup> The arguments made in this report are abbreviated due to space limitations; a fuller development of the arguments can be found in National Law Center on Homelessness & Poverty, et. al., *A Report to the Committee on the Elimination of Racial Discrimination on Racial Discrimination in Homelessness and Affordable Housing in the United States* (2007), [http://nlchp.org/documents/CERD\\_Housing\\_Report\\_2007](http://nlchp.org/documents/CERD_Housing_Report_2007).
- <sup>2</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2013* 4-5 (2013), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2013.pdf>.
- <sup>3</sup> See National Law Center on Homelessness & Poverty, *Eviction (Without) Notice: Renters and the Foreclosure Crisis* (2012), [http://nlchp.org/Eviction\\_Without\\_Notice](http://nlchp.org/Eviction_Without_Notice).
- <sup>4</sup> See National Law Center on Homelessness & Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil & Political Rights* (2013), [http://www.nlchp.org/Cruel\\_Inhuman\\_and\\_Degrading](http://www.nlchp.org/Cruel_Inhuman_and_Degrading)
- <sup>5</sup> The State of the Nation's Housing *supra* note 2 at 30.
- <sup>6</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *WORST CASE HOUSING NEEDS 2011: REPORT TO CONGRESS* viii (2013).
- <sup>7</sup> The State of the Nation's Housing *supra* note 2 at 30.
- <sup>8</sup> *Id.*
- <sup>9</sup> Matthew Desmond, *Poor Black Women are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Foundation, Mar. 2014, [http://www.macfound.org/media/files/HHM\\_Research\\_Brief\\_-\\_Poor\\_Black\\_Women\\_Are\\_Evicted\\_at\\_Alarming\\_Rates.pdf](http://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf).
- <sup>10</sup> *Id.*
- <sup>11</sup> See *Seventh to Ninth Periodic Reports of the United States of America to the Committee on the Elimination of Racial Discrimination*, para. 39-40, CERD/C/USA/7-9, 3 Oct. 2013, available at [http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd\\_c\\_usa6.doc..](http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd_c_usa6.doc..)
- <sup>12</sup> Will Fischer and Chye-Ching Huang, *Mortgage Interest Deduction Is Ripe for Reform*, Center for Budget & Policy Priorities, June 25, 2013, <http://www.cbpp.org/cms/?fa=view&id=3948>.
- <sup>13</sup> *The State of the Nation's Housing supra* note 2 at 30; Executive Office of the President of the United States, *Fiscal Year 2013 Budget of the U.S. Government* 123 (2012).
- <sup>14</sup> The 1978 HUD budget authority was \$95,700,000 in constant 2013 dollars (\$33,818,000 in 1978 dollars), the 2014 HUD budget authority estimate is \$41,518,000. White House, Office of Management & Budget, *Historical Tables, Table 5.2 – Budget Authority by Agency: 1976-2019* (2014), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist05z2.xls>. See also, Western Regional Advocacy Project, *Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness, and Policy Failures 20* (2010); National Low Income Housing Coalition, *Out of Reach 2014: 25-Years Later, the Affordable Housing Crisis Continues 4* (2014). Constant dollar calculations based on Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to present*, MeasuringWorth, 2014, [www.measuringworth.com/uscompare/](http://www.measuringworth.com/uscompare/).
- <sup>15</sup> United For Homes Campaign For the National Housing Trust Fund, *National Housing Trust Fund Frequently Asked Questions 1* (2013), [http://nlihc.org/sites/default/files/NHTF\\_FAQ.pdf](http://nlihc.org/sites/default/files/NHTF_FAQ.pdf).
- <sup>16</sup> National Low Income Housing Coalition, *Renters in Foreclosure: Defining the Problem, Identifying the Solutions 4* (2009).
- <sup>17</sup> Lawyers' Committee for Better Housing, *Chicago's Foreclosure Crisis: Community Solutions to the Loss of Affordable Rental Housing 2-3* (2013).
- <sup>18</sup> National Low Income Housing Coalition, *Renters In Foreclosure: A Fresh Look at an Ongoing Problem*, 1 (September 2012), [http://nlihc.org/sites/default/files/Renters\\_in\\_Foreclosure\\_2012..](http://nlihc.org/sites/default/files/Renters_in_Foreclosure_2012..)
- <sup>19</sup> *Protecting Tenants at Foreclosure Act of 2009*, Pub. L. No. 111-22, tit. VII, § 702 (a)(2), 123 Stat. 1632, 1660-62 (May 20, 2009), as amended by Pub. L. No. 111-203, tit. XIV, §1484 (2010).
- <sup>20</sup> See National Law Center on Homelessness & Poverty, *Eviction (Without) Notice: Renters and the Foreclosure Crisis* (2012), [http://nlchp.org/Eviction\\_Without\\_Notice](http://nlchp.org/Eviction_Without_Notice).
- <sup>21</sup> See *Seventh to Ninth Periodic Reports of the United States of America to the Committee on the Elimination of Racial Discrimination*, para 58, CERD/C/USA/7-9, 3 Oct. 2013, available at [http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd\\_c\\_usa6.doc](http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd_c_usa6.doc).
- <sup>22</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the United States of America*. 14/08/2001, paras. 380-407, U.N. Doc. A/56/18. See also Committee on the Elimination of Racial Discrimination, *General Recommendation 14, Definition of Racial Discrimination*, para. 114, U.N. Doc A/48/18 (1994), reprinted in *Compilation of General Comments and General Recommendations*

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- Adopted by Human Rights Treaty Bodies*, para. 203, U.N. Doc. HRI\GEN\1\Rev.6 (emphasizing that state actions with an unjustifiable disparate impact on racial minorities raise a violation of the Convention).
- <sup>23</sup> See *L. R. et al. v. Slovakia*, Communication No. 31/2003, Para. 10.4, U.N. Doc. CERD/C/66/D/31/2003 (2005) (requiring Slovakia to reinstitute a canceled housing program that disproportionately benefited the Roma minority).
- <sup>24</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 32, *The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, para 11, U.N. Doc CERD/C/GC/32(2009).
- <sup>25</sup> See National Law Center on Homelessness And Poverty, *2007 Annual Report*, 5 (2007), [http://www.nlchp.org/content/pubs/2007\\_Annual\\_Report2.pdf](http://www.nlchp.org/content/pubs/2007_Annual_Report2.pdf).
- <sup>26</sup> See National Coalition for the Homeless, *WHO IS HOMELESS?* (2009), available at <http://www.nationalhomeless.org/factsheets/who.html>. (based on a 2006 survey of 24 cities).
- <sup>27</sup> *Seventh to Ninth Periodic Reports of the United States of America to the Committee on the Elimination of Racial Discrimination*, para 40, CERD/C/USA/7-9, 3 Oct. 2013, available at [http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd\\_c\\_usa6.doc](http://ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd_c_usa6.doc) [hereinafter “U.S. Report.”]
- <sup>28</sup> National Alliance to End Homelessness, *The State of Homelessness in America 2013* 26 (2013). [http://b.3cdn.net/naeh/bb34a7e4cd84ee985c\\_3vm6r7cjh.pdf](http://b.3cdn.net/naeh/bb34a7e4cd84ee985c_3vm6r7cjh.pdf)
- <sup>29</sup> National Center for Homeless Education, *Education for Homeless Children and Youths Program* 4 (2013).
- <sup>30</sup> U.N. Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Mission to the United States of America, U.N. Doc. A/HRC/11/36/Add.3 ( 2009).
- <sup>31</sup> INTER-UNIVERSITY CONSORTIUM AGAINST HOMELESSNESS, ENDING HOMELESSNESS IN LOS ANGELES, (2007), [http://www.usc.edu/dept/geography/ESPE/documents/WEB\\_Research.pdf](http://www.usc.edu/dept/geography/ESPE/documents/WEB_Research.pdf).
- <sup>32</sup> Testimony of Gary Blasi , UCLA Professor of Law, University of California, Los Angeles, to State Legislators in Sacramento, CA (July 18, 2007).
- <sup>33</sup> GARY BLASI ET.AL, POLICING OUR WAY OUT OF HOMELESSNESS? THE FIRST YEAR OF THE SAFER CITIES INITIATIVE ON SKID ROW, (Sept. 2007), *available at* <http://www.law.ucla.edu/docs/Skid%20Row%20Safer%20Cities%20One%20Year%20Report.pdf>.
- <sup>34</sup> Email from Becky Dennison, Los Angeles Community Action Network, Mar. 28, 2014, on file with authors.
- <sup>35</sup> Human Rights Committee, *Concluding Observations on the Second and Third U.S. Reports to the Committee, 87<sup>th</sup> Session*, para. 22 , U.N. Doc. CCPR/C/USA/Q/3/CRP.4 (2006); U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, Raquel Rolnik, Mission to the United States of America, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, USA: “*Moving Away from the Criminalization of Homelessness, A Step in the Right Direction*” ( 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E..>
- <sup>36</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 31, *On the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* , para. 1(c), U.N. Doc A/60/18 (2005).