

**Shadow Report by the
National Bar Association-International Law Section and the Program in
International Human Rights Law of Indiana University School of Law-Indianapolis***

**International Human Rights Law & Hurricane Katrina:
U.S. Government Fails to Comply with ICERD**

Submitted to the

*United Nations Committee on the Elimination of Racial Discrimination for its 72nd Session on the
Occasion of Hearings on the 4th & 6th Periodic Reports of the
United States of America (U.S.A.) on its Implementation of the
International Convention on the Elimination of All Forms of Racial Discrimination*

**United Nations Race Committee Hearings of 21 & 22 February 2008
Palais des Nations, Geneva, Switzerland**

Attachment: *International Human Rights Law Violations Before, During, and after Hurricane
Katrina: An International Law Framework for Analysis, 31 THURGOOD MARSHALL LAW
REVIEW 353-425 (Spring 2006) (by George E. Edwards)*

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*The National Bar Association is the U.S.A.'s oldest and largest national association of predominately African American lawyers and judges, with affiliate chapters throughout the U.S.A., Canada, United Kingdom, Africa and the Caribbean. The National Bar Association, which is an NGO with UN ECOSOC Consultative Status, represents a professional network of over 20,000 lawyers, judges, educators and law students. The Chairperson of the National Bar Association – International Law Section is Dr. Beverly Baker Kelly (bbakerkelly@yahoo.com) and Chairperson Designee is Professor Dorothea Beane, Stetson University College of Law (Beane@law.stetson.edu). Professor George E. Edwards, the NBA-ILS Chairperson-at-Large & Delegate, is also Director of the Program in International Human Rights Law of Indiana University School of Law-Indianapolis (gedwards@indiana.edu).

Submission Date: February 2008

*NBA-ILS & PIHRL of IU School of Law-Indianapolis Submission on Hurricane Katrina to the
United Nations Committee on the Elimination of Racial Discrimination (February 2008, Geneva)*

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**NBA & PIHRL Shadow Report on
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***Proposed Recommendations of the
National Bar Association-International Law Section & the Program in International
Human Rights Law of Indiana University School of Law-Indianapolis
for the Race Committee to Adopt to Foster U.S.A. Compliance with the ICERD***

The National Bar Association-International Law Section & the Program in International Human Rights Law of Indiana University School of Law-Indianapolis respectfully request the Race Committee to urge the United States as follows:

- The Race Committee should urge the U.S.A. fully to afford all Katrina Victims their internationally recognized civil and political rights, in full equality and without discrimination, under the ICERD and the Race Committee's General Recommendations:
 - i. Right to be free from discrimination; right to equal protection under the law;
 - ii. Right to vote; electoral rights; right to participate in governance;
 - iii. Right to a fair trial; right to liberty and security of the person; right to be free from torture and cruel, inhuman & degrading treatment or punishment;
 - iv. Right to life, human dignity, and recognition as a person;
 - v. Rights related to privacy, family life, and missing relatives;
 - vi. Rights related to receiving humanitarian assistance (e.g., from non-governmental organizations & foreign governments);
 - vii. Right to be free from torture and cruel and unusual treatment and punishment;
 - viii. Rights to residence, freedom of movement, return under conditions of safety, resettlement and reintegration of displaced persons;
 - ix. Freedom of association and assembly; freedom of movement; right to be free from displacement; and
 - x. Right to a remedy for international human rights law violations.
- The Race Committee should urge the United States fully to afford all Katrina Victims all their internationally recognized economic human rights in the following areas, in full equality and without discrimination, that, if not afforded, will deprive Katrina Victims of their enjoyment of civil and political rights:
 - i. Right to work;
 - ii. Right to adequate health care;
 - iii. Right to adequate housing;
 - iv. Right to an adequate standard of living; freedom from poverty;
 - v. Right to education; and
 - vi. Property rights.

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To: Members, United Nations Race Committee (Geneva, Switzerland)

From: National Bar Association–International Law Section & the Program in International Human Rights Law, Indiana University School of Law-Indianapolis¹

Re: International Human Rights Law & Hurricane Katrina: United States Government Fails to Comply with CERD – A Shadow Report of the National Bar Association-International Law Section & the Program in International Human Rights Law of Indiana University School of Law-Indianapolis, submitted to the United Nations Committee on the Elimination of Racial Discrimination for its 72nd Session on the Occasion of Hearings on the 4th & 6th Periodic Reports of the United States of America (U.S.A.) on its Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

**Race Committee Hearings of 21 & 22 February 2008
Palais des Nations, Geneva, Switzerland**

Date: 12 February 2008

Attch: *International Human Rights Law Violations Before, During, and after Hurricane Katrina: An International Law Framework for Analysis*, 31 THURGOOD MARSHALL LAW REVIEW, 353-425 (Spring 2006) (by George E. Edwards)

Pages: 16 pages + 73 page attachment—(89 pages total).

1. Hurricane Katrina struck New Orleans in August 2005; Human rights violations by the United States Government

Hurricane Katrina, with brutal, devastating force, struck New Orleans and the U.S. Gulf Coast² on 29 August 2005, leaving in its wake destroyed homes, livelihoods, and human lives. New Orleans flooded as the levees protecting the city from Lake Ponchartrain and the Mississippi River buckled to category 5 Hurricane-induced waters. Fingers immediately pointed to the federal, state, and local governments that were unprepared for Katrina and that had failed to repair the antiquated and neglected levees that should have protected New Orleans from such disasters.

¹ The National Bar Association is the U.S.A.'s oldest and largest national association of predominately African American lawyers and judges, with affiliate chapters throughout the U.S., Canada, United Kingdom, Africa and the Caribbean. The National Bar Association, which is an NGO with U.N. ECOSOC Consultative Status, represents a professional network of over 20,000 lawyers, judges, educators and law students. This submission to the United Nations Race Committee was authored by Professor George E. Edwards, the National Bar Association–International Law Section Chairperson-at-Large & Director, Program in International Human Rights Law of Indiana University School of Law-Indianapolis (reachable at gedwards@indiana.edu). Special thanks to Professor Patrick J. McKeand and William J. Kurtz (of Indiana University Purdue University Indianapolis), and Syed Liaquat Ali, Rahma Hersi, Faith Knotts, Mary Deer, Wele Elangwe, Nelson Taku, and Chalanta Shockley of Indiana School of Law-Indianapolis.

² Though this submission to the Race Committee principally addresses international human rights law issues related to New Orleans victims of Katrina, all the rights discussed herein were implicated in other locales throughout the Gulf Region hit by Hurricane Katrina. Many of the rights discussed related to Katrina also relate to Hurricane Rita, which struck New Orleans in September 2005, and to other catastrophes.

The world cried racism and discrimination against the poor. New Orleans was seventy percent black, with a large proportion of residents living below the poverty line. There was perceived apathy for the poor, particularly blacks, who comprised the bulk of those living in New Orleans' most vulnerable neighborhoods that experienced the greatest hurricane damage. Poor blacks were disproportionately affected negatively by Katrina.

Something went horribly wrong in New Orleans before, during, and after Katrina. Nature caught the city off guard as the levees broke, swallowing up large sections of poor minority neighborhoods, leaving many people – who were unable to marshal vehicles and funds or other means to evacuate – to drown or die from lack of medical attention, trapping other people in their homes for days without food or clean water, forcing thousands to flee to unsafe and unsanitary sports stadiums for storm protection, and forcing thousands to evacuate the city for higher ground. But, the horrors of Katrina were not all due to natural forces. Human action and non-action – before, during and after Katrina – led to violations of the internationally recognized human rights of countless people victimized in New Orleans and surrounding areas. This submission principally focuses on the U.S. governments' violation of the *fundamental right to equality and non-discrimination* in the exercise and enjoyment of civil, political, economic, social, and cultural rights in the context of Hurricane Katrina before, during and after the hurricane, such violations unfortunately are continuing up to and including today, February 2008 (as outlined in Part 2, below).

2. US Government Continues to Violate Rights of Katrina Victims in February 2008 – Deadly Formaldehyde in “FEMA Trailers”

The U.S. government agency responsible for tackling Katrina-related disaster assistance is the Federal Emergency Management Agency (FEMA). After Hurricane Katrina, FEMA provided tens of thousands of New Orleans and other victims with living accommodations in the form of trailers or mobile homes that are commonly referred to as “FEMA trailers”. For years, it was known by FEMA that these FEMA trailers were suspected of containing formaldehyde,³ which is a deadly substance that also causes serious health problems in people exposed to them.⁴ As of this week—the week of 15 February 2008—FEMA has been unable or unwilling to ensure that all victims exposed to FEMA

³ See *Formaldehyde And Travel Trailers*, Release Date: July 20, 2007, Release Number: FNF-07-028, <http://www.fema.gov/news/newsrelease.fema?id=36730>.

FEMA has known about the formaldehyde problem for years, but it is only in February 2008, on the eve of the hearings before the UN Race Committee, that FEMA is apparently listening to the countless number of racial minorities who were harmed because of living in housing that contained deadly formaldehyde. FEMA's knowledge of formaldehyde is beyond dispute, as evidenced by, for example, the following statement that FEMA posted on its website in July 2007 referring back to the 2006 summer:

Last summer [2006 summer] the Environmental Protection Agency and the Agency for Toxic Substances and the CDC's Disease Registry testing [sic] of air samples from travel trailers. That study showed that ventilating the units is effective in reducing levels of formaldehyde. However, FEMA believes additional research is needed to address concerns about the health effects of living in travel trailers for prolonged periods of time.

⁴ See Sheila Kaplan, *FEMA covered up cancer risks to Katrina victims* (29 January 2008) (http://www.salon.com/news/feature/2008/01/29/fema_coverup/) (last visited 15 February 2008)

formaldehyde have received appropriate and adequate medical treatment or have been provided with appropriate and adequate substitute housing.

The U.S. government provision of Katrina victims with cancer-causing and otherwise dangerous housing, and the U.S. government's unwillingness over years to correct the problem, are glaring examples of how the U.S.A continues to violate the human rights of Katrina victims. Katrina victims not only continue to be deprived of economic rights (such as the right to health and the right to adequate, safe housing), but also they continue to be deprived of social, cultural, civil and political rights, none of which they can enjoy unless they are also enjoying economic rights. Katrina victims who suffer from formaldehyde-induced cancer, respiratory, or other illnesses are not in a position to enjoy their education rights, the right to vote, the right to participate in governance, their right of assembly, or other human rights to which they are entitled.

FEMA issued a press release on Thursday, 14 February 2008, that provided in part the following:⁵

WASHINGTON, D.C. -- The Department of Homeland Security's Federal Emergency Management Agency (FEMA) announced today its intent to expedite the agency's plan to provide for the safety and well being of residents living in FEMA provided temporary housing units. The re-doubling of efforts come amid preliminary findings from formaldehyde testing of temporary housing units in the Gulf Coast conducted for the agency by the Centers for Disease Control and Prevention (CDC).

These measures of the United States were far too few, and too late. Salon.com reports:

After Hurricane Katrina, FEMA placed tens of thousands of displaced families in travel trailers, more than 40,000 of which are still in use. Almost immediately, hundreds of families called FEMA to complain of illnesses, from breathing difficulties, bloody noses and rashes to more serious problems, and even deaths, possibly connected to high levels of formaldehyde gas permeating the trailers. Formaldehyde is a nearly colorless gas with a pungent, irritating odor even at low levels. It is used in many products and manufacturing procedures, notably as an adhesive in plywood used to make trailers. Health reports reveal that exposure to formaldehyde can impact fertility and the developing fetus, leading to spontaneous abortion or physical malformations.

Katrina victims continue to suffer, even as you, the Race Committee, read this Shadow Report.

3. U.S.A. international human rights law obligations generally & under the ICERD.

The United States government is obligated under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁶ other international human rights law instruments⁷ and

⁵ "FEMA Plan of Action on Formaldehyde Findings to be Implemented Immediately, Release Date: February 14, 2008, Release Number: HQ-08-022 (<http://www.fema.gov/news/newsrelease.fema?id=42611>) (last visited 15 February 2008)

⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, available at <http://www.ohchr.org/english/law/cerd.htm> (ratified by the U.S. on Oct. 21, 1994; adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of Dec. 21, 1965, and entered into force on Jan. 4, 1969, in accordance with Article 19 of the treaty, [hereinafter ICERD]).

customary international law to ensure that all persons in the U.S.⁸ – including all persons directly or indirectly affected by Hurricane Katrina – are fully afforded a panoply of human rights in many areas, including civil, political, economic, social, and cultural *rights in full equality and without discrimination*, both in the public and private spheres, in further accordance with the Race Committee's General Recommendation No. 14—Definition of discrimination (Art. 1, par.1).⁹ Under binding international human rights law, internal constituent political entities within the U.S., including domestic states (e.g., the states of Louisiana and Mississippi) and localities (e.g., the City of New Orleans), are similarly obligated to protect these rights, and the U.S. government is charged with ensuring that state and local authorities carry out their derivative responsibilities. The government must also ensure that effective mechanisms are in place to protect against human rights violations by non-state actors (e.g., corporations that price gouge, private citizens who discriminate, etc).

The U.N. Committee on the Elimination of Racial Discrimination (Race Committee) is charged with overseeing implementation of the ICERD in States parties such as the U.S. Periodically, each State that is party to the ICERD submits reports ("periodic reports") to the Committee detailing how that State is implementing the ICERD domestically. These periodic reports offer an opportunity for the States to analyze their own compliance (or non-compliance) with the treaty. The Race Committee, in overseeing implementation of the ICERD, conducts hearings based in part on the periodic reports it receives, and based in part on U.S. government answers to a list of questions presented by the Committee to the U.S. prior to the hearings. In February 2008, the Committee is holding hearings on the fourth and sixth periodic reports of the U.S. under the ICERD to determine whether the U.S. is in compliance with international human rights law and to assess whether the U.S. is breaching the internationally recognized human rights of U.S. citizens or other persons subject to the jurisdiction of the U.S.

The ***Vienna Declaration and Programme of Action***¹⁰ teaches that civil and political rights are not afforded to people in a vacuum and cannot be enjoyed by people if their economic, social, cultural and other rights are not provided for, and likewise, economic, social and cultural rights cannot be enjoyed by people if their civil and political rights are denied. Article 5 of the Vienna Declaration provides:

⁷ The U.S. is also bound to ensure the rights contained in the following instruments: International Covenant on Civil and Political Rights, available at <http://www2.ohchr.org/english/law/ccpr.htm> (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); the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, available at http://www.unhcr.ch/html/menu3/b/h_cat39.htm (adopted and opened for signature, ratification, and accession by General Assembly resolution 39/46 of Dec. 10, 1984, entry into force June 26, 1987, in accordance with Article 27 (1)); and the United Nations Charter, available at <http://www.un.org/aboutun/charter/>.

⁸ The U.S. owes international human rights law obligations to everyone in the U.S., including foreigners, whether undocumented, on a student or tourist visa, or in any other category of non-U.S. citizen. In the context of Katrina, the U.S. has "the primary responsibility to protect the people and property on their territory from hazards," including hazards related to hurricanes such as Katrina. See, e.g., Amnesty International U.S.A., *U.S. Breached International Law in Treatment of Katrina Victims*, http://www.amnestyusa.org/refugee/katrina_idps.html.

⁹ General Recommendation No. 14: Definition of discrimination (Art. 1, par.1), U.N. Committee on the Elimination of Racial Discrimination, (1993) available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d7bd5d2bf71258aac12563ee004b639e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d7bd5d2bf71258aac12563ee004b639e?Opendocument).

¹⁰ Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23, art. 5 (July 12, 1993), <http://www.ohchr.org/english/law/vienna.htm> (adopted by the United Nations World Conference on Human Rights Vienna, June 14-25, 1993) (adopted on June 25, 1993).

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Thus, the Race Committee, applying the principle of *equality and non-discrimination*, must consider the inter-relatedness of all the rights of the people of New Orleans and the Gulf Region and determine if the U.S. has violated those rights. Just as the Committee must recognize the direct violations of electoral rights, the right to life, the right to be free from discrimination, and other civil and political rights, the Committee must also recognize that the U.S.'s violation of the right to adequate health care, the right to food, the right to shelter and other economic rights contributes to the violations of civil and political rights. This submission lists civil and political rights that the U.S. has violated (see paragraph # 4 below), and separately lists economic and other rights (see paragraph # 5 below) in the context of the right to equality and non-discrimination, as interpreted by the Race Committee in *General Recommendation No. 20—Non-discriminatory implementation of rights and freedoms (Art. 5)*.¹¹

4. Attached Law Review article on U.S.A.'s international human rights violations in the Katrina context.

Attached to this submission is a Law Review article entitled *International Human Rights Law Violations Before, During, and after Hurricane Katrina: An International Law Framework for Analysis*, 31 THURGOOD MARSHALL LAW REVIEW, 353-425 (Spring 2006) (by George E. Edwards) (hereinafter "*Katrina Article*"). The *Katrina Article* identifies and discusses violations of the ICERD perpetrated by the U.S. government as well as by state and local governments before, during and after Katrina.¹² Unfortunately, many of those ICERD violations are ongoing. The U.S. government

¹¹ General Recommendation No. 20—Non-discriminatory implementation of rights and freedoms (Art. 5), U.N. Committee on the Elimination of Racial Discrimination, (1996) available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/8b3ad72f8e98a34c8025651e004c8b61?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/8b3ad72f8e98a34c8025651e004c8b61?Opendocument).

¹² The *Katrina Article* enumerates specific international human rights norms that bind the U.S. (e.g., civil, political, economic, social, and cultural rights protections), explains how and why these norms bind the U.S. government (and state and local governments), and discusses how the human rights protections can and should be applied to New Orleans and the Gulf area affected by Katrina. The *Katrina Article*, which does not attempt comprehensively to analyze whether and how the government breached or is continuing to breach Katrina-related rights, nevertheless concludes that international human rights law violations occurred before and during Katrina, and that international human rights law violations continue after Katrina. Further, the *Katrina Article* concludes that a concerted commitment by governmental officials is needed to help ensure that these violations are remedied and that all people of New Orleans and the Gulf Region are afforded their full panoply of internationally recognized human rights in all categories, including civil, political, economic, social, and cultural rights.

The *Katrina Article* draws on the work of various scholars and activists who have helped raise consciousness about Katrina-related international human rights law concerns, including concerns about U.S. obligations. See, e.g., *Statement of Professor Jeanne M. Woods (Loyola School of Law) & Professor Hope Lewis (Northeastern University School of Law) prepared for the Hearings of the United Nations Special Rapporteur on Extreme Poverty, Dr. Arjun Sengupta: The Aftermath of Hurricane Katrina*, New Orleans, LA, (Oct. 27, 2005) (highlighting violations of various rights, including: the right to life; the right to be free from discrimination based on race, class, age, and disability; the right to education; the rights of workers; the right to housing/shelter; the rights of undocumented and migrant workers; the rights of prisoners; and the rights of the poor); Ann Fagan Ginger, Meiklejohn Civil Liberties Institute, Portland National Lawyers Guild Convention, *Resolution on U.S. Government Violations of Human Rights of Katrina Victims* (Oct. 29,

continues its violative behavior, and continues to fail to provide a remedy for violations of internationally recognized human rights.

5. ICERD rights that the U.S. violated before and during Hurricane Katrina, and that the U.S. continues to violate, include the following (with page numbers corresponding to the pages on which they are discussed in the attached *Katrina Article*):

- i. Right to be free from discrimination; right to equal protection under the law, as elucidated upon by the Race Committee in General Recommendation No. 13—Training of law enforcement officials in the protection of human rights,¹³ and ICERD Articles 1(1)¹⁴ and 5(a)¹⁵ (see *Katrina Article* at pp. 370-373, 373-375)**
 - E.g.: Past and ongoing discrimination in New Orleans against racial minorities, including youth, the infirm, women, same-sex couples or other sexual minorities (e.g., gay, lesbian, bisexual or transgendered persons), immigrants, and the poor; Minority persons abandoned in New Orleans while many non-minorities had means to escape; Minority elderly trapped in nursing homes; Minorities disproportionately mistreated by police; Minority same-sex couples denied Federal Emergency Management Agency (FEMA) and other benefits; and governmental and media stereotyping of minorities.
- ii. Racial discrimination causing deprivation of the right to vote, electoral rights, and the right to participate in governance under ICERD Article 5(c)¹⁶ (see *Katrina Article* at pp. 386-387, 387-388)**

2005), <http://mcli.org/reso-nlg-katrina2-4pdf.pdf>; Frederic L. Kirgis, *Hurricane Katrina and Internally Displaced Persons*, ASIL INSIGHT, (Sept. 21, 2005), at www.asil.org/insights/2005/09/insights050921.html.

¹³ General Recommendation No. 13: Training of law enforcement officials in the protection of human rights, U.N. Committee on the Elimination of Racial Discrimination, (1993) available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/51868b27038065a2c12563ee004b2ea?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/51868b27038065a2c12563ee004b2ea?Opendocument).

¹⁴ ICERD Article 1, para. 1 provides:

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.

¹⁵ ICERD Article 5(a) provides:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake 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, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice[.]

¹⁶ ICERD Article 5(c) provides:

- E.g.: There was a disproportionate impact on racial minorities caused by: Irregularities in voting in New Orleans post-Katrina; Failure to properly notify prospective voters; Inadequate facilities for internally displaced persons to vote; Disproportionate disenfranchisement caused by smaller percentage of racial minorities and the poor who were displaced to have access to means and methods necessary to cast ballots; Newly shifted demographics caused by displacement resulting in shifting racially impacted political landscape.

iii. Right to a fair trial; right to liberty and security of the person; right to be free from torture and cruel, inhuman & degrading treatment or punishment in accordance with the Race Committee's General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system¹⁷ and ICERD Article 5(b)¹⁸ (see *Katrina Article* at pp. 379-384, 384-385)

- E.g.: Suspension of grand juries in New Orleans for many months; Suspension of jury trials in criminal cases for many months; Breach of speedy trial rights; Suspension of statutes of limitation; Inadequate assistance of counsel; Misidentification of arrestees resulting in improper incarcerations; Maltreatment in temporary jails; Jailed persons abandoned when the waters rose; Excessive bail amounts; inhuman treatment in detention facilities.

iv. Right to human dignity, as enunciated in ICERD's preamble, and as closely intertwined and interdependent with the right to life, and recognition as a person (under the International Covenant on Civil and Political Rights) (see *Katrina Article* at pp. 375-377, 378-379)

- E.g.: Unnecessary loss of life and human dignity; Implementation of "shoot on sight" orders by police; Inadequate food, housing, health care.

v. Rights related to privacy, family life, and missing relatives, as expounded upon by the Race Committee in General Recommendation No. 25—Gender related dimensions of racial discrimination¹⁹ (see *Katrina Article* at pp. 405-406, 406-407)

... States Parties undertake 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 . . . in the enjoyment of . . . (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service[.]

¹⁷ General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Committee on the Elimination of Racial Discrimination, A/60/18, pp. 98-108, available at http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf.

¹⁸ ICERD Article 5(b) provides for the "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution".

¹⁹ General Recommendation No. 25—Gender related dimensions of racial discrimination, UN Committee on the Elimination of Racial Discrimination, (2000) available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?Opendocument).

- E.g.: Misidentification of human remains; Undue delay in reunification of missing family members; Failure to provide same-sex couples who were Katrina victims the same privacy, family and missing relatives rights as other families similarly affected by Katrina.

vi. Rights related to receiving humanitarian assistance in light of the Race Committee's General Recommendation No. 20—Non-discriminatory implementation of rights and freedoms (Art. 5)²⁰ (e.g., from non-governmental organizations & foreign governments) (see *Katrina Article* at pp. 408-409, 409-410)

- E.g.: Federal government not providing adequate humanitarian and other assistance; State and local governments also failing in these respects; Private companies and individuals wrongfully exploiting the catastrophe and depriving Katrina victims of assistance; Inappropriate politics contributing to death and illness by the rejection of and delay of humanitarian assistance from offering countries due to inappropriate, political reasons.

vii. Discrimination against racial minorities in denying their right to be free from torture and cruel and unusual treatment and punishment (see *Katrina Article* at pp. 379-384, 384-385)

- E.g.: Jailed persons abandoned to Katrina in waist deep water for days, without proper sanitation and food; Beating and other physical mishandling of persons in custody in New Orleans; "Shoot on sight" orders executed in New Orleans.

viii. Discrimination against racial minorities in denial of rights to residence, freedom of movement, return under conditions of safety, resettlement and reintegration of displaced persons under ICERD Article 5(d)(i)²¹ (see *Katrina Article* at pp. 410-413, 413-414)

- E.g.: Delay in permitting persons to return to New Orleans; Inadequate facilities in New Orleans to support all who wish to return; Failure to have in place adequate plans to help prevent another Katrina catastrophe; Failure of the New Orleans' re-building process to be open to all former residents, without regard to race or economic status.

ix. Minorities discriminated against in denial of their freedom of association and assembly, freedom of movement, and right to be free from displacement under ICERD Article 5(d)(ix)²² (see *Katrina Article* at pp. 410-413, 413-414)

- E.g.: Inability of internally displaced persons to associate and assemble, occasioned by their displacement; Inability of displaced persons to return to New Orleans many months after the hurricane, in some cases with no hope of returning home soon due to unimproved conditions in the city.

²⁰ General Recommendation No. 20—Non-discriminatory implementation of rights and freedoms (Art. 5), U.N. Committee on the Elimination of Racial Discrimination, (1996) available at [unhcr.ch/tbs/doc.nsf/\(Symbol\)/8b3ad72f8e98a34c8025651e004c8b61?Opendocument](http://unhcr.ch/tbs/doc.nsf/(Symbol)/8b3ad72f8e98a34c8025651e004c8b61?Opendocument):

²¹ ICERD Article 5(d)(i) provides for the "right to freedom of movement and residence within the border of the State".

²² ICERD Article 5(d)(ix) provides for the "right to freedom of peaceful assembly and association".

- X. Discrimination against minorities in denial of their right to a remedy for international human rights law violations, under ICERD Article 6²³ as expounded by the Race Committee in General Recommendation No. 26—Article 6 of the Convention²⁴ (effective protection and remedies) (see *Katrina Article* at pp. 414, 415)**
- E.g.: Failure to provide adequate remedies for international human rights law violations perpetrated before, during and after Katrina; Failure to hold all relevant individuals and entities accountable for international human rights law violations perpetrated before, during and after Katrina.
- 6. Other rights (reflecting, together with the principle of equality and non-discrimination, the inter-relatedness of civil & political rights on the one hand, and economic, social and cultural rights on the other hand)**
- i. Right to work (see *Katrina Article* at pp. 395-397, 397)**
- E.g.: Exclusion of blacks and other minorities from lucrative government reconstruction contracts; jobs lost to Hurricane Katrina; Loss of pension and other benefits; Failure of viable programs to assist disadvantaged minorities in job training, which is needed to help ensure that civil and political rights are enjoyed; Loss of means by which displaced persons would have availed themselves of civil and political rights.
- ii. Right to adequate health care under ICERD Article 5(e)(iv)²⁵ (see *Katrina Article* at pp. 388-390, 390-391)**
- E.g.: Insufficient and inadequate health care providers, health care, and treatment equipment to handle the physical and mental health issues arising before, during and after Katrina; Deaths or serious illness caused by lack of adequate health care for Katrina victims; Unnecessary suffering; healthcare problems caused by untreated sewage, unsanitary conditions in temporary shelters (e.g., sports stadiums); Long-term health problems contributing to non-enjoyment of civil and political rights (e.g., too ill to vote, participate in governance in city, associate, or move).

²³ ICERD Article 6 provides:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

²⁴ General Recommendation No. 26: Article 6 of the Convention, U.N. Committee on the Elimination of Racial Discrimination, (2000) available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/c11647a2f7823d62802568bd0055ac51?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/c11647a2f7823d62802568bd0055ac51?Opendocument).

²⁵ ICERD Article 5(e)(iv) provides for the "right to public health, medical care, social security and social services".

iii. Right to adequate housing under ICERD Article 5(e)(iii)²⁶ (see *Katrina Article* at pp. 391-393, 393-395)

- E.g.: Non-availability of “adequate” housing at the level called for under international human rights law – with “adequate” housing, according to the United Nations Economic Committee in General Comment No. 4, para. 8, requiring assessing, as regards housing, the following factors: the legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. Also: Inappropriate and unlawful evictions of lower income renters; Non-availability of adequate low income housing; razing of public housing facilities; Race and class discrimination contributing to housing crises in New Orleans; Lack of permanent, adequate housing resulting in failure of displaced persons to be able to contribute to the electoral process in that they did not receive proper notice of recent New Orleans elections.

iv. Right to an adequate standard of living; freedom from poverty; right to work under ICERD Article 5(e)(i)²⁷ (see *Katrina Article* at pp. 395, 398, 399)

- E.g.: one-fifth of pre-Katrina population living below the poverty line; relationship in New Orleans between the non-realization of the right to an adequate standard of living and the right to be free from poverty on the one hand, and civil and political rights on the other hand.

v. Right to education under ICERD Article 5(e)(v)²⁸ (see *Katrina Article* at pp. 400-401, 402-403)

- E.g.: Failure of the right to education contributing to the lack of enjoyment of civil and political rights; Discrimination against racial minorities and the poor resulting in depressed enjoyment of the right to education, in turn resulting in depressed enjoyment of civil and political rights; Disparity in educational opportunities and educational achievement among different classes and races in New Orleans before Katrina contributed to the devastation and civil and political rights violations experienced during and after Katrina.

vi. Property rights, as expounded in the Race Committee’s General Recommendation No. 22: Article 5 and refugees and displaced persons²⁹ (see *Katrina Article* at pp. 403, 404-405)

²⁶ ICERD Article 5(e)(iii) provides for “the right to housing”.

²⁷ ICERD Article 5(e)(i) provides for “the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration”.

²⁸ ICERD Article 5(e)(v) provides for: “(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration” and “The right to education and training”.

²⁹ General Recommendation No. 22—Article 5 and refugees and displaced persons, U.N. Committee on the Elimination of Racial Discrimination (1996), available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fed5109c180658d58025651e004e3744?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fed5109c180658d58025651e004e3744?Opendocument)

- E.g.: Race and class discrimination in racially segregated neighborhoods and school systems; Race and class discrimination in receiving unfavorable insurance settlements for Katrina losses and the selection of homes and areas to rebuild or destroy; Lack of property ownership by racial minorities symptomatic of insidious discrimination against such persons; Lack of recourse for lost property.

7. The U.S. government has failed fully to implement the ICERD and has thus breached the ICERD and other international human rights law

The U.S. has failed fully to implement the ICERD and has thus failed to protect the internationally recognized human rights of victims of Hurricane Katrina. This submission will not highlight all governmental responsibility for violating the rights of Katrina victims, but it mentions one instance of U.S. self-reflection and criticism – a report by a Committee of the U.S. House of Representatives.

The U.S. House of Representatives convened a select committee to examine Katrina-related failures. That Committee published a scathing 520-page report entitled *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*.³⁰ The report recognizes human rights violations (including lost life and property) at different levels of government. Self-criticisms levied by the House of Representatives included:

- failure to evacuate all persons in a timely fashion or at all;
- late execution, if at all, of any hurricane relief plans;
- failure of the Department of Homeland Security (DHS) & the Federal Emergency Management Agency (FEMA) to prepare for this catastrophic hurricane and its aftermath;
- failure to adequately plan for alternatives when communication system became impaired;
- lack of coordination of the military;
- the collapse of law enforcement and lack of effective public communications;
- inadequate medical care;
- inability of FEMA to provide emergency shelter and temporary housing; and
- the inability of FEMA logistics and contracting systems to support a targeted, massive, and sustained provision of commodities.

Other investigations revealed additional instances in which the U.S. breached the right of Katrina victims to be free from racial discrimination. Because the U.S. failed in whole and in part to protect victims from racial discrimination, the U.S. violated the ICERD. Thus, the Race Committee has jurisdiction to consider the above-mentioned U.S. violations, and an obligation to condemn these U.S. violations.

³⁰ www.gpoaccess.gov/katrinareport/fullreport.pdf (520 pp report). See also House Rep. 109-396 – *A Failure of Initiative: Supplementary Report and Document Annex by the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. This report was also cited by Monique Harden & Nathalie Walker, Co-Directors and Attorneys Advocates for Environmental Human Rights (New Orleans, LA USA) and Kali Akuno, Executive Director, Peoples' Hurricane Relief Fund (New Orleans, LA USA) in *Hurricane Katrina: Racial Discrimination and Ethnic Cleansing in the United States in the Aftermath of Hurricane Katrina – A Response to the 2007 Periodic Report of the United States of America*, Nov. 30, 2007, available at http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/13_Hurricane%20Katrina.pdf.

8. National Bar Association-International Law Section & the Program in International Human Rights Law of Indiana University School of Law-Indianapolis Proposed Recommendations for the Race Committee to Adopt to Foster U.S.A. Compliance with the ICERD

The National Bar Association-International Law Section and the Program in International Human Rights Law of Indiana University School of Law-Indianapolis respectfully request the Race Committee as follows:

- **The Race Committee should urge the United States fully to adopt appropriate measures to afford all Katrina Victims, in full equality and without discrimination, all their internationally recognized civil and political human rights in the following areas that squarely fall within protections provided by the ICERD and the Race Committee's General Recommendations:**
 - i. **Right to be free from discrimination; right to equal protection under the law;**
 - ii. **Right to vote; electoral rights; right to participate in governance;**
 - iii. **Right to a fair trial; right to liberty and security of the person; right to be free from torture and cruel, inhuman & degrading treatment or punishment;**
 - iv. **Right to life, human dignity, and recognition as a person;**
 - v. **Rights related to privacy, family life, and missing relatives;**
 - vi. **Rights related to receiving humanitarian assistance (e.g., from non-governmental organizations & foreign governments);**
 - vii. **Right to be free from torture and cruel and unusual treatment and punishment;**
 - viii. **Rights to return under conditions of safety, resettlement and reintegration of displaced persons;**
 - ix. **Freedom of association and assembly; freedom of movement; right to be free from displacement; and**
 - x. **Right to a remedy for international human rights law violations.**

- **The Race Committee should urge the United States fully to adopt appropriate measures to afford all Katrina Victims, in full equality and without discrimination, all of their internationally recognized economic human rights in the following areas that, if not afforded, will deprive Katrina Victims of their enjoyment of civil and political rights:**
 - i. **Right to work;**
 - ii. **Right to adequate health care;**
 - iii. **Right to adequate housing;**
 - iv. **Right to an adequate standard of living; freedom from poverty;**
 - v. **Right to education; and**
 - vi. **Property rights.**

9. Conclusion

The National Bar Association–International Law Section and the Program in International Human Rights Law of Indiana University School of Law-Indianapolis respectfully request the Race Committee to consider our submission, which includes the attached *Katrina Article*, as you make concrete recommendations to the U.S. to correct the international human rights law violations that persist three years after Hurricane Katrina ravaged New Orleans and the Gulf Coast of the U.S.

Hurricane Katrina left a mass of destruction in its wake. But, not all of that destruction was a product of nature. Much of the horror that accompanied Katrina was man-made. Actions and non-actions of the U.S. government constituted grave international human rights law violations against the people of New Orleans and the Gulf Region.

U.S. government violations of rights of Katrina victims are ongoing, up to and including during this month in February 2008. For years, FEMA knew that FEMA trailers were suspected of containing formaldehyde—a deadly substance that also causes serious health problems in people exposed to them. As of this week—the week of 15 February 2008—FEMA has been unable or unwilling to ensure that all victims exposed to FEMA formaldehyde have received adequate medical treatment or have been provided with adequate substitute housing. Formaldehyde, which is used in fluids to embalm deceased persons before burial, is highly carcinogenic, according to the United States Centers for Disease Control (CDC).³¹

It is requested that the Race Committee urge the U.S. government to comply with its ICERD obligations and fully afford all victims of Katrina with their internationally recognized human rights in the civil and political arena, and in the inextricably intertwined economic sphere, *in full equality and without discriminatory intent or impact*.

Attachment: *International Human Rights Law Violations Before, During, and after Hurricane Katrina: An International Law Framework for Analysis*, 31 THURGOOD MARSHALL LAW REVIEW 353-425 (Spring 2006) (73 pages)

**For Contact Information for the
National Bar Association–International Law Section and the
Program in International Human Rights Law of
Indiana University School of Law-Indianapolis,
please turn to the following page:**

³¹ The CDC notes that:

Embalmers are exposed to formaldehyde at concentrations averaging up to 9 parts per million (ppm) during embalming. Short-term exposures to this strong-smelling gas cause eye, nose, and throat irritation at levels up to 5 ppm. At levels from 10 to 20 ppm, it causes cough, chest tightness, and unusual heart beat; and from 50 to 100 ppm, fluid on the lungs, followed by death. Exposure to formaldehyde over a long time may also cause cancer.

<http://www.cdc.gov/niosh/hc26.html> (last visited 15 February 2008)

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INTERNATIONAL HUMAN RIGHTS LAW
VIOLATIONS BEFORE, DURING, AND AFTER
HURRICANE KATRINA: AN INTERNATIONAL LAW
FRAMEWORK FOR ANALYSIS

BY: GEORGE E. EDWARDS*

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A. Introduction

1. International human rights law obligations of the United States federal government and of relevant state and local governments; Road map of the article; Hurricane Katrina background

1.1 Katrina – a category 5 hurricane – ravages New Orleans and the Gulf Coast leaving death and devastation in its wake. Hurricane Katrina, with brutal, devastating force, struck New Orleans and the U.S. Gulf Coast¹ on August 29, 2005, leaving in its wake destroyed homes, livelihoods, and human lives. New Orleans flooded as the levees protecting the city from Lake Ponchartrain and the Mississippi River buckled to the pressures of category 5 Hurricane-induced waters. Because the destruction was of a magnitude never before experienced in this region, finger pointing began almost immediately. Accusations were made regarding lack of preparedness for such a storm, particularly regarding federal, state, and local government officials' failure to repair the antiquated and neglected levees that were meant to protect New Orleans from disasters such as Hurricane Katrina. The world cried racism and discrimination against the poor. New Orleans was seventy percent black, with a large proportion of residents living below the poverty line. There was perceived apathy for the poor, particularly blacks, who comprised the bulk of those living in New Orleans' most vulnerable neighborhoods that experienced the greatest hurricane damage. Poor blacks were disproportionately affected negatively by Katrina. Something went horribly wrong in New Orleans before, during, and after Katrina. Nature caught the city off guard as the levees broke, swallowing up large sections of poor minority neighborhoods, leaving many people – who were unable to marshal vehicles and funds or other means to evacuate – to drown or die from lack of medical attention, trapping other people in their homes for many days without food or clean water, forcing thousands of people to flee to unsafe and unsanitary sports stadiums for storm protection, and forcing thousands

1. Though this article principally addresses international human rights law issues as they relate to New Orleans, virtually all of the rights discussed herein were implicated in and apply to the situation in other cities and states throughout the Gulf Region where the physical brunt of Hurricane Katrina was felt. Though some of the specific references apply almost exclusively to New Orleans and environs (e.g., those related to Lake Ponchartrain and the levees), other references apply throughout the Gulf Region. Many of the rights discussed related to Katrina also relate to Hurricane Rita, which struck New Orleans in September 2005, and to other catastrophes that have occurred and that might occur in the United States.

to evacuate the city for higher ground. Perceived and actual ineptitude plagued recovery efforts, which were notably slow in commencing and weak in eventual execution.

1.2 United States international human rights law obligations. The United States government is obligated under international human rights law to ensure that all persons in the United States² – including all persons directly or indirectly affected by Hurricane Katrina – are fully afforded a panoply of human rights in many areas, including civil, political, economic, social, and cultural rights. These U.S. obligations arise principally under international human rights law treaties and customary international law. State and local governments are similarly obligated to protect these rights, and the United States government is charged with ensuring that state and local authorities carry out their derivative responsibilities. The government must also ensure that effective mechanisms are in place to protect against human rights violations by non-state actors (e.g., corporations that price gouge, private citizens who discriminate, etc). Individuals and bodies appointed by the United Nations or other intergovernmental organizations are charged with investigating and reporting on whether the United States is in compliance with international human rights law, or whether the United States is breaching the internationally recognized human rights of U.S. citizens or other persons subject to the jurisdiction of the United States. The Appendices to this article identify some of the individuals (e.g., U.N. Special Rapporteurs) and bodies (e.g., U.N. Working Groups) charged with monitoring international human rights law violations by the United States.

1.3 Road map of article. This article discusses public international law generally and one of its key subsets, international human rights law. It identifies two principal international human rights law sources relevant to Katrina violations (treaties and customary international law), and it enumerates specific international human rights protections that are provided for in these legal sources (e.g., civil, political, economic,

2. The U.S. owes international human rights law obligations to everyone in the United States, including foreigners, whether undocumented, on a student or tourist visa, or in any other category of non-U.S. citizen. In the context of Katrina, the United States has “the primary responsibility to protect the people and property on their territory from hazards,” including hazards related to hurricanes such as Katrina. *See, e.g.,* Amnesty International U.S.A., *U.S. Breached International Law in Treatment of Katrina Victims*, http://www.amnestyusa.org/refugee/katrina_idps.html (on file with author) [hereinafter *U.S. Breached*].

social, and cultural rights protections). This article explains how and why these norms bind the United States government (and state and local governments) and generally discusses how the human rights protections can and should be applied to the Gulf area affected by Katrina. Though this article does not attempt comprehensively to analyze whether and how the government breached or is continuing to breach Katrina-related rights, the article concludes, based on the facts and assertions it examines, that international human rights law violations occurred before and during Katrina, and that international human rights law violations continue after Katrina. Further, this article concludes that a concerted commitment by governmental officials is needed to help ensure that these violations are remedied and that all people of New Orleans and the Gulf Region are afforded their full panoply of internationally recognized human rights in all categories, including civil, political, economic, social, and cultural rights.³

B. Basic international law and international human rights law principles (General)

2. What is international law? (Some basic principles)

2.1 Public international law – definition. “Public international law,” which is also commonly known as “the law of nations” or simply as “international law,” governs relationships between and among sovereign States as international actors. Public international law also

3. Much of the article's analysis is seemingly academic in nature because of the unwillingness of the United States government to acknowledge and fully comply with its international human rights law obligations. This article draws on the work of various scholars and activists who have helped raise consciousness about Katrina-related international human rights law concerns, including concerns about U.S. obligations, these past few months since the storm. See, e.g., *Statement of Professor Jeanne M. Woods (Loyola School of Law) & Professor Hope Lewis (Northeastern University School of Law) prepared for the Hearings of the United Nations Special Rapporteur on Extreme Poverty, Dr. Arjun Sengupta: The Aftermath of Hurricane Katrina*, New Orleans, LA, (Oct. 27, 2005) (highlighting violations of various rights, including: the right to life; the right to be free from discrimination based on race, class, age, and disability; the right to education; the rights of workers; the right to housing/shelter; the rights of undocumented and migrant workers; the rights of prisoners; and the rights of the poor) (on file with author); Ann Fagan Ginger, Meiklejohn Civil Liberties Institute, Portland National Lawyers Guild Convention, *Resolution on U.S. Government Violations of Human Rights of Katrina Victims* (Oct. 29, 2005), <http://mcli.org/reso-nlg-katrina2-4pdf.pdf>; Frederic L. Kirgis, *Hurricane Katrina and Internally Displaced Persons*, ASIL INSIGHT, (Sept. 21, 2005), at www.asil.org/insights/2005/09/insights050921.html.

governs relationships between and among sovereign States and other international actors, such as inter-governmental organizations and individual natural persons.

2.2 International law operates on two planes: The international plane and the domestic plane.

2.2.1 On the international plane, sovereign States negotiate and conclude treaties that bind them in inter-state relations. Sovereign States participate in the creation and identification of customary international law norms and general principles of law that also govern relations between and among international actors. On the international plane, if a State perpetrates an international wrong (or delict) against another State, the offending State engages state responsibility for that wrong and incurs an obligation to remedy the wrong vis-à-vis the offended State.

2.2.2 On the domestic plane, sovereign States incorporate international law norms into their domestic law, and domestic courts interpret and apply international law. On the domestic plane, international law does not operate as a distinct legal system, but it operates as a branch of domestic law.

2.2.3 In the United States, international law is a branch of domestic law. The Restatement (Third) of the Law on the Foreign Relations Law of the United States reflects “the rules that an impartial tribunal would apply if charged with deciding a controversy in accordance with international law.”⁴

2.3 International law: Dualism v. Monism

2.3.1 In a dualist system, international law is a separate system from domestic law as regards subject matter and procedure. Generally, a domestic court in a dualist system would look to domestic law when resolving disputes, and an international court would look to international law. International law would be used to resolve disputes that affect relations between and among States at the international level.

4. RESTATEMENT (THIRD) OF THE LAW ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES 3 (1987).

2.3.2 In a monist system, international law is a subset of domestic law and is used in resolving disputes in domestic courts.

2.3.3 The United States is essentially a monist system since "international law is part of our law,"⁵ and international law is "the law of the land."⁶ Thus, international law can be, should be, and indeed is considered by United States courts. The doctrine of non-self-executing treaties, though rendering some individuals unable effectively to sue to recover for breaches of rights under certain treaties to which the United States is a party, does not render the United States a dualist system.

3. Three basic sources of international law (treaties, customary international law, and general principles of law).⁷

3.1 Treaties. (The first source of international law). A "treaty" is an agreement, contractual in nature, between and among States, governed by international law, and intended to be binding.⁸ Treaties bind States via express consent generally evidenced by treaty signature and ratification.

3.2 Customary International Law. (The second source of international law). Customary international law derives its binding power via implied consent. Customary international law has two traditional elements that must be satisfied before States are bound by a customary international law norm. These two elements are: (a) state practice; and (b) *opinio juris*.⁹

3.3 General Principles of Law. (The third source of international law). This article will not focus on general principles of law as the third source of international law as most of the international human rights norms relevant to Katrina derive from the first two sources of international law: (a) treaties; and (b) customary international law.

5. *The Paquete Habana*, 175 U.S. 677, 700 (1900).

6. U.S. CONST. art. VI, cl. 2; *see also, e.g., The Paquete Habana*, 175 U.S. at 700.

7. *See* RESTATEMENT (THIRD) OF THE LAW ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 4; Statute of the International Court of Justice, art. 38(1)(b) (1946).

8. Vienna Convention on the Law of Treaties, May 23, 1969, art. 1(a), 1155 U.N.T.S. 331 [hereinafter Vienna Convention on the Law of Treaties].

9. *See supra* note 7.

4. **The relationship between international law and U.S. law.** The United States Supreme Court has repeatedly reaffirmed that “international law . . . is part of our law”, for example:
- 4.1 *Hilton v. Guyot*,¹⁰ which was decided by the U.S. Supreme Court in 1895, ruled that “international law . . . is part of our law and must be ascertained by U.S. courts of justice.”
- 4.2 *The Paquete Habana*,¹¹ ruled in 1900 that “international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.”
- 4.3 *Sosa v. Alvarez-Machain*¹² reaffirmed the “international law is part of our law” principle, noting that domestic U.S. law recognizes international law or the law of nations and stated that “[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations.”
- 4.4 *Roper v. Simmons*,¹³ in holding as unconstitutional the execution of minors – persons below the age of eighteen when they committed their crimes – acknowledged “the overwhelming weight of international opinion against the juvenile death penalty” and cited the United Nations Children’s Convention, the Civil and Political Rights Covenant, the American Convention on Human Rights, and the African Charter on the Rights and Welfare of the Child.

10. *Hilton v. Guyot*, 159 U.S. 113, 163 (1895). For further discussion on the relationship between international law and domestic U.S. law, see *Expert Witness Affidavit of Professor George E. Edwards on International Human Rights Law, International Humanitarian Law, and International Criminal Law*, tendered in the case of *U.S. v. David M. Hicks*, U.S. Military Commissions, Guantanamo Bay, Cuba (Nov. 14, 2005) (Affidavit tendered in lieu of live testimony at the Military Commissions in Guantanamo Bay; Affidavit on file with the author).

11. *The Paquete Habana*, 175 U.S. at 700.

12. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729-30 (2004).

13. *Roper v. Simmons*, 543 U.S. 551, 576 (2005) (citing the U.N. Convention on the Rights of the Child, Nov. 20, 1989, art. 37, 1577 U.N.T.S. 3. which was signed by the U.S. on Feb. 16, 1995) [hereinafter Children’s Convention], the United Nations International Covenant on Civil and Political Rights, Sept. 8, 1982, art. 6(5), 999 U.N.T.S. 175 [hereinafter Civil and Political Rights Covenant], the American Convention on Human Rights, Pact of San Jose, Costa Rica, Nov. 22, 1969, art (4)(5), 1144 U.N.T.S. 146, and the African Charter on the Rights and Welfare of the Child, Nov. 29, 1999, art. 5 (3), OAU Doc. CAB/LEG/24.9/49 (1990)).

- 4.5 *Lawrence v. Texas*¹⁴ struck down as unconstitutional a Texas statute that prohibited two same sex adults from engaging in intimate sexual relations, citing international jurisprudence and noting that “The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries.”
- 4.6 *Atkins v. Virginia*,¹⁵ which ruled that executing the mentally retarded was cruel and unusual punishment forbidden by the U.S. Constitution, noted that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”
- 4.7 In *Grutter v. Bollinger; Gratz v. Bollinger*,¹⁶ in which the Court ruled on affirmative action at the University of Michigan, Justice Ginsburg in accompanying opinions cited international human rights law conventions.
5. **Non-self-executing treaties (Domestic treaty enforcement).** Not all treaties of the United States are such that a person may successfully sustain a cause of action in a U.S. court alleging breach of the treaty in question. A cause of action may be sustained if the treaty is self-executing. A treaty that does not permit a cause of action affirmatively to be brought in a U.S. court may be a non-self-executing treaty. Unfortunately, the United States typically attaches a condition to human rights treaties it ratifies that results in those international human rights law treaties being deemed non-self-executing in the United States. For example, the United States has declared the Civil and Political Rights Covenant to be non-self-executing, rendering unsustainable in a U.S. court an affirmative claim that a right contained in that treaty has been violated.
6. **Domestic law cannot be invoked as a defense for breaching international law.** A basic rule of international law is that a State may

14. *Lawrence v. Texas*, 539 U.S. 558, 576-77 (2003) (citing *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (1981) and other European Court of Human Rights cases).

15. *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) (citing Amicus Curiae Brief from the European Union in *McCarver v. N.C.*, O.T. 2001, No. 00-8727 at 4).

16. *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003) (Ginsburg, J., concurring) (citing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, July 17, 1980, art. (4)(1), U. N. Doc. A/34/46 (1979) [hereinafter *Women’s Convention*]); *Gratz v. Bollinger*, 539 U.S. 244, 302 (2003) (Ginsburg, J., dissenting) (citing *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003) (Ginsburg, J., concurring) (citing *Women’s Convention*, *supra* note 16, at art. (4)(1)).

not invoke its domestic law in defense of or as justification for breaching that State's international obligations. The Vienna Convention on the Law of Treaties provides in Article 27: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." U.S. domestic law must be construed in a manner consistent with international law. And, as suggested in the *Charming Betsy Rule*, in essence, international law trumps domestic law.¹⁷

C. International law relevant to Hurricane Katrina

7. International instruments related to Hurricane Katrina: Treaties (hard law – binding instruments) and soft law instruments (non-binding, but that may contain binding customary international law norms)

7.1 Binding treaties – signed and ratified (binding on the United States)

7.1.1 International Covenant on Civil and Political Rights.¹⁸ The Civil and Political Rights Covenant provides for a breadbasket of individual rights including, for example, the right to be free from discrimination, the right to vote, and the rights to freedom of expression and association, among other "first generation" rights. The Human Rights Committee is the United Nations Treaty Body charged with overseeing implementation of the Civil and Political Rights Covenant in States party to that treaty.¹⁹ The United States and other parties to this treaty must submit periodic reports to the United Nations Human Rights Committee informing them of whether and how the State is complying with the treaty. In the 2005 summer, the Human Rights Committee invited U.S. non-governmental organizations (NGOs) to report to the Committee on implementation of rights in the U.S. In October 2005 meetings in

17. See *Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) (noting what has become known as the "*Charming Betsy Rule*" – "[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.").

18. Civil and Political Rights Covenant, *supra* note 13, available at <http://www.ohchr.org/english/law/ccpr.htm>. The Civil and Political Rights Covenant was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of Dec. 16, 1966, and it entered into force on Mar. 23, 1976, in accordance with Article 49 of the treaty. *Id.*

19. Office of the United Nations High Commissioner for Human Rights, *Human Rights Committee: Monitoring Civil and Political Rights*, <http://www.ohchr.org/english/bodies/hrc/index.htm> (last visited Apr. 8, 2006). For additional information about the U.N. Human Rights Committee, see Appendix III.

Geneva, the Committee received oral and written reports from NGOs on U.S. violations in many areas, including Katrina violations. The U.S. will appear for further related hearings before the Human Rights Committee in Geneva on 17 and 18 July 2006.

7.1.2 International Convention on the Elimination of All Forms of Racial Discrimination (Race Convention).²⁰ This Convention provides for freedom from racial discrimination in the context of a wide range of first and second generation rights (such second generation rights including, for example, economic and related rights). The United Nations Race Committee is charged with overseeing this treaty's implementation.²¹

7.1.3 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.²² This Convention prohibits state officials from engaging in torture and cruel, inhuman, or degrading treatment or punishment that does not rise to the level of torture. Police brutality and other use of force by or condoned by governmental representatives may violate this treaty.

7.1.4 United Nations Charter.²³ This treaty serves as the Constitution of the United Nations, outlining the principal organizational structure and purposes. The Charter calls for the promotion and protection of

20. United Nations International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, available at <http://www.ohchr.org/english/law/cerd.htm> [hereinafter Race Convention]. The Race Convention, which the U.S. ratified on Oct. 21, 1994, was adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of Dec. 21, 1965, and entered into force on Jan. 4, 1969, in accordance with Article 19 of the treaty. *Id.*

21. Office of the United Nations High Commissioner for Human Rights, *Committee on the Elimination of Racial Discrimination: Monitoring Race Equality and Non-Discrimination*, <http://www.ohchr.org/english/bodies/cerd/> (last visited Apr. 8, 2006). For additional information about the U.N. Committee on the Elimination of Racial Discrimination, see Appendix I and Appendix II to this article.

22. United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, http://www.unhchr.ch/html/menu3/b/h_cat39.htm (last visited Apr. 11, 2006) (adopted and opened for signature, ratification, and accession by General Assembly resolution 39/46 of Dec. 10, 1984, entry into force June 26, 1987, in accordance with Article 27 (1)) [hereinafter Convention Against Torture]. The United Nations Torture Committee is charged with overseeing implementation of this treaty in States that are party to the treaty. Office of the High Commissioner for Human Rights, *Committee Against Torture*, <http://www.unhchr.ch/html/menu2/6/cat/index.html> (last visited Apr. 11, 2006).

23. U.N. CHARTER, available at <http://www.un.org/aboutun/charter/>.

human rights, generally. The Charter serves as the basis for the creation and continued existence of various United Nations bodies with human rights competency, including the U.N. Human Rights Commission, which is scheduled to be replaced by a new U.N. Human Rights Council in the spring of 2006. In turn, these bodies give life to "special procedures" or "mechanisms" in the form of United Nations Special Rapporteurs, Working Groups, Independent Experts, and Special Representatives, all of whom are charged with investigating and reporting on human rights violations around the globe. (See Appendix IV to this article for more information about these United Nations procedures and mechanisms.)

7.1.5 Organization of American States. The United States is part of the Inter-American system for human rights promotion and protection, and participates in the work of the Inter-American Commission on Human Rights²⁴ based in Washington, D.C. Furthermore, the American Declaration on the Rights and Duties of Man,²⁵ which is not a treaty, applies to the U.S.

7.2 Treaties that the U.S. has signed but has not ratified, rendering these treaties not binding but nevertheless relevant.²⁶ Because the United States has signed each of the following treaties, the United States is obligated to refrain from acts that would defeat the object and purpose of these treaties.²⁷ However, the United States is not bound to comply fully with any of these signed but not ratified treaties. Nevertheless, many of the international human rights norms provided for in these treaties have risen to the level of customary international

24. Inter-American Commission on Human Rights, *Organization of American States: Composition of the IACHR*, at <http://cidh.org/personal.eng.htm> (last visited Apr. 10, 2006). For additional information about the Inter-American Commission on Human Rights, see Appendix V to this article.

25. Inter-American Commission on Human Rights, *Organization of American States: American Declaration of the Rights and Duties of Man*, <http://www.cidh.org/Basicos/basic2.htm> (last visited Apr. 8, 2006) (approved by the Ninth International Conference of American States, Bogota, Colombia, 1948) [hereinafter American Declaration].

26. The U.S. typically becomes bound by an international human rights law treaty only upon U.S. ratification of that treaty. However, if the U.S. signs the treaty, the U.S. assumes an obligation "to refrain from acts which would defeat the object and purpose of [the] treaty." Vienna Convention on the Law of Treaties, *supra* note 8, at art. 18. The obligation to refrain from acts that would defeat the object and purpose of the treaty differs from the heavier obligation to comply fully with the treaty when a State has ratified that treaty. See *id.*

27. See Vienna Convention on the Law of Treaties, *supra* note 8, at art. 18.

law, and those customary international law norms bind States, including the United States, irrespective of any treaty ratification.

7.2.1 United Nations International Covenant on Economic, Social, and Cultural Rights (Economic Covenant).²⁸ This Covenant obligates States that are party to the treaty to provide for a range of “second generation” rights, including the right to housing, food, education, etc.²⁹ The United States has signed this treaty, but it has not ratified it.

7.2.2 Convention on the Elimination of All Forms of Discrimination against Women.³⁰ This Convention provides for non-discrimination based on sex for a broad range of many specific first and second generation rights. The United States has signed but not ratified this treaty.

7.2.3 The Convention on the Rights of the Child (CRC).³¹ This treaty obligates States that are party to the treaty to ensure a broad range

28. Office of the United Nations High Commissioner for Human Rights, *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, <http://www.ohchr.org/english/law/cescr.htm> [hereinafter Economic Covenant]. The Economic Covenant entered into force Jan. 3, 1976, in accordance with Article 27 of the treaty. The United States signed the ICESCR, but it has not yet ratified the treaty. The U.N. Economic Rights Committee oversees implementation of the ICESCR in Member States. *Id.*

29. Article 2(1) of the Economic Covenant, *supra* note 28, provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

30. Women’s Convention, *supra* note 16, available at <http://www.ohchr.org/english/law/cedaw.htm>. The Women’s Convention, which the U.S. has signed but has not yet ratified, entered into force Sept. 3, 1981, in accordance with Article 27(1) of the treaty. Information about the Women’s Convention Committee, which oversees implementation of the treaty in Member States, can be found at <http://www.un.org/womenwatch/daw/cedaw/>. Because the U.S. has not ratified the Women’s Convention, the Women’s Convention Committee has no jurisdiction to monitor implementation of Women’s Convention treaty rights in the U.S. *Id.*

31. Children’s Convention, *supra* note 13, available at <http://www.ohchr.org/english/law/crc.htm>. The CRC entered into force Sept. 2, 1990, in accordance with Article 49 of the treaty. The U.N. Children’s Committee oversees implementation of that treaty in Member States. Office of the United Nations High Commissioner for Human Rights, *Committee on the Rights of the Child: Monitoring Children’s Rights*, <http://www.ohchr.org/english/body/crc/> (last visited Apr. 8, 2006). Because the United States has not become a party to the

of many child-specific first and second generation rights. The United States has signed but not ratified this treaty.

7.3 International instruments that are not treaties, but that contain binding customary international human rights law norms (Soft law instruments)

7.3.1 The Guiding Principles on Internal Displacement.³² Paragraph 2 of the Introduction to the Guiding Principles on Internal Displacement defines “internally displaced persons” as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of . . . violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.” The persons who fled the Gulf region are not “refugees” because to be a refugee, a person must flee across national borders for the purpose of escaping persecution. However, these people would qualify as internally displaced persons because they fled human rights violations perpetrated in the Gulf Region. In addition, they qualify as internally displaced persons because they fled the aftermath of Hurricane Katrina, the devastation of which was both a natural and human-made disaster.

7.3.2 Universal Declaration of Human Rights (UDHR). The UDHR was promulgated soon after the United Nations was created as a positive law embodiment of rights to be afforded to all persons. As this instrument was only a declaration without the full binding force of law (not unlike the U.S. Declaration of Independence), efforts

CRC, the Children’s Committee does not have jurisdiction to monitor CRC treaty rights in the United States. However, since the United States has signed the CRC, the United States is obligated to refrain from acts which would defeat the object and purpose of the treaty. *See* Vienna Convention on the Law of Treaties, *supra* note 8, at art. 18.

32. *Addendum to the Human Rights, Mass Exoduses and Displaced Persons Report of Mr. Francis M. Deng, Representative of the Secretary-General, to the UN Human Rights Commission*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998), reproduced at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/d2e008c61b70263ec125661e0036f36e?Opendocument>; <http://www.unhcr.ch/html/menu2/7/b/principles.htm> [hereinafter *Guiding Principles on Internal Displacement*]. Though the *Guiding Principles on Internal Displacement* may be considered as non-binding “soft law,” the United States should still comply with the principles that it has identified as a “useful tool and framework” for ensuring that internationally displaced persons are fully afforded their rights following disasters. *See U.S. Breached, supra* note 2.

were made to generate binding human rights law instruments, which led to the Civil and Political Rights Covenant and the Economic Covenant. The human rights norms contained within the UDHR are widely said to have risen to the level of customary international law, and they are thus binding on States irrespective of whether the States in question did or did not ratify any particular treaty.

7.4 Other relevant international instruments

7.4.1 Vienna Declaration and Program of Action.³³ This instrument was adopted by the United Nations World Conference on Human Rights held in Vienna, Austria, in 1993. It provides, in Article 5:

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

7.4.2 Vienna Convention on the Law of Treaties.³⁴ The basic rules regarding creating, becoming bound by, interpreting, complying with, suspending, terminating, and breaching treaties are codified in the Vienna Convention on the Law of Treaties. Though the United States has not yet ratified or otherwise become expressly bound by this treaty, it complies with the substantive rules contained therein because, *inter alia*, the United States recognizes the treaty to be “the authoritative guide to current treaty law and practice.”³⁵ Furthermore, the United States “accepts the Vienna Convention [on the Law of Treaties] as, in general, constituting a codification of the customary international law governing international agreements.”³⁶ Article 26 provides, as does Section 321 of the Restatement Third,

33. Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23, art. 5 (July 12, 1993), <http://www.ohchr.org/english/law/vienna.htm> (United Nations World Conference on Human Rights Vienna, June 14-25, 1993) (adopted on June 25, 1993).

34. Vienna Convention on the Law of Treaties, *supra* note 8.

35. S. Exec. Doc. L., 92nd Cong., 1st Sess., at 1 (1971).

36. *Id.*

that “[e]very international agreement in force is binding upon the parties to it and must be performed by them in good faith.”³⁷ Thus, the United States is obligated to comply with the terms of all treaties that it ratifies.

7.4.3 International Law Commission Draft Articles on the Responsibility of States for Wrongful Acts (“Draft Articles on State Responsibility”).³⁸ Under the ILC Draft Articles on State Responsibility, when a State engages in an internationally wrongful act, state responsibility is triggered, and the offending State owes amends or remedies to the offended State. The breach of an international human rights law treaty or any other treaty is an internationally wrongful act. When the U.S. breaches a treaty, it breaches its obligations to other States that are party to that treaty. Thus, not only does the United States owe remedies to individual victims who are harmed by the U.S. breaches, but also the U.S. owes remedies to States that are offended when the United States breaches international human rights law treaties to which those States and the United States are a party.

7.4.4 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³⁹ These Basic Principles, which were adopted at a U.N. Congress in 1990, are guidelines for when and how force should or may be used by law enforcement officials.

7.4.5 Other miscellaneous soft law international instruments. Numerous other soft law international instruments exist that contain principles and guidelines relevant to U.S. breaches of international law in the context of Katrina. Discussion of these other instruments is outside the scope of this article.

37. RESTATEMENT (THIRD) OF THE LAW ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 4, at § 321.

38. United Nations International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Official Records of the General Assembly, G.A. Res. 55/152, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10, chp.IV.E.1 (2001) available at <http://www.un.org/law/ilc/> (last visited Apr. 10, 2006).

39. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, (Aug. 27-Sept. 7, 1990), available at http://www.unhcr.ch/html/menu3/b/h_omp43.htm.

D. Rights provisions and analysis: What international human rights law provisions of the various international instruments are specifically relevant to events before, during, and after Katrina?

8. Relevant provisions of international instruments that may have been violated before, during, and after Hurricane Katrina. Many government officials, at all levels, have denied the existence of any international human rights law breaches before, during, and after Katrina, or have attempted to justify or excuse actions or inactions that have given rise to claims of international human rights law breaches. Denials or assertions of excuses or justifications do not negate the existence of the rights in question and their applicability, and they do not remedy any violations. This article seeks to identify relevant international human rights norms that apply in the context of Katrina and to enumerate and illustrate claims that these rights have been breached. This article does not attempt comprehensively to prove the breaches or determine the merits of any asserted excuses or justifications.

8.1 *Right to be free from discrimination; right to equal protection under the law (see also Textbox I, infra at pages 373 – 375)*

8.1.1 Race Convention, Article 1(1) defines “racial discrimination” as follows:

1. 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.⁴⁰

8.1.2 Race Convention, Article 5(a) calls for “equality before the law” and non-discrimination in the enjoyment of:

(a) The right to equal treatment before the tribunals and all other organs administering justice.⁴¹

40. Race Convention, *supra* note 20, art. 1(1).

41. *Id.* at art. 5(a).

8.1.3 Civil and Political Rights Covenant, Article 2(1) provides:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.⁴²

8.1.4 Civil and Political Rights Covenant, Article 3 provides:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.⁴³

8.1.5 Civil and Political Rights Covenant, Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴⁴

8.1.6 American Declaration, Article II provides:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.⁴⁵

8.1.7 Economic Covenant, Article 3 provides:⁴⁶

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.⁴⁷

42. Civil and Political Rights Covenant, *supra* note 13, at art. 2(1).

43. *Id.* at art. 3.

44. *Id.* at art. 26.

45. American Declaration, *supra* note 25.

46. Economic Covenant, *supra* note 28. Article 2(2) also calls for guaranteeing Covenant rights "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." *Id.* at art. 2(2).

47. *Id.* at art. 3.

8.1.8 Children's Convention,⁴⁸ Article 2(1) provides:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁴⁹

8.1.9 Guiding Principle on Internal Displacement No. 1 provides:

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.⁵⁰

8.1.10 Guiding Principle on Internal Displacement No. 4 provides:

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.⁵¹

8.1.11 Guiding Principle on Internal Displacement No. 22 provides, in relevant part:

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: . . .

48. Civil and Political Rights Covenant, *supra* note 13, also provides for non-discrimination against children, in Article 24, as follows: "1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." *Id.*

49. Children's Convention, *supra* note 13, at art. 2(1).

50. Guiding Principles on Internal Displacement, *supra* note 32, Principle No. 1.

51. *Id.* at Principle No. 4(1-2).

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right. . . .⁵²

Textbox I: Were there violations of the *right to be free from discrimination and/or the right to equal protection under the law* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁵³

- Were any of the following individuals or groups of persons discriminated against by government officials or private persons or entities before, during or after Katrina: racial minorities; youth; the infirm; women; same-sex couples or other sexual minorities (e.g., gay, lesbian, bisexual or transgendered persons); immigrants; the poor?

52. *Id.* at Principle No. 22(1)(b-d).

53. See, e.g., Benjamin Dangl, *Human Rights Violations in the Aftermath of Hurricane Katrina*, Dec. 6, 2005, www.towardfreedom.com/home/content/view/691. Interviewee Ann Fagan Ginger noted:

Many orders by FEMA were not racially discriminatory on their face, but everyone knew that they would have a disparate impact on people of color because the poverty in Black communities is much higher than in White communities. E.g., FEMA early ordered citizens to evacuate by car when thousands of African Americans had no cars. Then, when empty federally-ordered busses were driven in, they passed by Black citizens, including the elderly and disabled, walking by the side of the road, rather than picking them up and taking them to a safe, dry [sic] place.

Id.; see Malia Brink, Indigent Defense, *THE CHAMPION*, Nov. 2005, at 74, 75, available at WL 29-NOV CHAMP 74; Jonathan Glater, Contractors Get Affirmative Action Exemption, *N.Y. TIMES*, Sept. 20, 2005; Human Rights Watch, *Excerpts of Letters from Prisoners Abandoned to Katrina*, Oct. 10, 2005, hrw.org/english/docs/2005/10/31/usdom12003.htm [hereinafter Excerpts of Letters](mentioning letters from prisoners, left behind to weather Hurricane Katrina, describing, *inter alia*, unsanitary and hazardous conditions in the abandoned jails); see also CNN, *The Latest on Katrina's Aftermath: Attorney for Nursing Home Owners Says Charges are False*, Sept. 13, 2005, <http://www.cnn.com/2005/US/09/07/news.update/> (noting that thirty-four nursing home residents were found dead after they drowned at St. Bernard Parish).

- Were racial minorities, the poor, or other individuals or groups of persons abandoned during the evacuation and left to fend for themselves, while non-minorities and the non-poor were not left behind and were looked after?
- Were racial minorities and poor persons disproportionately trapped in unsanitary and unsafe shelters during and after Katrina?
- Were incapacitated aged and infirm persons disproportionately trapped in their homes, in nursing homes, or in hospitals without being evacuated or adequately cared for during Katrina?
- Has FEMA or other governmental or private relief assistance been distributed without discrimination based on race, ethnic background, sexual orientation, class, economic background, or other status?
- What role did race play in the accessibility or availability of public or private means of transportation out of the flood-ravaged areas? Were racial minorities and the poor disproportionately without means of evacuation, and if so, what economic or social factors contributed to this?
- What role might discrimination and racial stereotyping have played in the media's portrayal of minority Katrina victims? For example, when media images appeared of similarly situated blacks and whites separately wading through water carrying food in New Orleans, why did the captions label the blacks as "looters" while labeling the whites as persons who "found" food?⁵⁴
- Was the media threatened or manipulated by governmental authorities

54. The People's Hurricane Relief Fund & Oversight Coalition noted that "[t]o the major media blacks seeking and finding food from abandoned stores were looters, while whites doing the same were identified as having found food." The People's Hurricane Relief Fund & Oversight Coalition, Justice After Katrina Rally Dec. 9-10, <http://cluonline.live.radicaldesigns.org/?p=51> (last visited Apr. 9, 2006) [hereinafter People's Hurricane Relief Fund]; Lundy Langston, Why Hurricane Katrina's So-Called Looters Were Not Lawless: They Are Entitled to the Well-Established Defense of Necessity, *FINDLAW*, Sep. 13, 2005, writ.news.findlaw.com/commentary/20050913_langston.html. In discussing the defense of necessity and how it relates to looting that occurred after Hurricane Katrina, Langston noted:

These individuals are entitled to the defense of necessity and should not be deemed "looters." And they were entitled to help without the further threat of death – this time, by guns. It is appalling that the responders turned guns on the very people they were sent to help." "Looters" Should not be Blamed for Merely Protecting Human Life and Health.

Id.

and prevented from access to accurate information before, during and after Katrina? Did the media covering Katrina and its aftermath have comprehensive access to all the information required to report fully on Katrina-related issues? Was the right freely to impart and receive accurate information breached?

- What role might discrimination have played in the orders to law enforcement and military personnel to “shoot on sight” persons suspected of looting, when most of those suspects were racial minorities?
- Did law enforcement officers disproportionately arrest, beat, and otherwise abuse blacks, other minorities, and/or poor persons?
- Were blacks and other minorities disproportionately represented among those who died or were injured because of Katrina? Were the homes of racial minorities and poor persons primarily in the areas of the city that were most vulnerable to harm from a category 5 hurricane, and were they the homes that indeed experienced the most damage from the hurricane?
- Were same-sex couples or other sexual minorities discriminated against in the provision of information about missing partners, in the distribution of FEMA and other assistance, in abuse at the evacuation shelters, or otherwise?

8.2 *Right to life; right to human dignity; and right to recognition as a person (see also Textbox II, infra at pages 378 – 379)*

8.2.1 Civil and Political Rights Covenant, Article 6 provides:

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.

8.2.2 American Declaration, Article I provides:

Every human being has the right to life, liberty and the security of his person.

8.2.3 American Declaration, Article XVII provides:

Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

8.2.4 Guiding Principle on Internal Displacement No. 8 provides:

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

8.2.5 Guiding Principle on Internal Displacement No. 10 provides, in relevant part:

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life.

8.2.6 Children's Convention, Article 6 provides:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

8.2.7 Guiding Principle on Internal Displacement No. 11 provides, in relevant part:

1. Every human being has the right to dignity and physical, mental and moral integrity.

8.2.8 Guiding Principle on Internal Displacement No. 20 provides, in relevant part:

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

8.2.9 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 4 and 5 provide, in relevant part:

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life.

8.2.10 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 7, 8 and 9 provide:

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

8.2.11 Civil and Political Rights Covenant, Article 7 provides, in relevant part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Textbox II: Were there violations of the right to life, the right to human dignity, and/or the right to recognition as a person before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁵⁵

- Were violations of the right to life, the right to human dignity, and/or the right to recognition as a person triggered by inadequate warnings, inadequate supplies, inadequate emergency equipment on hand, and general inadequate preparedness for a disaster such as Hurricane Katrina?
- Did the government's non-reinforcement of the levees, which were built by the Army Corps of Engineers, contribute to denial of the right to life? Is the U.S. government devoting adequate resources to bolster the levee system post-Katrina?
- Did the non-existence of government evacuation plans contribute to the breach of the right to life?
- Did government officials breach the right to life and the right to

55. See, e.g., Human Rights Watch, *New Orleans: Prisoners Abandoned to Floodwaters, Officers Deserted a Jail Building, Leaving Inmates Locked in Cells*, Sept. 22, 2005, <http://hrw.org/english/docs/2005/09/22/usdom11773.htm> (alleged violations of the right to human dignity and/or the right to recognition as a person in situation where correctional officers from the Orleans Parish Prison abandoned 600 inmates in one of the prison buildings during Katrina, including inmates still locked in cells on the ground level, with many of the jailed immersed in chest and neck level water and left without food, electricity, fresh air, clean water, or functioning facilities for four days and nights).

As regards threats liberty and security of the person, and threats to freedom of expression and coercion of the press that authorities may have sought to intimidate to help cover up governmental abuse or ineptitude, it was reported that New Orleans police "hurled to the ground" a photographer for the Canadian Toronto Star daily, grabbed his two cameras, removed memory cards from them, and then insulted and threatened him when he asked for his property back. The Information Office of the State Council of the People's Republic of China, *The Human Rights Record of the United States in 2005*, PEOPLE'S DAILY ONLINE, english.people.com.cn/200603/09/eng20060309_249259.html (March 9, 2006) [hereinafter *Human Rights Record*]. It was also reported that New Orleans police officers attacked and detained a local newspaper reporter and then smashed his camera equipment to the ground while the reporter was covering a shoot-out between local residents and police. *Id.*

human dignity by issuing “shoot on sight” orders, which are prohibited under international human rights law?⁵⁶ Was excessive force used, beyond that permitted by self-defense or other legitimate purposes? Was the force employed disproportionate to any perceived threats?

- What is the relationship between economic rights (such as the right to food, housing, health, and an adequate standard of living) and the right to life and the right to human dignity? Did the denial of economic rights contribute to the denial of the right to life and the right to human dignity?
- What constitutes “inhumane treatment” or “degrading treatment?”
- Is it inhumane or degrading treatment for governmental authorities to abandon jailed persons in chest-high flooded cells, without clean air, clean water, food, or functioning facilities for several days during a category 5 hurricane?
- Was the right to life violated given the deaths resulting from any action and/or inaction by federal, state, and/or local governments?

8.3 Right to a fair trial; right to liberty and security of the person; right to be free from torture or cruel, inhuman, or degrading treatment or punishment (see also Textbox III, infra at pages 384 – 385)

8.3.1 Civil and Political Rights Covenant, Article 14 (fair trial) provides:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but

56. See People’s Hurricane Relief Fund, *supra* note 54; see also CNN, *Military Due to Move Into New Orleans: Governor Warns Thugs, Troops ‘Know how to Shoot and Kill,’* Sept. 2, 2005, <http://www.cnn.com/2005/WEATHER/09/02/katrina.impact/index.html>.

any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

8.3.2 Race Convention, Article 5(b) (security of person) calls for non-discrimination in the enjoyment of:

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

8.3.3 Civil and Political Rights Covenant, Article 9(1) (liberty and security of person) provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

8.3.4 Civil and Political Rights Covenant, Article 10 (liberty and dignity of the person) provides:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

8.3.5 Guiding Principle on Internal Displacement No. 12 (liberty and security of person) provides, in relevant part:

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

8.3.6 American Declaration, Article I (liberty and security of person) provides:

Every human being has the right to life, liberty and the security of his person.

8.3.7 American Declaration, Article XXV (liberty) provides, in relevant part:

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

8.3.8 Convention Against Torture, Article 1 provides:

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or

suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

8.3.9 Convention Against Torture, Article 2 provides:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

8.3.10 Convention Against Torture, Article 16 provides:

1. 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 I, 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. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

8.3.11 Civil and Political Rights Covenant, Article 7 provides, in relevant part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Textbox III: Were there violations of the right to a fair trial, the right to liberty and security of the person, and/or the right to be free from torture or cruel, inhuman, or degrading treatment or punishment before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁵⁷

- How were suspects, arrestees, and charged criminal defendants treated by government officials during and after Katrina? How were they treated before Katrina? Were they fully afforded all the procedural rights mandated by international human rights law, including the right to be presumed innocent until proved guilty, the right to a speedy trial, the right to counsel, the right to be informed of charges against them, etc.? Were any of these rights improperly suspended during and after Katrina?
- Were all arrestees fully afforded the right to a fair trial as required by international human rights law and as required by domestic law? Can the right to a fair trial be fully afforded to persons in New Orleans if jury and bench trials are suspended for many months, if grand juries are not convened for many months, and if suspects and arrestees are not timely afforded their day in court? Can the right to a trial by a jury of one's peers be afforded in New Orleans if fewer than one-third of the area residents have returned to the city?
- Have inmates been denied their right to assistance of counsel due to lack of communication facilities and the inability of law enforcement agencies to identify which inmates were evacuated to which facilities?

57. See, e.g., Woods & Lewis, *supra* note 3; Human Rights Watch, *Louisiana: Justice Obstructed, Not Restored – Six Weeks After Hurricane, Arrests for Minor Offenses Turn into Indefinite Jail Time*, Oct. 14, 2005, <http://www.hrw.org/english/docs/2005/10/13/usdom11870.htm>; David Rohde and Christopher Drew, *Storm and Crisis: The Inmates: Prisoners Evacuated After Katrina Allege Abuse*, N.Y. TIMES, Oct. 2, 2005; Barbara E. Bergman, *NACDL'S Response to Katrina*, THE CHAMPION, Nov. 2005, at 8, available at WL 29-NOV CHAMP 8 (noting Louisiana's poor "criminal justice system," especially the lack of adequate funding for indigent defense prior to Hurricane Katrina). For reports by U.S. non-governmental organizations on police brutality in New Orleans in contravention of the Convention Against Torture, see *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States – A Report Prepared for the United Nations Committee Against Torture on the Occasion of Its Review of The United States of America's Second Periodic Report to the Committee Against Torture* (April 2006) (on file with author) (describing law enforcement and military personnel violations of the Convention Against Torture in New Orleans, such violations including violently arresting and detaining internally displaced persons, use of excessive physical force, etc.)

Can a diminished public defenders' office provide effective assistance of counsel when each defender is responsible for more than 1,000 felony cases?

- Was international human rights law violated by the suspension of Louisiana's "speedy trial" statutes, by the suspension of the statute of limitations on crimes, and/or by the prosecutor being permitted to dismiss cases and reinstate those cases in order to circumvent statutes of limitation? Will the increased size of the criminal court docket and the lengthy delays result in violations of international human rights law?
- Were inmates incarcerated for longer than required or permitted because of confusion as to their identities when inmates abandoned in the jails were finally rescued or because of the failure of recent arrestees to be brought before a judge for bail and other release procedures, etc.?
- Were/are indigent clients fully afforded counsel, particularly when the primary source of funds traditionally used to pay for such counsel – revenues from traffic tickets – was non-existent during Katrina and is dramatically lessened post-Katrina?
- Was there any maltreatment in the temporary jails and holding in New Orleans? Were some individuals improperly jailed or erroneously charged? Was habeas corpus suspended, and if so was this suspension constitutionally permissible?
- Were people who were housed in flooded temporary or permanent jails in New Orleans abandoned, locked in their cells without means of sustenance or other essentials?
- Have inmates been denied their right to be free from excessive bail because of their inability to make contact with family members who were also evacuated and because of an interim bail process that required in-person appearances and possibly hundreds of miles of travel?
- Did New Orleans police resort to excessive force against black and other minority suspects or accused persons before, during, or after Katrina? Did acts of government officials vis-à-vis suspects or accused persons amount to torture or cruel or degrading treatment or punishment?

8.4 *Right to vote; electoral rights; right to participate in governance (see also Textbox IV, infra at pages 387 – 388)*

8.4.1 Race Convention, Article 5(c) calls for non-discrimination in the enjoyment of:

(c) Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

8.4.2 Civil and Political Rights Covenant, Article 25 provides:

25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

8.4.3 American Declaration, Article XX provides:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

8.4.4 Guiding Principle on Internal Displacement No. 22 provides, in relevant part:

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights. . . .

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right

Textbox IV: Were there violations of the right to vote, electoral rights and/or the right to participate in governance before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁵⁸

- Were there any irregularities, procedural or otherwise, in New Orleans regarding post-Katrina local, state and/or federal elections? Do any such irregularities continue to exist? Will post-Katrina elections be fair?
- What mechanisms are in place for internally displaced persons to vote in upcoming New Orleans' elections? What plans are in place for internally displaced persons who wish to participate in governance in New Orleans to do so, even if those persons are not physically in New Orleans? Can they vote by absentee ballot? By fax? By regular first class U.S. mail? With internally displaced persons scattered around the country, how do they receive notices regarding voting?
- What types of identification will be required to vote for voters who have been internally displaced? If a person from New Orleans wishes to register to vote for the first time, will that person have to return to New Orleans to register, or can that person register by mail? If that person registers by mail, must that person's first ballot be cast in person in New Orleans? If Iraqi citizens living in the United States can vote in Iraqi elections while in the United States, should not New Orleans citizens living in another state within the United States be permitted to vote in New Orleans elections?
- Will permitting internally displaced persons to vote by computer result in disproportionate disenfranchisement caused by the smaller percentage of racial minorities and poor persons with physical access to a computer, just as many had no access to automobiles or funds to evacuate from New Orleans?

58. See, e.g., Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World: With Constituents Dispersed, and Voting Districts Underpopulated, How Should New Orleans Hold Elections?*, FINDLAW, Oct. 11, 2005, writ.findlaw.com/commentary/20051011_gelfand.html; Ed Anderson, *Feds' Ruling Jeopardizes February Elections; Displaced Voters' Records Off-Limits*, TIMES-PICAYUNE, Oct. 19, 2005, at 3, www.nola.com/printer/printer.ssf?base/news-3/1129703437198130.xml.

- Has the federal government provided access to federal records that may show where internally displaced voters have been relocated?
- Were any relevant Voting Right Act provisions complied with in New Orleans or elsewhere in the Gulf Region?
- Will the electoral landscape of New Orleans change if poor, displaced black voters are denied the opportunity fully to exercise their right to vote and non-black voters with greater financial means have greater access to voting information and ballots (either online, via mail, or in person)?
- Will internally displaced persons lose their legal residency in New Orleans due to physical absence?
- How will a substantial permanent migration from New Orleans affect Louisiana's Congressional political power?
- What is the relationship between and among electoral rights, poverty, liberty and security of the person, and disenfranchisement?

8.5 *Right to adequate health care (see also Textbox V, infra at pages 390 – 391)*

8.5.1 Race Convention, Article 5(e)(iv) calls for non-discrimination in:

- (iv) The right to public health, medical care, social security and social services.

8.5.2 American Declaration, Article XI provides:

Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

8.5.3 Economic Covenant, Article 12 provides:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

8.5.4 Children's Convention, Article 24 provides, in relevant part:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

8.5.5 Guiding Principle on Internal Displacement No. 19 provides, in relevant part:

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

Textbox V: Were there violations of the *right to adequate health care* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁵⁹

- Did Katrina victims have access to adequate health services — for physical and mental health — before, during and after Katrina?

59. See, e.g., Jaime Guillet, *Look Who's Talking — Dr. Cathi Fontenot*, <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=14149> (Dec. 12, 2005) (discussing \$465 million in damage to New Orleans facilities that are part of the Medical Center of Louisiana — Charity and University hospitals while the “health care outlets for the city’s uninsured are scrambling to relocate services and provide care for New Orleans residents”); see Edwin Meese III, Stuart M. Butler, & Kim R. Holmes, *From Tragedy to Triumph: Principled Solutions for Rebuilding Lives and Communities*, Sept. 12, 2005, at <http://www.heritage.org/Research/GovernmentReform/sr05.cfm> “Promoting Permanent Health Care Coverage” (acknowledging the inadequacy of a range of health services during Katrina and suggesting that “urgent services should be given through whatever sources are available, and, beyond reasonable volunteer services . . . reimbursed through” Congressionally-authorized emergency funds); see also Soeren Mattke & Francisco Martorell, Working Paper, *Recruitment and Retention of a High-Quality Healthcare Workforce*, Oct. 2005 (discussing inadequacy of health care); *Excerpts of Letters*, *supra* note 53 (letters from inmates describing unsanitary living conditions in prisons and denial of medical healthcare). One inmate from the New Orleans Parish Prison housed at Concheta describes how prisoners were left to survive the floodwaters. She wrote, “[w]e lived in high waters, the building is 3 floors, the first floor flooded to the top, that force[d] us to move to the second floor. . . . Living in contaminated waters for 3 long miserable days.” (letter written from the Louisiana State Penitentiary, Oct. 10, 2005). Another woman who had been taken to the Concheta facility wrote: “I wasn’t given my pills for diabetes or any of three pairs of prescription eyeglasses, where I now sit at LSP with blurred vision.” (letter written from the Louisiana State Penitentiary, Oct. 15, 2005).

- Were there insufficient and otherwise inadequate health care providers, health care, and treatment equipment, to handle the physical and mental health issues that arose before, during, and after Katrina? How did insufficient and otherwise inadequate health care providers, health care and treatment equipment before Katrina contribute to non-realization of the right to health during and after Katrina?
- How many deaths or cases of serious illnesses were caused by or promoted by lack of adequate health care for Katrina victims? How much unnecessary physical or mental suffering existed in New Orleans before, during, and/or after Katrina struck? How many illnesses went untreated by trained professionals during and after Katrina?
- What was the state of health care in nursing homes and hospitals before and during Katrina? What is the state of health care in nursing homes and hospitals after Katrina? How did inadequate health care in nursing homes and hospitals before Katrina contribute to mental and physical health problems during and after Katrina?
- How did inadequate mental or physical health care of people in New Orleans before Katrina – particularly care of minorities and poor people – contribute to the mental and physical health problems faced by those people during and after Katrina?
- How did untreated sewage, unsanitary conditions in the sports arena shelters, general discrimination, and other international human rights law violations contribute to unnecessary deaths and serious physical and mental illnesses in New Orleans? What will be the long-term impact on the physical and mental health of persons affected by international human rights law violations? What steps will the government take to remedy those problems? Will the government assume full responsibility to remedy those violations?

8.6 Right to adequate housing (see also Textbox VI, *infra* at pages 393 – 395)

8.6.1 Race Convention, Article 5(e)(iii) calls for non-discrimination in:

- (iii) The right to housing.

8.6.2 Economic Covenant, Article 11 provides, in relevant part:⁶⁰

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

60. The United Nations Economic Rights Committee, which oversees implementation of the UN Economic Covenant, has noted:

The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

The Right to Adequate Housing (Art. 11(1) CESCR General Comment 4, Office of the U.N. High Commissioner for Human Rights, 6th Sess., at para. 1 (1991), [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+4.En?OpenDocument). The United Nations Economic Rights Committee further noted:

7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means . . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities — all at a reasonable cost."

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context.

Id. at para. 7-8. The U.N. Economic Rights Committee noted that the following factors are to be considered in determining whether housing is adequate: (a) Legal security of tenure; (b) the availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. *Id.* at para. 8.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger...

8.6.3 Guiding Principle on Internal Displacement No. 7 provides, in relevant part:

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

Textbox VI: Were there violations of the *right to adequate housing* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶¹

- Was housing in New Orleans before Katrina at the level called for under international human rights law, in that it was “adequate”, which according to the United Nations Economic Committee in General Comment No. 4, para. 8 requires assessing, as regards housing, the following factors: the legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy?

61. See, e.g., Medea Benjamin, *Two Months Later, Katrina Survivors are Losing the Battle to Return Home*, CODEPINK – WOMEN FOR PEACE, <http://www.codepink4peace.org/article.php?id=575> (last visited Apr. 9, 2006) (discussing how New Orleans, a city whose population included 65% black residents before Hurricane Katrina, continues to undergo “whitification” because renters who could afford rent and who had housing before Hurricane Katrina have returned to find that they have either been evicted or have had their rent substantially raised to unaffordable levels); Wsws, *Three Months After the Katrina Disaster: New Orleans Left for Dead*, INDY BAY, Dec. 14, 2005, at <http://www.indybay.org/news/2005/12/1790286.php> (noting that 40,000 families are living in trailers, only 8,780 trailers were provided by FEMA, and thousands of trailers stored nearby have not been delivered because FEMA has not paid the suppliers); see Greg Thomas, *Home Prices Take Off After Katrina*, TIMES-PICAYUNE, Feb. 19, 2006, <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-5/1140333234146440.xml> (discussing rising home prices post-Katrina); see also Harry J. Holzer, *Back to Work in New Orleans*, The Brookings Institution, Oct. 2005; The Brookings Institution, *Rebuilding After Katrina: Forming the Federal-State-Local Partnership for Southern Louisiana*, Feb. 21, 2006 [Transcript prepared from a Tape Recording]; *Human Rights Record*, *supra* note 55 (noting that “The homeownership rate for blacks is 48.1 percent compared with 75.4 percent for whites.”).

- Was temporary housing during Katrina, for example, in the various sports stadiums, “adequate” under international human rights law standards? Is temporary housing post-Katrina, for example, in FEMA houses, “adequate” under international human rights law standards? Can temporary housing ever be “adequate” under international human rights law standards?
- Were there inappropriate and unlawful evictions of lower income renters whose eviction was sought to free up units for higher income renters with more disposable income, resulting in lower income renters being priced out of the housing market? Will low cost, affordable public housing be available to replace the public housing that was rendered unusable by Katrina?
- Before Katrina, was there a pervasive form of race and class discrimination in New Orleans that inhibited access by racial minorities and poor persons to adequate housing? If so, do these conditions still exist after Katrina? What action, if any, was taken or is being taken against any landlords, home-sellers, or real estate agents for housing discrimination before, during, or after Katrina?
- What caused the substantial delay in FEMA trailers being provided as accommodations for displaced persons?
- How has lack of permanent housing or a permanent mailing address affected claims of internally displaced persons for relief benefits?
- How will the housing needs of internally displaced persons be met post-Katrina?
- What will be the contours of New Orleans’ reconstruction? Will internally displaced persons be able adequately to participate in decisions related to reconstruction?
- How long will FEMA permit internally displaced persons to live in hotels when those persons have no New Orleans homes to return to?
- Does the White House and do others within the current U.S. Administration agree with the following comment attributed to Mrs. Barbara Bush regarding New Orleans internally displaced persons who were temporarily housed in the Houston Astrodome: “And so many of the people in the arena here, you know, were underprivileged anyway, so this is working very well for them.”⁶²

62. Katrina Web Log, www.npr.org/news/specials/hurricane/katrina/blog_090605.html (last visited Dec. 30, 2005).

- Given that a person needs a home (or at least an address) to vote in elections, will displaced persons who return to New Orleans be afforded appropriate housing such that they will be able to exercise their constitutional and international human right to vote? Will voting regulations be modified such that displaced persons formerly resident in New Orleans who are unable to return to New Orleans to vote will be afforded a full opportunity to participate in future New Orleans elections? Will the government fully recognize the inter-relatedness between economic rights (such as the right to adequate housing) and civil and political rights (such as the right to vote and the right to participate in public affairs)?

8.7 Right to work (see also Textbox VII, *infra* at page 397)

8.7.1 Race Convention, Article 5(e)(i) (right to work) calls for non-discrimination in:

- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

8.7.2 American Declaration, Article XIV provides:

Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

8.7.3 Economic Covenant, Article 6 provides:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall

include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

8.7.4 Economic Covenant, Article 7 provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

8.7.5 Women's Convention, Article 11 provides, in relevant part:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

Textbox VII: Were there violations of the *right to work* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶³

- How many jobs were lost in New Orleans and environs because of Hurricane Katrina?
- How many post-Katrina employment opportunities were taken by non-New Orleans residents who traveled to the city during or after Katrina to take advantage of the new work opportunities? To what degree were New Orleans workers displaced by outside labor forces during and post-Katrina?
- Will New Orleans workers displaced by Katrina lose pension and other benefits?
- Were local suppliers and other companies permitted to participate in the massive, lucrative clean-up and other contracts, many of which were awarded without bid to companies from outside the region, including companies with close ties to the current federal administration? What steps were taken to ensure transparency and fairness in the post-Katrina bidding process for these lucrative contracts?
- Were minority-owned companies excluded from a lucrative post-Katrina primary contract feeding frenzy? Were minority-owned companies awarded predominantly sub-contracts rather than primary contracts?
- Does a viable program of action exist to help disadvantaged minorities access employment and funding for job training in New Orleans?

63. See, e.g., Ann McFeatters, *Report: 400,000 Jobs Lost to Katrina*, POST-GAZETTE, Sept. 8, 2005, <http://www.post-gazette.com/pg/05251/567466.stm>; see also *Thousands of Jobs Lost After Katrina*, Oct. 15, 2005, at <http://www.echolist.com/business/2005/october/news17269.html>; see also Chris Isidore, *Job Drop not so Steep*, CNNMONEY.COM, Oct. 7, 2005, at money.cnn.com/2005/10/07/news/economy/jobs_september/index.htm; Woods & Lewis, *supra* note 3, at 6 (citing Memorandum from Charles E. James, Sr., Deputy Assistant Secretary, U.S. Department of Labor, Re: Contracts for Hurricane Katrina Relief Efforts (Sept. 8, 2005), available at <http://www.dol.gov/esa/ofccp/pdf/Katrina1.pdf>); Tyler Lewis, *Decision to Suspend Affirmative Action Requirements Sharply Criticized*, CIVILRIGHTS.ORG, Sept. 21, 2005, at http://www.civilrights.org/tools/printer_friendly.cfm?id=35883&print=true; Jonathan Glater, *Contractors Get Affirmative Action Exemption*, N.Y. TIMES, Sept. 20, 2005, at 26.

8.8 *Right to an adequate standard of living; right to freedom from poverty*
(see also Textbox VIII, infra at page 399)

8.8.1 Guiding Principle on Internal Displacement No. 18 provides:

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

8.8.2 Children's Convention, Article 27 provides, in relevant part:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Textbox VIII: Were there violations of the right to an adequate standard of living and/or the right to freedom from poverty before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶⁴

- In New Orleans before Katrina, why did 100,000 of its 500,000 population live in poverty, with the majority of those living in poverty being black Americans? What percentage of the population living in New Orleans after Katrina will remain in poverty, and what percentage of those persons living in poverty will be black Americans or other racial minorities?
- What is the relationship in New Orleans between non-realization of the right to an adequate standard of living and the non-realization of the right to adequate housing, education rights, health rights, the right to work, and other economic rights?
- Has the situation in New Orleans demonstrated the inter-relatedness of civil and political rights on the one hand, and economic and social rights on the other hand, and demonstrated that rights in all of these categories were breached before, during, and after Katrina?
- If the displaced residents of New Orleans are deprived of economic rights in that they are so poor that they cannot afford to return to New Orleans because of the lack of affordable housing, or if they remain physically or mentally ill due to circumstances surrounding Katrina, how can those persons easily exercise their civil and political right to vote and participate in the governance of their city? Will the government recognize the full relationship between economic rights on the one hand and civil and political rights on the other hand?

64. For discussion of the violation of the right to an adequate standard of living or the right to freedom from poverty, *see, e.g.*, Press Release, *US Human Rights Network Launches Petition Drive to Promote Government Accountability to Katrina Victims*, www.ushrnetwork.org/pubs/Release%20on%20Katrina%20petition1.pdf (Mar. 2, 2006); Haider Rizvi, *Racial Poverty Gaps in U.S. Amount to Human Rights Violation, Says U.N. Expert*, at http://www.nesri.org/media_updates/index.html (published on Nov. 30, 2005); Loretta J. Ross, *A Feminist Perspective on Katrina: Violations of International Human Rights Standards (from ZNet)*, The Critical Race Studies Program, http://weblog.law.ucla.edu/crs/archives/2005/10/a_feminist_pers.html (Oct. 11, 2005) (noting how governmental agencies refused aid to individuals without social security numbers and that FEMA, at the prodding of critics, stopped distributing debit cards to those in need because "poor people were irresponsible and likely to cheat the system"); Kirgis, *supra* note 3 (discussing rights of internally displaced persons).

8.9 Right to education (see also Textbox IX, *infra* at pages 402 – 403)

8.9.1 Race Convention, Article 5(e)(v) calls for non-discrimination in:

(v) The right to education and training.

8.9.2 American Declaration, Article XII provides, in relevant part:

Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

8.9.3 Economic Covenant, Article 13 provides, in relevant part:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

8.9.4 Women's Convention, Article 7 provides:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

8.9.5 Women's Convention, Article 10 provides, in relevant part:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education . . .

8.9.6 Children's Convention, Article 28 provides, in relevant part:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity

8.9.7 Guiding Principle on Internal Displacement No. 23 provides:

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Textbox IX: Were there violations of the *right to education* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶⁵

- Was the right to education fully afforded to the people of New Orleans pre-Katrina? If not, what is the relationship between the deprivation of the right to education and the lack of enjoyment of civil and political rights, and lack of enjoyment of other economic rights such as the right to an adequate standard of living, the right to adequate housing, etc.?
- What impact would there have been on education and the right to education if forty percent of children in New Orleans lived in poverty pre-Katrina? What percentage of children in New Orleans after Katrina is living below the poverty line? What is the impact on education for any child living below the poverty line?
- Before Katrina, was there adequate education of the people of New Orleans about evacuation and safety plans?
- Was or is there discrimination against poor, racial minorities, resulting

65. For articles addressing the violation of the right to education *see, e.g.*, Meese, Butler, & Holmes *supra* note 59. The authors note the following:

In the wake of the hurricane, schoolchildren in affected areas have significant opportunities for a brighter educational future. Public education in New Orleans, for example, has not adequately served the needs of all children: 65 percent of New Orleans schools failed to make the state's performance standard this year, compared to 11 percent of schools statewide. In Orleans Parish, 76 percent of students come from economically disadvantaged households, diminishing their options for alternatives to inadequate public schools.

Id. Other articles discussing education in the context of Katrina include the following: National Counsel on Disability, *National Counsel on Disability on Hurricane Katrina Affected Areas: Subsequent Follow-Up Action*, Sept. 7, 2005, <http://www.ncd.gov/newsroom/publications/2005/katrina.htm> (recommending funding from Homeland Security for education on preparedness for all individuals, including persons with disabilities, as well as funding for proper emergency planning); *Experiences and Challenges of Hurricane Katrina Evacuees Before the H. Select Katrina Response Investigation*, 109th Cong. (Dec. 6, 2005) (statement of Ishmael Muhammad Co-Coordinator, PHRF/MS-DRC Grassroots Legal Network) (survivors demanding immediate education); Lois Whitman & Jamie Fellner, *U.S. Proposed Waiver Could Keep Child Victims of Katrina Out of School, Letter to the U.S. Secretary of Education*, Sept. 26, 2005, at <http://hrw.org/english/docs/2005/09/26/usdo ml1783.htm> (Human Rights Watch officials discussing how the proposed waiver of education provisions of the McKinney-Vento Homeless Assistance Act could negatively impact children who survived Katrina); *see Human Rights Record, supra* note 55 (noting significant number of children living below the poverty line in New Orleans).

in the depressed enjoyment of the right to education? Are all elementary and primary schools in New Orleans equally equipped to teach youngsters all the skills that are needed for the youngsters to be marketable upon reaching adulthood? Are schools in black neighborhoods in New Orleans as well equipped as schools in white neighborhoods in New Orleans? Are schools in poor neighborhoods of New Orleans as well equipped as schools in wealthy neighborhoods of New Orleans?

- Is the Katrina-related trauma experienced by children being taken into account in assessing performance in school for children who are temporarily displaced outside of New Orleans and for children who have returned to school in New Orleans?
- How did any disparity in educational opportunities and educational achievement among the different classes and races in New Orleans before Katrina contribute to the devastation experienced during and after Katrina?
- Are there any New Orleans children who have been or who are being “left behind?”

8.10 Property rights (see also Textbox X, *infra* at pages 404 – 405)

8.10.1 American Declaration, Article XXIII provides:

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

8.10.2 Guiding Principle on Internal Displacement No. 21 provides, in relevant part:

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Textbox X: Were there violations of *property rights* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶⁶

- Are the owners of real estate in New Orleans equally being afforded opportunities to rebuild?
- Was real estate in predominately poor, black neighborhoods disproportionately destroyed by Katrina?
- Are real estate owners in the poor, black neighborhoods more likely to receive unfavorable settlements from insurance companies or from the government?
- What problems are associated with non-ownership of real estate, and have those problems disproportionately affected poor, black families in New Orleans? Have home-renters in New Orleans been evicted for non-payment of rent, with no place to live?
- Will the majority of homes that the government will condemn and demolish for purported safety purposes be homes in the poor, black neighborhoods? Will those homes be destroyed to make way for new construction that will be unaffordable for the poor who were displaced?

66. See Adam Scales, *How Will Homeowners Insurance Litigation After Hurricane Katrina Play Out?, The Key Dynamics, the Mississippi Lawsuit, and the Courts' Likely Views*, FINDLAW, Sept. 19, 2005, at writ.news.findlaw.com/commentary/20050919_scales.html (discussing issues arising from the lawsuit filed by Mississippi Attorney General against various homeowners insurance companies). Mr. Scales noted that the suit alleges that insurers have illegally engaged in unfair trade practices by representing that their homeowners insurance contracts provide "full and comprehensive hurricane coverage" when the policies, in fact, contain substantial exclusions limiting liability.

Mississippi claims that, as a result of such practices, vulnerable homeowners are being pressured into accepting partial payments and signing away their rights. Accordingly, Mississippi is asking a court to order the companies to stop paying less than full value on claims under the policies, and to hold that the water and flood exclusions are unenforceable.

Id. Furthermore, it is contended that approximately 120,000 residents of New Orleans were unable to evacuate because they did not have personal transportation. See Chris Regan & Bryan Preston, *Ghost Plan for a Ghost Town: Ghastly Oversight in New Orleans*, http://www.nationalreview.com/comment/regan_preston200509061439.asp (Sept. 6, 2005); see also North Carolina Housing Finance Agency, *Questions and Answers for Rental Property Owners*, at <http://www.nchfa.com/About/hurricane.aspx> (last visited Apr. 10, 2006).

- What problems were caused by non-ownership of personal property, such as cars, that might have permitted more poor, black New Orleans residents to evacuate? Pre-Katrina, what problems were caused by the lack of ownership of funds to pay for personal evacuation? What problems are caused by the non-ownership of funds to support a new life outside of New Orleans or to return to New Orleans and restart?
 - Is the widespread lack of property ownership by racial minorities in New Orleans symptomatic of invidious discrimination against such persons?
- What recourse do displaced persons have if their lost personal property was not insured?

8.11 *Rights related to privacy and family life and rights related to missing relatives (see also Textbox XI, infra at pages 406 – 407)*

8.11.1 Civil and Political Rights Covenant, Article 17 provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

8.11.2 American Declaration, Article VI provides:

Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

8.11.3 Guiding Principle on Internal Displacement No. 17 provides:

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage

and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

8.11.4 Guiding Principle on Internal Displacement No. 16 provides:

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Textbox XI. Were there violations of *rights related to privacy and family life and/or rights related to missing relatives* before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶⁷

67. The number of people who died as a result of Hurricane Katrina remains unknown. See Democracy Now, *How Many are Missing and Dead After Katrina? Three Months After the Hurricane...*, Dec. 9, 2005, at www.democracynow.org/article.pl?sid=05/12/09/1444207. Reportedly, over 6,600 people, including 1,300 children, are missing. Amy Goodman reported that many people may be missing because families were separated during their evacuation. *Newsday* correspondent Tina Susman gave the following account of one mother's story of how she was almost separated from her two children:

They were waiting to get on a bus, and when, finally, they were able to get onto that bus, she told me that a police officer came and took her two children -- one is six, and one is a one-year-old -- took them, and put them on the bus and tried to prevent her from getting on the bus. The idea was 'Well let's get the kids on the

- Were the remains of any persons who died during Katrina misidentified?
- Why are many persons still missing post-Katrina? Did governmental action or inaction lead to the chaos that inhibited the search for missing relatives?
- Were causes of death of Katrina victims erroneously reported?
- Were the remains of deceased persons treated with appropriate respect?
- Was there undue delay in the reunification of families that were split up during the evacuation from New Orleans during Katrina? Has apathy set in regarding continuing to search for persons who are still missing after Katrina?
- Were same-sex couples who were victims of Katrina afforded the same privacy, family, and missing relatives rights as other families that were similarly affected by Katrina?⁶⁸ Have same-sex couples received the same governmental assistance (e.g., from FEMA) and other assistance as other Katrina victims?
- Are legal measures in place to deal with cross-state child custody disputes where one parent with joint custody may have removed a child from New Orleans during or immediately post-Katrina, contrary to a pre-existing custody order, and then been ordered by a court to return the child to New Orleans post-Katrina at the request of the other parent who may have remained in or independently returned to New Orleans?

bus,' which might sound okay, except that if the rest of the family is getting left behind and there's no way for people to get them back together what really — really, what good does it do? That's why we are in the mess we are in now.

Id. Lynn Brezosky, *Months Later, Couple Learns Son, Wife Died in Katrina*, MYSA.COM, Jan. 20, 2006, www.mysanantonio.com/sharedcontent/APStories/stories/D8F8JDHOE.html (unclaimed identified bodies are cremated and almost "disposed of" after government agencies failed to contact coroner's office to notify them that surviving family members were searching for the lost relatives); Miriam Raftery, *FEMA, La. Outsource Katrina Body Count to Firm Implicated in Body-Dumping Scandals*, THE RAW STORY, Sept. 13, 2005, rawstory.com/news/2005/FEMA_outsources_Katrina_body_count_to_firm_implicated_in_bodysdumping_scan_0913.html; *Sides Facing Off Over Gay Marriage Ban*, SAN ANTONIO EXPRESS-NEWS, Sept. 16, 2005, mysa.com.

68. In discussing a marriage ban, Anne Wynne cited inequality in FEMA's granting of family benefits as one of the ways same-sex couples are already discriminated against. *Id.* See also Tina Susman, *Looking for the Lost: The Search for Children Scattered by Katrina*, Dec. 4, 2005, http://www.operationlookout.org/lookoutmag/Katrina_Lost.htm.

8.12 *Right related to receiving humanitarian assistance (e.g., from non-governmental organizations (NGOs), foreign governments, etc.) (see also Textbox XII, infra at pages 409 – 410)*

8.12.1 Guiding Principle on Internal Displacement No. 24 provides:

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

8.12.2 Guiding Principle on Internal Displacement No. 25 provides:

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

8.12.3 Guiding Principle on Internal Displacement No. 26 provides:

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

8.12.4 Guiding Principle on Internal Displacement No. 30 provides:

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective

mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Textbox XII: Were there violations of rights related to receiving humanitarian assistance (e.g., from non-governmental organizations (NGOs), foreign governments, etc.) before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁶⁹

- Did the federal government provide adequate humanitarian and other assistance at the state and local levels? Did inadequate cooperation among federal agencies result in insufficient humanitarian assistance at the state and local level? Did a lack of effective communication among federal agencies contribute to a failure to render appropriate humanitarian assistance?
- Did state or local officials seek appropriate humanitarian assistance from the federal government? Did state or local officials reject inappropriate humanitarian assistance from the federal government?
- Did private companies and individuals engage in exploitation, wrongfully depriving Katrina victims of humanitarian assistance? Were any governmental officials involved in any such exploitation?

69. See, e.g., Ron Kampeas, *U.S. Rejects Initial Israeli Disaster Aid*, JEWISH NEWS OF GREATER PHOENIX ONLINE, at <http://www.jewishaz.com/issues/story.mv?050916+disaster> (Sept. 16, 2006) (noting that "The United States turned down offers of expert assistance from Israel and other nations in the crucial first days after Hurricane Katrina devastated New Orleans, JTA has learned."); Barry Schweid, *Rice Says All Hurricane Aid Offers from Other Countries Will Be Accepted*, ASSOCIATED PRESS, Sept. 1, 2005, <http://www.wtlv.com/local/stories/www1090105usgetshelp.16cbe69d.html> (noting that State Department spokesman Sean McCormack said that "Secretary of State Condoleezza Rice has decided 'no offer that can help alleviate the suffering of the people in the afflicted area will be refused,'" but also noting that "in Moscow, a Russian official said the U.S. Federal Emergency Management Agency had rejected a Russian offer to dispatch rescue teams and other aid."); In *U.S. Rejects Iran's Oil Bribe*, NEWSMAX.COM, at <http://www.newsmax.com/archives/ic/2005/9/7/133810.shtml> (Sept. 7, 2005), Carl Limbacher noted:

Iran offered to send the United States 20 million barrels of crude oil in the aftermath of Hurricane Katrina if Washington waived trade sanctions, but a State Department official said Wednesday that offer was rejected. In a gesture that mirrors American aid offers after a devastating 2003 earthquake in Iran, Tehran's envoy to the Organization of Petroleum Exporting Countries said his government would ship up to 20 million barrels of oil, state radio reported late Tuesday.

Id.

- Why has the government more properly prepared for and responded to catastrophic storms in other areas of the country, for example in Florida, but did not properly prepare for or respond to Hurricane Katrina? Can discrimination be inferred from this disparity?
- Did federal, state, or local officials reject offers of humanitarian assistance from foreign countries, including Cuba? Was humanitarian assistance rejected because the offering countries were not viewed as “friendly” to the United States? Was such humanitarian assistance rejected for inappropriate, political reasons?
- Did politics play any role in the provision (or non-provision) of humanitarian assistance?

8.13 *Rights related to return, resettlement, and reintegration of displaced persons; freedom of movement; freedom of association and assembly; right to be free from displacement (see also Textbox XIII, infra at pages 413 – 414)*

8.13.1 Race Convention, Article 5(d)(i) (freedom of movement and residence) calls for non-discrimination in:

- (i) The right to freedom of movement and residence within the border of the State.

8.13.2 Civil and Political Rights Covenant, Article 12 (freedom of movement and residence) provides, in relevant part:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

8.13.3 Race Convention, Article 5(d)(ix) (freedom of assembly and association) calls for non-discrimination in:

- (ix) The right to freedom of peaceful assembly and association.

8.13.4 Civil and Political Rights Covenant, Article 22 (freedom of association) provides:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

8.13.5 Children's Convention, Article 15 (freedom of association and assembly) provides:

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

8.13.6 American Declaration, Article VIII (freedom of movement and residence) provides:

Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

8.13.7 American Declaration, Article XXII (freedom of association) provides:

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

8.13.8 Guiding Principle on Internal Displacement No. 3 (national authorities' primary duty to provide protection and humanitarian assistance) provides, in relevant part:

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

8.13.9 Guiding Principle on Internal Displacement No. 6 (freedom from displacement) provides:

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation;

3. Displacement shall last no longer than required by the circumstances.

8.13.10 Guiding Principle on Internal Displacement No. 14 (freedom of movement and residence) provides:

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

8.13.11 Guiding Principle on Internal Displacement No. 15 (freedom to relocate) provides:

Internally displaced persons have:

- (a) The right to seek safety in another part of the country; [and]
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

8.13.12 Guiding Principle on Internal Displacement No. 28 (national government has primary settlement responsibilities) provides:

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

8.13.13 Guiding Principle on Internal Displacement No. 29 (non-discrimination against IDPs in resettlement; participation in government) provides:

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled

in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Textbox XIII: Were there violations of rights related to return, resettlement, & reintegration of displaced persons, freedom of movement, freedom of association and assembly, and freedom from displacement before Katrina, during Katrina, and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁷⁰

- Under what circumstances will internally displaced persons be permitted to return to New Orleans? Will every displaced person who wants to return to New Orleans be able to return to that city? Will government or other funding be available for rebuilding, particularly for those persons whose homes were not adequately covered by insurance?
- Will every displaced person who wishes to participate in the reconstruction of New Orleans be fully permitted to participate in that process?
- Will the rebuilding of New Orleans be adequately regulated to prohibit shoddy and inappropriate construction while permitting

70. See e.g. Democracy Now, *Role of Race and Class in Government's Response to Hurricane Katrina*, INDY BAY, Dec. 9, 2005, www.indybay.org/news/2005/12/1788883.php; Benjamin, *supra* note 61; Democracy Now, *New Orleans Residents Face Eviction From Homes as Rents Skyrocket*, INDY BAY, Dec. 16, 2005, www.indybay.org/news/2005/12/1790920.php; see Ross, *supra* note 64 (addressing gentrification and rebuilding and noting that the need for internally displaced persons, especially women, to have "quality public housing" instead of "permanent refugee camps" and noting how displaced persons have the right to return and rebuild their community and the right to assistance for rebuilding).

construction flexibility by the builders?

- Will the greater needs of the community be considered as reconstruction plans are finalized, such needs that might include educational and recreational facilities, public transportation, shopping areas, green spaces, etc?
- Will New Orleans be rebuilt in a manner that fosters eradication of the racial polarization that existed pre-Katrina?
- Will equitable funding and other attention be devoted to all neighborhoods, and not merely to the wealthiest, whitest neighborhoods?
- Will all the plans of all developers be carefully scrutinized to prevent exploitation of homeowners and other New Orleans Katrina victims?
- Will adequate rental property be provided for those who cannot afford to purchase or who choose for other reasons not to purchase?
- Why did federal, state, and local governments fail to take adequate steps to ensure protection against a category 5 hurricane hitting New Orleans, even though the taking of certain steps – e.g., fortifying the levees, effecting sound evacuation plans, etc. – may have resulted in less and perhaps virtually no displacement?
- What steps will the government take to help ensure that the massive internal displacement that resulted from Katrina will not be required for catastrophes that might occur in the future? Will efforts be made to help ensure that illegal and immoral class, race, ethnic origin, sexual orientation, and other discrimination do not play a role in the preparation for and in the response to future catastrophes?

8.14 *Right to a remedy for international human rights law violations*
(see also *Textbox XIV, infra at pages 415 – 416*)

8.14.1 Civil and Political Rights Covenant, Article 2(3) provides

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent

judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

8.14.2 Race Convention, Article 6 provides:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

8.14.3 American Declaration, Article XVIII provides:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Textbox XIV: Were there violations of the right to a remedy for international human rights law violations before Katrina, during Katrina and/or after Katrina? Questions to ask? Areas of concern? Any asserted excuses or justifications?⁷¹

- What federal, state, and local governmental remedies are in place for violations of civil, political, economic, social, cultural, and other rights as regards Katrina? How can victims of Katrina access such remedies?

71. See Association of Trial Lawyers of America, *ATLA in Motion*, TRIAL, Dec. 2005, at 10, available at WL 41-DEC JTLATRIAL 10 (noting that the Katrina Volunteer Protection Act and the Gulf Coast Recovery Act grant broad limits on civil liability to individuals and contractors, thereby eliminating the private remedies available to citizens for use against certain contractors).

- Has the federal government released all Katrina-related records in its possession, including records related to what information governmental officials possessed before Katrina hit; records related to what actions were taken by the government based on what they knew; records related to the decision-making (or lack of decision-making) in the days leading up to Katrina, resulting in ineffective, slow government preparation for and response to Katrina's devastation; records related to the governmental decisions not to invest money in shoring up the New Orleans levees in the months and years before Katrina; and records of the apparent general apathy that some government officials appeared to harbor for Katrina and its victims? Are those records available to individuals and groups who may seek to rely upon those records to support claims of violations of international human rights law in the context of Katrina?
- Upon conducting inquiries into the handling of Katrina, will the government hold specific governmental actors accountable for the man-made portion of the devastation surrounding Katrina and provide reparations to all Katrina victims?

E. Conclusion

Hurricane Katrina was a natural disaster of proportions theretofore not experienced in the United States. Hurricane Katrina was also a man-made disaster involving mass international human rights law violations perpetrated against the people of New Orleans and the Gulf Region. The evidence suggests that much of the devastation associated with Katrina could have been avoided. Further evidence suggests that the Katrina-related breaches of international human rights law have not yet been remedied.

The United States government maintains the international legal obligation to ensure that people within its territory and subject to its jurisdiction are afforded all their internationally recognized human rights, which include civil, political, economic, social, and cultural rights. The United States government has obligations not to violate international human rights law and obligations not to permit other entities and individuals to engage in such breaches. Furthermore, the United States has the international legal obligation to remedy any breaches that may occur. State and local governments also carry the burden of ensuring human rights protections, while multi-national corporations, local companies, and private individuals as non-state actors also share this responsibility.

The government violates international human rights law when it fails to act diligently and on time, despite having the means to protect against levee breaches, poverty, denial of the right to vote, inadequate housing, hunger, and other deprivations. Corporations violate international human rights law when they exploit disasters for pecuniary gain. Private individuals breach international human rights law when they unlawfully discriminate or otherwise harm other persons.

International human rights law that binds the United States through the operation of treaty and customary international law provides for rights and duties that trickle down through state and local governments and reaches us in our daily lives: in our cities and towns, neighborhoods, local dining and recreational facilities, places of worship, schools, and homes. We all must take steps to help ensure that the rights of all persons are fully realized, and that remedies are provided to all victims for all breaches.

On the domestic plane, attempts to curb violations and provide remedies are being made through various non-governmental organizational grass roots campaigns, through criminal law challenges, and through various civil suits that have been filed demanding that the government fully comply with domestic and international law. Concerned persons may assist the many grassroots domestic organizations and governmental lobbying efforts seeking to foster compliance and rectify breaches.

Efforts have also been undertaken to hold the United States accountable on the international plane through international human rights law channels. The United States, as a party to various international human rights law treaties, is subject to scrutiny by individuals and groups charged by the United Nations and other inter-governmental organization bodies with human rights inspection and investigatory powers, about which information is provided in the Appendices to this article.⁷² Indeed, already at least one United Nations official — the United Nations Independent Expert on Extreme Poverty, Dr. Arjun Sengupta — has conducted an investigatory visit to New Orleans and the Gulf Region. Those of us who are concerned about the internationally recognized human rights of Katrina victims might consider contacting these international bodies or individuals and providing them with information that can be used to help convince the United States

72. Appendices I - V to this article highlight individuals and bodies associated with inter-governmental organizations that have competency to investigate international human rights law violations perpetrated by the United States. The Appendices provide information about the United Nations Race Committee, the United Nations Human Rights Committee, the United Nations Special Procedures (*e.g.*, Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups), and the Inter-American Commission on Human Rights.

fully to comply with its international obligations to ensure that all persons in the United States are afforded all of the human rights protections to which they are entitled. The additional information contained in the Appendices to this article may facilitate such contacts.

Though private citizens and non-governmental organizations can successfully fight for the rights of Katrina victims, in the hopes that devastation like that which accompanied Katrina will never happen again, the bulk of the responsibility lies squarely on the United States government to take the lead as the protector of the people and as the principal entity with international human rights law protection responsibilities within the United States. The United States government has long hailed itself as the champion of international human rights and as a beacon to be followed by nations around the world that may need guidance on ensuring implementation of international human rights law in their domestic environments. However, some foreign nations may perceive a double standard, in that the United States would deem certain violative policies and practices to be unacceptable in other countries, though those same violative policies and practices are occurring with impunity within the United States. International human rights law is based in part on the notion that nations cannot be trusted fully to afford their citizens with international human rights law protections. Foreign nations, and indeed the international community as a whole, have the right, and indeed the duty, to take steps to ensure that States that violate human rights desist. Thus, all States, and the international community as a whole, must condemn, seek to halt, and facilitate remedies for international human rights law violations that occur in the United States, including Katrina-related international human rights law violations.

F. Appendices

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Appendix I

United Nations Committee on the Elimination of Racial Discrimination Membership (Overseeing implementation of the UN Race Convention) (http://www.ohchr.org/english/bodies/cerd/members.htm) (last visited Apr. 10, 2006)		
Name	Nationality	Term expires
Mr. Mahmoud ABOUL-NASR	Egypt	19.01.2010
Mr. Nourredine AMIR	Algeria	19.01.2010
Mr. Alexei S. AVYONOMOV	Russian Federation	19.01.2008
Mr. Ralph F. BOYD Jr.	United States of America	19.01.2008
Mr. José Francisco CALI TZAY	Guatemala	19.01.2008
Ms. Fatima-Binta Victoria DAH	Burkina Faso	19.01.2008
Mr. Kokou Mawuena Ika Kana (Dieudonné) EWOMSAN	Togo	19.01.2010
Mr. Régis de GOUTTES	France	19.01.2010
Ms. Patricia Nozipho JANUARY- BARDILL	South Africa	19.01.2008
Mr. Morten KJAERUM	Denmark	19.01.2010
Mr. José A. Lindgren ALVES	Brazil	19.01.2010
Mr. Raghavan Vasudevan PILLAI	India	19.01.2008
Mr. Agha SHAHI	Pakistan	19.01.2010
Mr. Alexandre SICILIANOS	Greece	19.01.2010
Mr. Chengyuan TANG	China	19.01.2008
Mr. Patrick THORBERRY	United Kingdom	19.01.2010
Mr. Luis VALENCIA RODRIGUEZ	Ecuador	19.01.2008
Mr. Mario Jorge YUTZIS (Chairperson)	Argentina	19.01.2008

Appendix II

**United Nations Committee on the Elimination of
Racial Discrimination – Contact Information:**
(<http://www.ohchr.org/english/bodies/cerd/contact.htm>)
(Last visited Apr. 10, 2006)

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Appendix III

United Nations Human Rights Committee Membership (This Committee oversees implementation of the International Covenant on Civil and Political Rights.) (www.ohchr.org/english/bodies/hrc/members.htm) (Last visited Apr. 10, 2006) (www.ohchr.org/english/bodies/hrc/index.htm) (Last visited Apr. 10, 2006)		
Name	Nationality	Term expires
Ms. Christine CHANET (Chairperson)	France	31.12.2006
Mr. Nisuke ANDO	Japan	31.12.2006
Mr. Prafullachandra Natwarlal BHAGWATI	India	31.12.2006
Mr. Alfredo CASTILLERO HOYOS	Panama	31.12.2006
Mr. Abdelfattah AMOR	Tunisia	31.12.2006
Mr. Maurice Ahanhanzo GLÉLÉ-AHANHANZO	Benin	31.12.2008
Mr. Edwin JOHNSON LOPEZ	Ecuador	31.12.2008
Mr. Walter KÄLIN	Switzerland	31.12.2006
Mr. Rajsoomer LALLAH	Mauritius	31.12.2008
Mr. Michael O'FLAHERTY	Ireland	21.12.2008
Mr. Rafael RIVAS POSADA	Colombia	31.12.2008
Sir Nigel RODLEY	United Kingdom	31.12.2008
Mr. Ivan SHEARER	Australia	31.12.2008
Mr. Hipólito SOLARI YRIGOYEN	Argentina	31.12.2006
Mr. Ahmed TAWFIK KHALIL	Egypt	31.12.2008
Ms. Ruth WEDGWOOD	United States of America	31.12.2006
Mr. Roman WIERUSZEWSKI	Poland	31.12.2006
Ms. Elisabeth PALM	Sweden	31.12.2008

Appendix IV

United Nations Special Procedures for Investigating Human Rights Violations (Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups) (Selected) (www.ohchr.org/english/bodies/chr/special/themes.htm) (Feb. 1, 2006)					
Title / Mandate	Mandate established		Mandate extended		Name & country of origin of the mandate-holder(s)
	in	by	in	By	
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	2000	Resolution 2000/9	2003	Resolution 2003/27 (for 3 years)	Mr. Miloon KOTHARI (India)
Working Group on people of African descent	2002	Resolution 2002/68	2003	Resolution 2003/30 (for 3 years)	Chairperson-Rapporteur: Mr. Peter Lesa KASANDA (Zambia); Mr. Joe FRANS (Sweden); Mr. George N. JABBOUR (Syrian Arab Republic); Mr. Roberto B. MARTINS (Brazil); Ms. Irina ZLATESCU (Romania)
Working Group on Arbitrary Detention	1991	Resolution 1991/42	2003	Resolution 2003/31 (for 3 years)	Chairperson-Rapporteur, Ms. Leila ZERROUGUI (Algeria); Mr. Tamás BÁN (Hungary); Ms. Manuela Carmena CASTRILLO (Spain); Mr. Seyyed Mohammad HASHEMI (Islamic Republic of Iran); Ms. Soledad VILLAGRA DE BIEDERMANN (Paraguay)
Special Rapporteur on the right to education	1998	Resolution 1998/33	2004	Resolution 2004/25 (for 3 years)	Mr. Vernor MUNOZ VILLALOBOS (Costa Rica)
Independent Expert on the question of human rights and extreme poverty	1998	Resolution 1998/25	2004	Resolution 2004/23 (for 2 years)	Mr. Arjun SENGUPTA (India)
Special Rapporteur on the right to food	2000	Resolution 2000/10	2003	Resolution 2003/25 (for 3 years)	Mr. Jean ZIEGLER (Switzerland)
Special Rapporteur on the promotion	1993	Resolution 1193/45	2005	Resolution 2005/38	Mr. Ambeyi LIGABO (Kenya)

United Nations Special Procedures for Investigating Human Rights Violations (Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups) (Selected) (www.ohchr.org/english/bodies/chr/special/themes.htm) (Feb. 1, 2006)					
Title / Mandate	Mandate established		Mandate extended		Name & country of origin of the mandate-holder(s)
	in	by	in	By	
and protection of the right to freedom of opinion and expression				(for 3 years)	
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	2002	Resolution 2002/31 (for 3 years)	2005	Resolution 2005/24; (for 3 years)	Mr. Paul HUNT (<i>New Zealand</i>)
Special Representative of the Secretary-General on the situation of human rights defenders	2000	Resolution 2000/61	2003	Resolution 2003/64 (for 3 years)	Ms. Hina JILANI (<i>Pakistan</i>)
Special Rapporteur on the independence of judges and lawyers	1994	Resolution 1994/41	2003	Resolution 2003/43 (for 3 years)	Mr. Leandro DESPOUY (<i>Argentina</i>)
Representative of the Secretary-General on the human rights of internally displaced persons	2004	Resolution 2004/55 (for 2 years)	—	—	Mr. Walter KÄLIN (<i>Switzerland</i>)
Special Rapporteur on the human rights of migrants	1999	Resolution 1999/44	2005	Resolution 2005/47 (for 3 years)	Mr. Jorge A. BUSTAMANTE (<i>Mexico</i>)
Independent Expert on minority issues	2005	Resolution 2005/79 (2 years)			Ms. Gay MCDUGALL (<i>United States of America</i>)
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and	1993	Resolution 1993/20	2005	Resolution 2005/64 (for 3 yrs)	Mr. Doudou DIÈNE (<i>Senegal</i>)

United Nations Special Procedures for Investigating Human Rights Violations (Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups) (Selected) (www.ohchr.org/english/bodies/chr/special/themes.htm) (Feb. 1, 2006)					
Title / Mandate	Mandate established		Mandate extended		Name & country of origin of the mandate-holder(s)
	in	by	in	By	
related intolerance					
Independent Expert on human rights and international solidarity	2005	Resolution 2005/55 (for 3 years)	—	—	Mr. Rudi Muhammad RIZKI (Indonesia)
Independent Expert on the effects of economic reform policies and foreign debt	2000	Resolution 2000/82	2003	Resolution 2003/21 (for 3 years)	Mr. Bernards Andrew NYAMWAYA MUDHO (Kenya)
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	1985	Resolution 1985/33	2004	Resolution 2004/41 (for 3 years)	Mr. Manfred NOWAK (Austria)
Special Rapporteur on the adverse effects of illicit movement & dumping of toxic & dangerous products and wastes on human rights enjoyment	1995	Resolution 1995/81	2004	Resolution 2004/17 (for 3 years)	Mr. Okechukwu IBEANU (Nigeria)
Special Representative of the SG on human rights and transnational corporations and other business enterprises	2005	Resolution 2005/69 (for 2 years)	—	—	Mr. John RUGGIE (United States of America)

Appendix V

Inter-American Commission on Human Rights – Membership (http://www.cidh.oas.org/personal.eng.htm) (Last visited Apr. 10, 2006)		
Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights 1889 F Street, N.W., Washington, D.C., 20006, U.S.A. Fax: 1-202-458-3992 E-Mail: cidhoea@oas.org		
Name	Member State	Term of Office
Paulo Sérgio Pinheiro	Brazil	1/1/2004 - 12/31/2007
Evelio Fernández Arévalos	Paraguay	1/1/2004 - 12/31/2007
Freddy Gutiérrez Trejo	Venezuela	1/1/2004 - 12/31/2007
Florentín Meléndez	El Salvador	1/1/2004 - 12/31/2007
Paolo G. Carozza	United States of America	1/1/2006 - 12/31/2009
Víctor E. Abramovich	Argentina	1/1/2006 - 12/31/2009
Clare Kamau Roberts	Antigua & Barbuda	1/1/2002 - 12/31/2009

