

A GENDERED PERSPECTIVE ON THE RIGHT TO HOUSING IN THE UNITED STATES

“The U.S. does not support the ‘right to adequate housing’ or ‘housing rights,’
because such a right does not exist.”

–Ms. Goli Ameri, Member of the United States Delegation at the United Nations Commission on
Human Rights Annual Gathering in March and April 2005¹

“We are unable to perceive in that document any constitutional guarantee of access
to dwellings of a particular quality, or any recognition of the right of a tenant to
occupy the real property of his landlord beyond the term of his lease without the
payment of rent or otherwise contrary to the terms of the relevant agreement.”

Linsey v. Normet, 405 U.S. 56, 74 (1972).

**INTERNATIONAL WOMEN’S HUMAN RIGHTS CLINIC
THE CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW**

¹ The United States Government Delegation to the 61st Session of the United Nations Commission on Human Rights, Item 10: Women’s Equal Ownership, Access to and Control over Land and the Equal Rights to own Property and to Adequate Housing (April 15, 2005), <http://geneva.usmission.gov/humanrights/2005/0415Item10L34.htm>.

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I. EXECUTIVE SUMMARY

The United States government's intervention into the housing market has been responsible for providing millions of Americans with housing security over the last seven or so decades since major housing policy was developed with a focus on homeownership. Yet, marginalized racial and ethnic groups and women generally have frequently been excluded from this form of housing through both private and government discrimination, leaving these groups in the population more vulnerable and dependent on direct government subsidies for housing as well as a volatile rental market.

Currently, the government provides a high level of support to homeowners, especially the wealthy, through tax breaks, while failing to adequately fund programs for low-income housing. This privileges men over women and white communities over communities of color. These skewed government interventions contribute to and have allowed the formation of racially-segregated neighborhoods throughout the United States, which were "redlined" by banks that refused to lend to their residents, and then "reverse redlined" by predatory lenders offering sub-prime loans that stripped equity from entire communities.

Consequently, in the United States, women consistently face greater housing insecurity than men, and women from marginalized communities face the worst housing conditions of almost any sub-group of the population. This report provides an analysis explaining the causes and consequences of gender discrimination and how it intersects with race discrimination in housing in the United States, with an emphasis on four major issues: foreclosure, homelessness, Section 8 and public housing.

In particular, this report highlights:

- The gendered and racial inequities that have caused the foreclosure crisis to disproportionately impact racial minorities and women.
- The over-reliance on market strategies, and under-investment in alternatives such as public housing and rental subsidies, and how it has impacted women generally and women of color in particular.
- Punitive policies in government supported housing that further exacerbates housing insecurity and other vulnerabilities for women and their children.
- Finally, the report reveals how the lack of affordable housing leads to serial displacement and homelessness in vulnerable populations with devastating long term health and other impacts on poor women and children.

II. INTRODUCTION

1. HISTORY

After the U.S. Civil War, the federal government enacted legislation to redress the expropriation of labor under slavery; however, many federal reconstruction-era homesteading programs were never realized and those that were enacted disproportionately benefitted white landowners.² Post World War I zoning restrictions that excluded rentals and commercial housing from planned housing developments served to privilege the concept of single family homes, usually with a male bread-winner and head of the household.³

New Deal era suburbanization further exacerbated existing inequalities. The Federal Housing Administration (FHA) was created in 1934 with the National Housing Act.⁴ From its inception, the FHA had a strong focus on home ownership. It created federal mortgage insurance for creditors and new loan policies which allowed payments over a longer period of time. Significantly, the FHA did not provide assistance for low-income families,⁵ single women who could not qualify for FHA loans (with the exception of war widows), the elderly without income, or racial and ethnic minorities that were not permitted to participate in the loan assistance program due to the ‘redlining’ of minority neighborhoods.⁶ In 1937, the Wagner-Steagall Act (the Housing Act) passed, which provided housing assistance for the poor and the creation of local housing authorities to administer public housing programs.⁷ The Federal Housing Authority (FHA) channeled low-interest, federally backed mortgages away from urban centers and almost exclusively into suburban white communities.⁸ The deliberation of this discrimination is evidenced by FHA underwriting manuals that openly encouraged racial segregation.⁹ Denied access to federally-backed mortgage programs, black families were unable to access the opportunities for wealth-building and intergenerational transmission that lifted millions of white Americans into the middle class.¹⁰ Residential segregation has created

² Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, 14 (N.Y., Routledge 1997).

³ “Race and Gender in the Department of Housing and Urban Development v. Rucker: Constructing the Racialized Family in Federal Public Housing,” Marie Justine Fritz, Paper presented at the Annual Meeting of Midwestern Political Science Association, Palmer House Hilton Hotel, Chicago, IL (3-6 April 2008)

⁴ “HUD Historical Background,” U.S. Department of Housing and Urban Development (18 May 2007), <http://www.hud.gov/offices/adm/about/admguides/history.cfm>

⁵ Fritz, *supra* note 3.

⁶ Fritz, *supra* note 3.

⁷ U.S. Department of Housing and Urban Development, *supra* note 4; Fritz, *supra* note 3.

⁸ George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics*, 5-6 (Temple University Press 1998).

⁹ The Federal Housing Authority’s *Underwriting Manual* “openly stated that ‘if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes’ and further recommended that ‘subdivision regulations and suitable restrictive covenants’ are the best way to ensure such neighborhood stability.” Oliver & Shapiro, *supra*, note 2, at 18.

¹⁰ See generally George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Temple University Press 1998). See also Oliver and Shapiro, *supra* note 2.

conditions through which entire communities have been politically disenfranchised and economically disempowered.¹¹

These early 20th century government policies resulted in a system where the “right to housing” seemingly only applied to white middle-class citizens who were receiving federal subsidies and tax breaks toward home ownership. The rest of Americans were left to maneuver the private rental market, inadequate public housing, and the high levels of government supervision required for access to affordable housing through rental subsidies.¹²

The common practice of redlining, a form of racially-discriminatory credit denial, has excluded nonwhites from the most secure form of housing. Those who were able to purchase homes in minority neighborhoods were given unfairly high interest rates for homes that were devalued in terms of market prices simply because of their locations, in essence causing homeowners to overpay for undervalued homes.¹³

Constitutional protections have been insufficient to fully redress these inequalities. The Equal Protection Clause to the 14th Amendment to the United States Constitution provides that states may not “deny to any person within its jurisdiction the equal protection of the laws.”¹⁴ Since the 14th Amendment only applies to state actors, discrimination by private individuals does not violate the Equal Protection Clause. The Supreme Court has further limited its protections by requiring acts with discriminatory intent, rather than merely discriminatory impact.¹⁵ This standard has provided the basis of successful challenges to overtly racially discriminatory state action; however, it has failed to remedy facially race-neutral policies that result in egregiously disparate impacts. Additionally, the heightened scrutiny of judicial review courts apply to race-based classifications has made it much more difficult for affirmative action remedies to withstand constitutional review.

Through the mid 20th century, private discrimination flourished through racially restrictive covenants which, until 1948, were judicially enforceable. The Supreme Court decision in *Shelley v. Kraemer* found that judicial enforcement amounted to state action that violated the 14th Amendment Equal Protection Clause.¹⁶ Because of the state action requirement, the court found these covenants perfectly constitutional in the absence of judicial enforcement.¹⁷

¹¹ Most funding for public schools comes from state and local taxes, U.S. Dept. of Education, “10 Facts about K-12 Education Funding,” <http://www.ed.gov/about/overview/fed/10facts/10facts.pdf>. (Last visited Oct. 23, 2009). In 2002-2003, “[m]ore than 60 percent of black and Latino students attend high poverty schools (>50% poor), compared to 30 percent of Asians and 18 percent of whites.” Gary Orfield & Chungmei Lee, Civil Rights Project, “Why Segregation Matters: Poverty and Educational Inequality” 18 (2005). Police harassment and brutality are concentrated in minority neighborhoods, whose residents are subject to more frequent arrests and harsher prison terms than are whites. Lipsitz *supra* note 8, at 11). Residents of minority neighborhoods are also frequently subjected to serious environmental hazards. *Id.* at. 8-10.

¹² “Race and Gender in the Department of Housing and Urban Development v. Rucker: Constructing the Racialized Family in Federal Public Housing,” Marie Justine Fritz, Paper presented at the Annual Meeting of Midwestern Political Science Association, Palmer House Hilton Hotel, Chicago, IL (3-6 April 2008)

¹³ See generally Lipsitz, *supra* note 8.

¹⁴ U.S. CONST. amend. XIV.

¹⁵ *Washington v. Davis*, 426 U.S. 229 (1976)

¹⁶ *Shelley v. Kraemer*, 334 U.S. 1 (1948)

¹⁷ *Id.*

Private discrimination flourished with the help of the federal government: “The FHA’s official handbook even went so far as to provide a model ‘restrictive covenant’ that would pass court scrutiny to prospective white homebuyers.”¹⁸

Finally responding to ongoing acts of private discrimination, Congress enacted the Fair Housing Act (Act) in 1968.¹⁹ The Act declares that “it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States” and prohibits discrimination in the private housing market, subject to narrow exceptions.²⁰ Although it has provided some formal legal protections, due to underenforcement, the Act has not been successful in providing functional housing equality.²¹ It is important to remember that the removal of legal prohibitions against minority homeownership cannot be characterized as action that parallels the active promotion of homeownership among whites through New Deal era legislation.²²

In 1974, the Equal Credit Opportunity Act (ECOA) was passed to prohibit discrimination by any private creditors who ‘regularly’ participate in the credit market.²³ However, the ECOA has not guaranteed equal access to credit.²⁴ Discriminatory practices by creditors did not disappear, but merely shifted form. In what is known as “reverse redlining,” the discriminatory act occurs not in the approval process, but in the terms of the loan itself.²⁵

While these policies kept low-income and minority families out of the private market, there also began a dis-investment in housing for the poor. During the Reagan era, funding for the Department of Housing and Urban Development was cut from \$26 billion to less than \$8 billion.²⁶ With the budget cut came decreased public support for government run housing programs. During this time, government involvement in the lives of poor women began to be particularly high. For women, this government surveillance came in specific forms including prosecution of drug-dependent women for causing a fetus to be exposed to controlled substances, strong encouragement to undergo sterilization, and high risk of a loss of parental rights. During

¹⁸ Oliver & Shapiro, *supra* note 2, at 39.

¹⁹ 42 U.S.C. §3601 (1968).

²⁰ *Id.*

²¹ Katharine B. Silbaugh, *Women’s Place: Urban Planning, Housing Design, and Work-Family Balance*. 76 *FORDHAM L. REV.* 1797, 1843 (2007).

²² “Since the end of legal segregation in the late 1960s, there has not been any comparable federal mass investment in homeownership that would benefit disenfranchised people of color.” Amaad Rivera et al. *United for a Fair Economy, Foreclosed: State of the Dream 2008* 33 (January 15, 2008).

²³ 15 U.S.C. 1691 (1974).

²⁴ Rivera et al., *supra* note 22, at v.

²⁵ See John A. Powell & Jason Reece, *Symposium: New Strategies in Fair Housing: The Future of Fair Housing and Fair Credit: From Crisis to Opportunity*, 57 *CLEV. ST. L. REV.* 209 (2009). See generally Jesus Hernandez, *Written Testimony Submitted to the National Commission on Fair Housing and Equal Opportunity Connecting Segregation to Contemporary Housing Credit Practice and Foreclosure: A Case Study of Sacramento* (2009).

²⁶ “Race and Gender in the Department of Housing and Urban Development v. Rucker: Constructing the Racialized Family in Federal Public Housing,” Marie Justine Fritz, Paper presented at the Annual Meeting of Midwestern Political Science Association, Palmer House Hilton Hotel, Chicago, IL (3-6 April 2008); “Reagan and the Homeless Epidemic in America,” interview with Carol Fennelly, *Democracy Now!* (11 June 2004), http://www.democracynow.org/2004/6/11/reagan_and_the_homeless_epidemic_in

this time, public housing developments also came to be seen in a very negative light as havens for uneducated and irresponsible women.²⁷

Congress used the lack of public support for public housing and the fervor of the war against drugs to pass the Anti-Drug Abuse Act in 1988.²⁸ The Act amends the 1937 United States Housing Act and allows tenants of public housing to be evicted if the tenant, any member of the tenant's household, or any guest or other person under the tenant's control engages in any criminal activity that is drug-related or criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants.²⁹ Furthermore, in 2002, the Supreme Court ruled, in *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002), that the Anti-Drug Abuse Act of 1988 unambiguously requires that public housing leases include provisions to allow local public housing authorities to evict tenants for drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity. This type of strict liability rule leaves tenants in a constant state of insecurity because they could be evicted from their homes for the behavior of others which the tenants have no knowledge of. In practice, this has included simply having a guest that was charged, but never prosecuted for or even later found innocent of, alleged drug activity.

2. PUBLIC HOUSING

The United States has more than 14,000 public housing developments that are located in more than 3,500 cities and towns across the country³⁰ and house approximately 1.2 million households.³¹ Most public housing is owned and operated by local agencies that receive federal funding to subsidize residents' rents and to cover the costs of operating and maintaining the buildings.³² Unfortunately, according to the Center on Budget and Policy Priorities, due to funding limitations, only 25% of households that are eligible for public housing actually receive any type of federal housing assistance. In addition, a majority of public housing agencies have very long waiting lists. Some of the agencies have such a large backlog of applicants that they will no longer receive new applications.³³

Eligibility for public housing is largely determined by the local housing agencies. The agencies are permitted to give preference to certain groups of individuals, such as homeless people and working families.³⁴ However, the federal government dictates that public housing must be limited to households that are U.S. citizens or have eligible immigration status, are

²⁷ Fritz, *supra* note 3.

²⁸ The Anti-Drug Abuse Act of 1988, 21 U.S.C. § 1501 (2009)

²⁹ Fritz, *supra* note 3.

³⁰ "Policy Basics: Introduction to Public Housing," Center on Budget and Policy Priorities (18 Dec 2008), <http://www.cbpp.org/cms/index.cfm?fa=view&id=2528>

³¹ "HUD's Public Housing Program," U.S. Department of Housing and Urban Development (28 Nov 2007), <http://www.hud.gov/renting/phprog.cfm>

³² *Id.*; "Policy Basics: Introduction to Public Housing," *supra* note 30.

³³ *Id.*

³⁴ "Policy Basics: Introduction to Public Housing," *supra* note 30.

considered “low income,” and qualify as either persons with disabilities, elderly, or as a “family” (defined by federal regulation).³⁵

Public housing in the United States provides homes for more than 2.3 million low-income Americans. Almost two thirds of residents in public housing are elderly or have a disability.³⁶ In sixty-four percent of public housing households there is at least one elderly person or an individual with a disability. Forty percent of public housing households include children.³⁷

Households in public housing can choose to pay a flat rent, determined by the housing agency and based on local market values, or a rent based on their income. Only eleven percent of households choose to pay flat rents and the remaining households are generally required to pay thirty percent of their income for their rent and utilities (after certain deductions from their income for things like caring for a disabled family member or having children in their family).³⁸

Public housing is funded by the federal government through three different channels. The first is the Public Housing Operating Fund. The money from this fund is intended to directly subsidize the rents that the tenants pay. After tenants have paid their rents, this fund provides the remaining money required to maintain and operate the developments.³⁹ In recent years, the federal government has not been able to provide enough money to completely fill the gap between the rents that tenants are providing and the costs incurred. Consequentially, the agencies have been forced to cut back services or increase the required payment of the tenants.⁴⁰

The second source of funding from the federal government is the Public Housing Capital Fund. This fund is intended to provide money for the renovation and replacement of aspects of the aging public housing developments. Unfortunately, in recent years, Congress has significantly reduced the Capital Fund and agencies have been left with less funding than the estimated cost of the new renovation and replacement needs that accrue each year.⁴¹

The third source of funding is the federal program, Hope VI. Hope VI gives grants to agencies to revitalize public housing. The grants can be used for renovation, demolition, construction of replacement housing, acquisition of land for new public housing developments, and social services for families that are displaced due to the revitalization. Funding for this program has also been significantly cut in recent years.⁴²

³⁵ “HUD’s Public Housing Program,”*supra* note 31.; the regulation determining eligibility for public housing can be found at 24 C.F.R. § 960.201 (2009), http://edocket.access.gpo.gov/cfr_2005/aprqr/pdf/24cfr960.201.pdf (http://www.access.gpo.gov/nara/cfr/waisidx_05/24cfr960_05.html); the regulation defining “family” for the purposes of eligibility for use of public housing can be found at 24 C.F.R. § 5.403, http://edocket.access.gpo.gov/cfr_2005/aprqr/pdf/24cfr5.403.pdf

³⁶ “Policy Basics: Introduction to Public Housing,” *supra* note 30.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

According to data from the United States Department of Housing and Urban Development (HUD), in 1993, seventy-five percent of households in public housing were female headed. Those households include single parent families as well as elderly women, who tend to live alone.⁴³ Seven years later in 2000, similar data from HUD indicates that there had been little change. Seventy-seven percent of households in public housing were female headed. Forty percent of households were female headed with children.⁴⁴

According to a 2008 report (jointly compiled by HUD and the United States Census Bureau), in 2007, there were a total of nearly two million renter occupied units owned by a public housing authority. Of those nearly two million, 72 thousand of the units are classified as having 'severe' physical problems and 131 thousand of the units are classified as having 'moderate' physical problems.⁴⁵ According to the same report, the number of public housing units steadily decreased from 1980 to 2000, but rose minimally by 2007. In 1980, there were 2,008,000 total public housing units; in 1990, there were 1,992,000 total public housing units; and in 2000, there were 1,850,000 total public housing units.⁴⁶

3. SECTION 8

The Section 8 Program was created in 1974 with two branches: the voucher program and a project-based program, (which will not be the focus of this submission),⁴⁷ and was designed with the goal of stopping the cycle of poverty by providing low-income families with the means to relocate out of poor neighborhoods and into neighborhoods with better schools, better job prospects⁴⁸ and better living conditions. Under this program, those who receive housing vouchers are free to choose any housing (not limited to units in subsidized housing projects) that meets the program criteria (such as health, safety, price, etc.) and the owner participates in the voluntary voucher program. When suitable housing has been obtained (leased signed by tenant and landlord and public housing agency (PHA) and landlord), the voucher-holder will then be responsible for paying their portion of the rent and utilities (generally thirty percent of monthly adjusted income, as calculated by a PHA) and the PHA (with funds provided by HUD) provides the difference to the landlord. Under this program, the landlord must provide "decent, safe and sanitary housing to a tenant at a reasonable rent." Before the unit is approved, it must pass housing quality standards and be kept up to those standards as long as the landlord is receiving housing assistance payments. Despite the program's stated objectives, Section 8 often does not meet those goals in practice. As demand and need overwhelm the amount of funding actually available, there are often extremely long waiting lists to receive these vouchers and in areas

⁴³ "Family Data," United States Department of Housing and Urban Development (1993), <http://www.huduser.org/publications/pubasst/famdat.html>

⁴⁴ "A Picture of Subsidized Households – 2000," United States Department of Housing and Urban Development (2000), <http://www.huduser.org/picture2000/index.html>

⁴⁵ *American Housing Survey for the United States: 2007*, United States Department of Housing and Urban Development and the United States Department of Commerce, 284 (Sept. 2008), <http://www.census.gov/prod/2008pubs/h150-07.pdf>

⁴⁶ *Id.*

⁴⁷ National Housing Institute, "A Withering Commitment," <http://www.nhi.org/online/issues/94/bratt.html>, last visited October 23, 2009.

⁴⁸ National Housing Institute, "Section 8 Is Broken," <http://www.nhi.org/online/issues/127/section8.html>, last visited October 23, 2009.

where the lists are so long, Public Housing Agencies will close the lists to new applicants.⁴⁹ Arguments have been presented that instead of creating areas of mixed-income housing, Section 8 housing is actually the “tipping point” driving middle-class residents out of neighborhoods and reconcentrates low-income families wherever the housing market is “soft.”⁵⁰ Also, landlords are often discouraged from participating due to multiple government inspections of the residential premises and other bureaucratic hoops⁵¹ as well as stereotypes against Section 8-receiving tenants based on their race or gender⁵² or preconceived notions about ability to pay or how they will treat the residence property.⁵³

Women make up the majority of Section 8 residents. According to the U.S. Department of Housing and Urban Development (HUD), in 2009 there were over two million Section 8 Vouchers in use. Of the families, or individuals, receiving voucher assistance, eighty-four percent are female-headed and 56 percent on female-headed with children. Of the total residents, sixty-one percent are minorities. The average family unit in Section 8 housing earns \$10,600 per year on average, and twelve percent of those families receive the majority of their income from government welfare programs.⁵⁴

4. FORECLOSURES

Homeownership, the single most secure form of housing in the United States, is disproportionately available to the wealthy. Americans able to cross the requisite threshold of wealth are rewarded with social privilege, property rights, tax benefits,⁵⁵ and the opportunity to accumulate even more wealth through home equity. The demographics of homeownership reveal that it is overwhelmingly available to white Americans. Racial minorities, especially women of color,⁵⁶ are less likely than are whites to possess the level of wealth necessary to secure homeownership: white Americans possess nearly six times the wealth that black Americans possess.⁵⁷ In 2008, three of four non-Hispanic whites owned homes, while fewer than half of all

⁴⁹ US Department of Housing and Urban Development, “Housing Choice Voucher Fact Sheet,” http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm, last visited October 23, 2009.

⁵⁰ National Housing Institute, “Section 8 Is Broken,” *supra* note 48.

⁵¹ National Multi Housing Counsel, “Section 8 Voucher Reform and Mandatory Section 8,” <http://www.nmhc.org/Content/ServeContent.cfm?ContentItemID=5102>, last visited October 23, 2009.

⁵² Svetlana Vidovic, “Renting to Section 8 Tenants-What to Expect,” <http://www.isellbuildings.com/chicago-apartment-buildings-portal/real-estate-reports/renting-to-section-8-tenants---what-to-expect.html>, last visited October 23, 2009.

⁵³ *Id.*

⁵⁴ “Picture of Subsidized Households,” *supra* note 44.

⁵⁵ See Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 ARIZ. ST. L.J. 1347, 1348-1349 (2000).

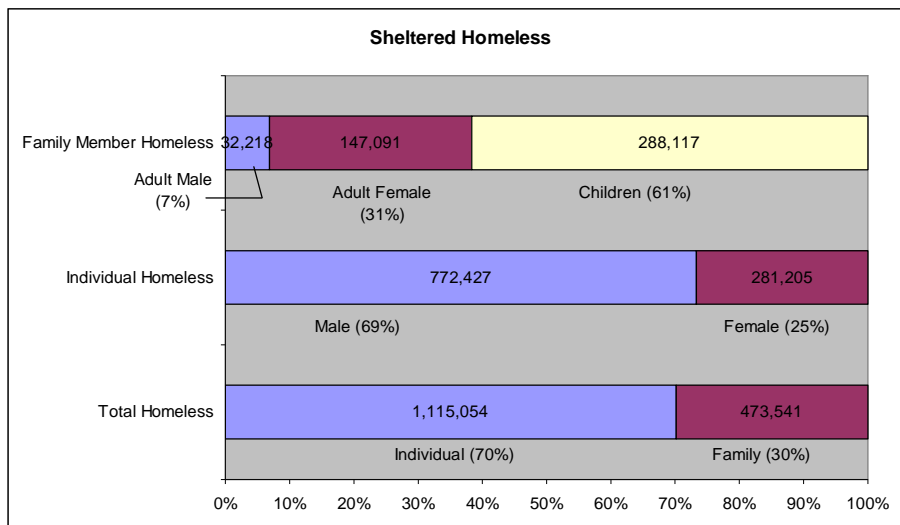
⁵⁶ “While women-headed households make up only one quarter of owner-occupied households, these households make up almost half of owner-occupied households in poverty.” Allen J. Fishbein & Patrick Woodall, Consumer Federation of America, *Women are Prime Targets for Subprime Lending; Women are Disproportionately Represented in High-Cost Mortgage Market* 8 (December 2006), citing U.S. Census Bureau, “American Housing Survey for the United States: 2005,” H150/05, Table 3-9, at 136 (August 2006). “Households headed by women have about half the income and less than one-third the wealth than other U.S. households”; the disparity increases among women with children. Fishbein *supra*, at 8.

⁵⁷ “A quarter of the Black population lives in poverty compared to 8% of Whites...For every dollar of White wealth, people of color have 15 cents.” Rivera et al., *supra* note 22 at 28.

Blacks and Latinos did.⁵⁸ The continued level of government intervention in support of private homeowners is clear evidence that the government is as able to remedy these inequalities as it was able to create them.⁵⁹

5. HOMELESSNESS

Determining an accurate count of the homeless in the United States is a daunting task. The various organizations that attempt to record who is homeless in their service areas often follow the model used by the U.S. Department of Housing and Urban Development (“HUD”). This model includes two surveys. One survey records the number of individuals and families that accessed emergency shelter or stayed in transitional housing during a one-year period. The other survey is a point-in-time analysis, which attempts to count the number of homeless, whether sheltered or not, on a given night in January.⁶⁰ The following is a summary of the Agency’s findings:

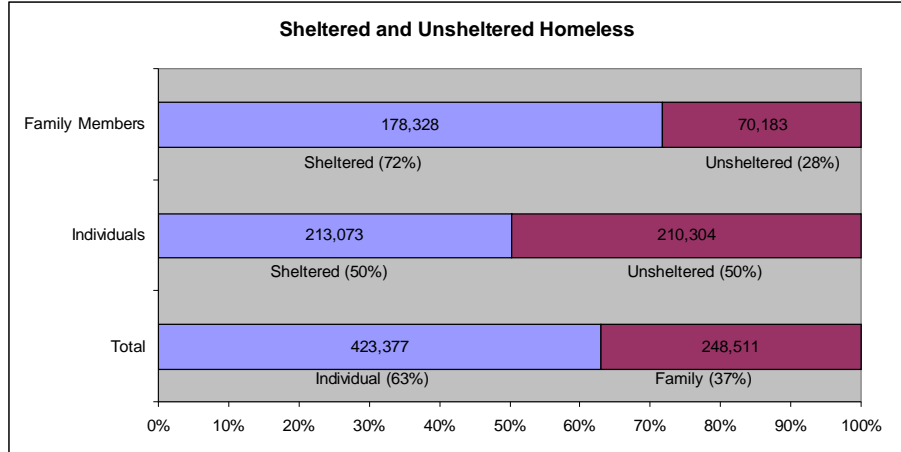


United States Department of Housing and Urban Development, The Third Annual Homeless Assessment Report to Congress, p. D-2 and D-3 (July 2008).

⁵⁸ U.S. Census Bureau, “Census Bureau Reports on Residential Vacancies and Homeownership,” February 3, 2009 at 8. <http://www.census.gov/hhes/www/housing/hvs/qtr408/files/q408press.pdf>. (Last visited Nov. 1, 2009).

⁵⁹ Rivera et al., *supra* note 22, at 2.

⁶⁰ HUD submitted its third Annual Homeless Assessment Report (AHAR) to Congress in July 2008. This report counted the sheltered homeless from October 1, 2006 to September 30, 2007 based on a national sample of the 80 communities throughout the United States that have implemented the Homeless Management Information System (HMIS). The report also counted the total homeless on one night in January 2007 based on information gathered by local communities that conduct point-in-time analysis in order to apply for HUD grants. U.S. Department of Housing and Urban Development (“HUD”), The Third Annual Homeless Assessment Report to Congress, i-ii (July 2008).



United States Department of Housing and Urban Development, The Third Annual Homeless Assessment Report to Congress, p. 12 (July 2008).

Sheltered and Unsheltered Homeless, Point-in-Time Count by City, January 2007⁶¹

Total	5,979	Total	68,608
Sheltered	4,346	Sheltered	11,422
Unsheltered	1,633	Unsheltered	57,166

New Orleans (Orleans and Jefferson Parishes)⁶²

New York City⁶³

Total	1,619	Total	50,372
Sheltered	990	Sheltered	46,617
Unsheltered	629	Unsheltered	3,755

Washington D.C.⁶⁴

Total	5,320
Sheltered	4,980
Unsheltered	340

Homelessness takes on a variety of forms. The chronically homeless are unaccompanied individuals who possess some sort of disabling conditions, such as a physical or mental disability

⁶¹ *Id.* at C-6-C-15.

⁶² UNITY, a housing rights advocacy organization that serves Orleans and Jefferson Parishes estimates that there are more than 11,000 homeless, including 5,000 children. The homeless make up 4% of the total population. Bill Capo, *Action Report: 11,000 Homeless in Orleans, 5,000 in Jeff, says Unity*, WWLTV.com, Jul. 17, 2009, <http://www.wwltv.com/actionreport/stories/ww1071709mlunity.4e1dcb70.html>.

⁶³ Coalition for the Homeless, a New York City homeless rights advocacy organization, estimates that more than 10,000 homeless families use shelters each night. This is the highest number of families in shelters since the recording of this data began 25 years ago. Coalition for the Homeless, *State of Homelessness 2009*, p. 7 (Apr. 23, 2009).

⁶⁴ The Community Partnership for the Prevention of Homelessness, a non-profit corporation that coordinates homeless services in Washington D.C., found a 3% increase in shelter use from 2008 to 2009. The total number of families in shelters is about 703 consisting of 868 adults and 1,426 children. The Community Partnership for the Prevention of Homelessness, *Fast Facts on Homelessness in D.C.*, http://www.community-partnership.org/cp_dr-Fastf.php (last visited October 20, 2009).

or alcohol or drug abuse, and have been continuously homeless for at least a year or have had four or more incidences of homelessness in the past three years.⁶⁵ In discussing homelessness and the human right to housing it is important to recognize the difference between this kind of homelessness and those who experience a sudden episode of homelessness as a result of an emergency situation, known as acute homelessness. The ten to twenty-nine percent of individual adults who are chronically homeless are consistently denied their right to housing.⁶⁶ In Los Angeles, thirty-three percent of homeless individuals are considered chronically homeless. Of these, seventy percent are male and twenty-nine percent are female.⁶⁷ Note that this definition only includes individuals so there is no count of families that may be experiencing similar situations.

Also, there is an important distinction between those who are homeless in urban areas, where there are greater job, housing subsidy, and social services opportunities, and rural homelessness, where there tends to be a shortage of such resources. An estimated nine percent of the homeless are located in rural areas.⁶⁸ Those in rural areas have greater obstacles in attaining their right to housing because fewer or often no shelters exist.⁶⁹ Unlike urban areas, where the individual homeless outnumber those in families, the largest group of homeless in rural areas is generally single mothers and their children. This is likely due to the relative mobility of homeless men who are more often solitary and able to move to urban areas to access greater opportunities.

III. INTERNATIONAL OBLIGATIONS AND ANALYSIS

1. RIGHT TO ADEQUATE HOUSING

The right to adequate housing, in addition to being of central importance in itself, is also necessary to fulfill the right to an adequate standard of living guaranteed by the Universal Declaration of Human Rights and remains “of central importance for the enjoyment of all economic, social, and cultural rights”⁷⁰ The fundamentality of the right to adequate housing is evidenced and reinforced by its inclusion in the International Covenant on Economic, Social, and Cultural Rights;⁷¹ the Convention for the Rights of Persons with Disabilities;⁷² and the

⁶⁵ HUD, *supra* note 60, at pp. iii and 15.

⁶⁶ Mary Cunningham, Preventing and Ending Homelessness, Metropolitan Housing and Communities Center, 3 (Feb. 2009). The HUD point-in-time count found 123,833 chronically homeless persons or 18% of the total sheltered and unsheltered population. Two-thirds of these individuals are either on the streets or in other places not meant for human habitation. HUD, *supra* note 60, at pp. iii and 17.

⁶⁷ The Los Angeles Homeless Service Authority, 2007 Greater Los Angeles Homeless Count, p. 22 (2007).

⁶⁸ HUD, *supra* note 60 at p. B-6.

⁶⁹ National Coalition for the Homeless, How Many People Experience Homelessness?, p. 2 (Jul. 2009).

⁷⁰ Pursuant to article 11 (1) of the Covenant, States parties “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 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.” U.N. Committee on Economic, Social, and Cultural Rights (UNCESCR), General Comment 4, ¶ 1, E/1992/23 (1991).

⁷¹ “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

Convention on the Rights of the Child.⁷³ The right to adequate housing includes: legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; cultural adequacy.⁷⁴

A. Violations Stemming From the Lack of Affordable Housing

The primary cause of homelessness is an increasing lack of affordable housing caused by rising rents paired with the destruction of low-income housing through gentrification, the purposeful demolition of public housing without replacement and cuts in public benefits and federal housing programs.⁷⁵ Currently, the gap between the number of affordable housing units available and the number of those who need them is 4.5 million units, the largest gap on record.⁷⁶ Between 2005 and 2008, New York City lost 55,000 or 7.5% of housing units with rents below \$800 per month.⁷⁷ In Washington D.C., rent for a two-bedroom apartment increased by fifty-eight percent between 2000 and 2008.⁷⁸ All of these factors have led to high rent burdens, overcrowding, and substandard housing.

According to the National Coalition for Homelessness, the average United States household must earn at least \$17.84/hour to afford an adequate 2-bedroom rental unit and maintain basic, subsistence needs. For a 1-bedroom unit, a worker must earn \$14.97/hour.⁷⁹ Currently, the federal minimum wage is \$7.25/hour.⁸⁰ There are no counties in the United States where a full-time, minimum-wage worker earns an income sufficient to afford a two-bedroom unit and only four counties where the same worker can earn enough to rent a one-bedroom unit.⁸¹

effect the essential importance of international co-operation based on free consent.” International Covenant on Economic, Social and Cultural Rights (ICESCR) art. 11(1), Jan. 3, 1976, 993 U.N.T.S. 3. A/RES/21/2200 A.

⁷² States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability. Convention on the Rights of Persons with Disabilities (CRPD) art. 28(1), May 2008. A/RES/61/106.

⁷³ “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.” Convention on the Rights of the Child (CRC) art. 27(3), Sep. 2, 1990, 1557 U.N.T.S. 3. A/RES/44/25.

⁷⁴ UNCESCR General Comment No. 4, *supra* note 70 at ¶ 8.

⁷⁵ Maria Foscarinis, *Realizing Domestic Social Justice Through International Human Rights*, 30 N.Y.U. Rev. L. & Soc. Change 447, 469.

⁷⁶ National Coalition for the Homeless, *Homeless Families With Children*, <http://www.nationalhomeless.org/factsheets/families.html>. (July 2009),

⁷⁷ State of Homelessness 2009, *supra* note 63, at 8.

⁷⁸ The Community Partnership for the Prevention of Homelessness, *Fast Facts on Homelessness in D.C.* http://www.community-partnership.org/cp_dr-Fastf.php (last visited Oct. 20, 2009).

⁷⁹ National Coalition for the Homeless, *Why are People Homeless?* p. 3 (Jul. 2009).

⁸⁰ United States Department of Labor, *Wages*, <http://www.dol.gov/dol/topic/wages/minimumwage.htm> (last visited September 14, 2009).

⁸¹ National Law Center on Homelessness & Poverty Centre on Housing Rights and Evictions, *Housing Rights are Human Rights*, p. 25 (Nov. 5, 2007).

Compounding this situation for women is the fact that on average women workers earn eighty cents for every dollar earned by a man.⁸² Also, women tend to bear the primary care-taking responsibility of children and elderly relatives. Of single-parent families generally, women comprise seventy-one percent of head of households. Among the homeless population, women make up eighty-five percent of single-parent head of households.⁸³ Therefore, in order for a woman to afford a two-bedroom apartment for her family she must work an average of fourteen more hours per week than a single man must work to afford the average one-bedroom apartment. Combining women's lower wages with the fact that a majority of single-parent families are headed by women, it is easy to see the additional vulnerability to homelessness faced by women. Furthermore, additional work hours may be particularly troublesome for a woman to obtain since sixty-one percent of women, and seventy-five percent of homeless women work in sales or service sectors where the jobs are mostly part-time.⁸⁴

Although single men continue to represent the largest segment of the homeless in the United States, families are one of the fastest growing segments of the homeless.⁸⁵ A survey conducted by the National Coalition for the Homeless found that seventy-one percent of cities saw an increase in the number of families with children seeking emergency assistance.⁸⁶ Federal funding for benefits programs are insufficient and declining. Federal support for low-income housing fell forty-nine percent between 1980 and 2003.⁸⁷ The budget provided by Congress to USHUD decreased by \$52.1 billion between 1976 and 2004.⁸⁸ TANF benefits and Food Stamps, additional resources relied upon by low-income families, are so low that combined they do not raise a family above the federal poverty level in any state.⁸⁹ The average income of homeless families is \$8000 per year.⁹⁰ In 2006, fifteen percent of families and thirty-two percent of single-parent families lived below the federal poverty line.⁹¹ In Washington D.C., the city with the highest poverty rate in the United States, nearly one of five women live below the federal poverty line.⁹²

Clearly, the United States has failed to fulfill the right to adequate housing due to policies (in particular dis-investment, inequitable investment and demolition of housing for the poor, all discussed below) that have allowed and enabled this acute shortage of affordable housing. The Committee on Economic, Social, and Cultural Rights defined this right to housing

⁸² Bureau of Labor Statistics, Databases, <http://data.bls.gov/cgi-bin/surveymost> (last visited Oct. 15, 2009).

⁸³ Gillian Silver and Rea Pañares. *The Health of Homeless Women*, p. 2 (Mar. 2000).

⁸⁴ *Id.*

⁸⁵ Homeless Families with Children, *supra* note 76, at 1.

⁸⁶ The National Center on Family Homelessness. *Homeless Children: America's New Outcasts*. <http://www.nhchc.org/ShelterHealth/ToolKitA/A2HomelessChildren.pdf> (last visited Oct. 20, 2009).

⁸⁷ Why are People Homeless? *supra* note 79, at 2.

⁸⁸ Foscarinis, *supra* note 75, at 467.

⁸⁹ Homeless Families with Children, *supra* note 76, at 2.

⁹⁰ Homeless Children: America's New Outcasts, *supra* note 86, at 3.

⁹¹ The National Center of Family Homelessness. *Characteristics and Needs of Families Experiencing Homelessness*. p. 2.

http://www.lawrencefamilypromise.org/resources/pdfs/Characteristics_Needs_Homeless_Families.pdf (last visited October 29, 2009).

⁹² Washington Area Women's Foundation, *Resources for Homeless Single Women-Headed Families Don't Match Need*. Mar. 24, 2009. <http://thewomensfoundation.org/2009/resources-for-homeless-single-women-headed-families-dont-match-need/>.

in General Comment 4 and found that: the right to housing is not merely a roof over one's head; this right also includes the ability to live somewhere in security, peace, and dignity.⁹³ Thus, this right is more aptly described as the right to adequate housing which includes affordability or the ability to manage housing costs without having to compromise or forego other basic necessities.⁹⁴ The United States government is failing to meet this standard for the 4.5 million Americans unable to attain affordable housing.

Although there is some evidence that cities are acting to combat the rising number of homeless families in the United States,⁹⁵ the United States government still has not enacted legislation nor put in place a national plan to ending homelessness.⁹⁶ International law requires states to take all appropriate measures to meet its obligations.⁹⁷ Not only has the United States government failed to do this, destruction of low-income housing and cuts to federal housing programs are retrogressive measures also contrary to international human rights standards.⁹⁸

B. Other Rights That are Impacted Due to Housing Insecurity

According to General Comment 4 of the CESCR, “the right to adequate housing cannot be viewed in isolation from other human rights contained in [other international human rights treaties].”⁹⁹ The major impact of a lack of secure housing, regardless of gender, is that it affects the realization of many other human rights. When individuals or families do not have affordable housing, which is defined in the United States as paying thirty percent or more of their income on housing, they are forced to forgo many other basic necessities, like food and health care.¹⁰⁰ They may also be denied the right to obtain employment, the right to an education, the right to be free of violence, the right of privacy, and the right to preserve social relationships.¹⁰¹ Because women tend to be the primary caretakers of family, a woman's denial of these rights also will affect her children.

Health of Women

Among the most significant impacts of homelessness on women are the health consequences that result when a woman must make the difficult choice of forgoing medical attention so as to find and afford a place to sleep and food to eat. Health issues common to homeless women include chronic physical conditions, common illness, stress, poor nutrition,

⁹³ UNCESCR General Comment 4, *supra* note 70, at ¶ 7.

⁹⁴ *Id.* at ¶ 8(c).

⁹⁵ The average number of shelter beds for families has increased over the years. Homeless Families with Children, *supra* note 76, at 1. In 2008, twenty-five percent fewer families were found on the street than in 2007. National Coalition for the Homeless, Domestic Violence and Homelessness. p. 1. (July 2009).

<http://www.nationalhomeless.org/factsheets/domestic.html>

⁹⁶ Foscarinis, *supra* note 75 at p. 465.

⁹⁷ ICESCR, *supra* note 71, at art. 2, ¶ 1.

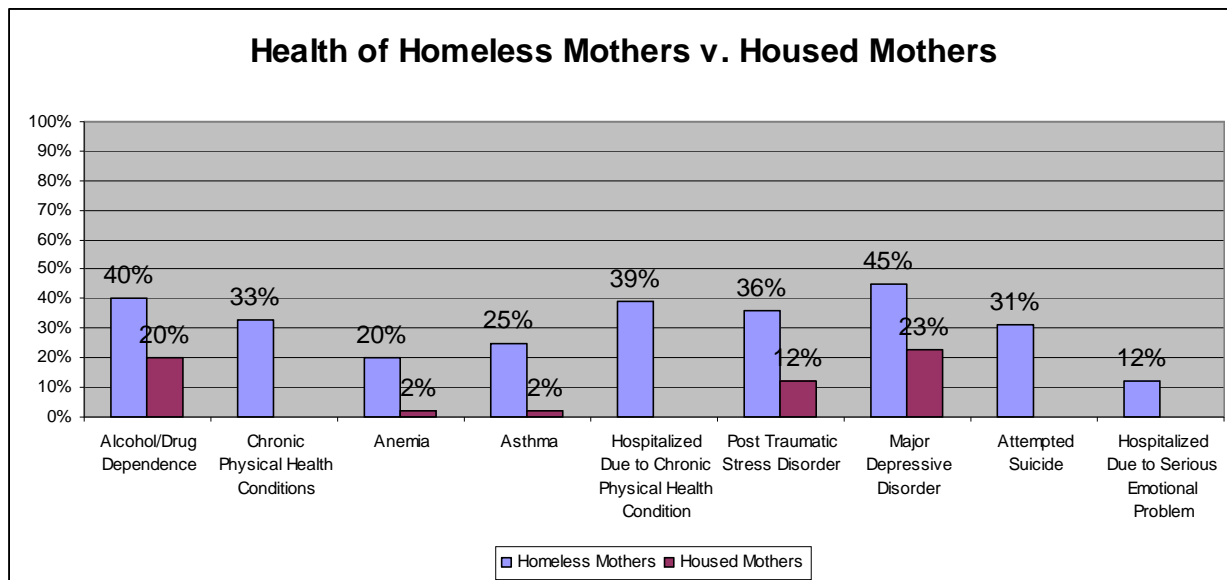
⁹⁸ See United Nations Committee on Economic Social and Cultural Rights, General Comment 3 ¶ 9. 14/12/90 (1990).

⁹⁹ *Id.*

¹⁰⁰ Housing Rights are Human Rights, *supra* note 81, at 8.

¹⁰¹ *Id.*

dental problems, substance abuse, lack of rest, untreated mental health problems, and a lack of family planning services.¹⁰²



Homeless Children: America’s New Outcasts, The National Center on Family Homelessness and Characteristics and Needs of Families Experiencing Homelessness, The National Center on Family Homelessness, p.4.

Both the ICESCR and the ICCPR contain articles that relate to health. Article 12 of the ICESCR, “recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Failing to provide adequate housing for women clearly results in the collateral consequence of further human rights violations.

Health, Education, and Development of Children

Homeless children also suffer from a number of health problems including hunger, illness, and emotional difficulties. Homeless children go hungry twice as often as other children.¹⁰³ They suffer from fair or poor health twice as often as other children and four times as often as children in families who earn over \$35,000 per year. These children experience high rates of acute illness, including twice as many ear infections and five times more stomach and diarrhea problems. Homeless children are four times as likely to be asthmatic. They more often experience low birth weights and require special care right after birth four times as often as other babies. More than one-fifth of homeless children between ages three and six have emotional problems serious enough for professional care, while homeless children between ages six and seventeen struggle with very high rates of mental health problems.¹⁰⁴

Children who experience homelessness are also at risk of slow development and educational underachievement. These children have four times the rate of delayed development, twice as many learning disabilities, and six times as many speech and stammering problems as

¹⁰² See Silver, *supra* note 83, at 3.

¹⁰³ Katherine Barrett Wiik. Justice For America’s Homeless Children. 35:3 Wm. Mitchell L. Rev. 875, 880 (2009).

¹⁰⁴ Homeless Children: America’s New Outcasts, *supra* note 86, at 2.

housed children. Homeless children tend to be underserved by special education programs and are twice as likely to repeat a grade or be suspended. As a consequence of short living arrangements, serial displacement, and limited transportation, homeless children frequently transfer schools or do not attend school at all.¹⁰⁵ A 2007 survey sponsored by the Los Angeles Homeless Services Authority found that eleven percent of homeless parents had kids that were not currently attending school.¹⁰⁶ A lack of academic or medical records makes enrolling in new schools difficult if not impossible. In response, the United States government passed the McKinney-Vento Education Act, which requires public schools to provide transportation to homeless children and allows enrollment without documents.¹⁰⁷ However, the stress of the daily need to obtain food and shelter continues to be a barrier for homeless children's continued attendance in school.¹⁰⁸

While the right to the well-being of children could easily be incorporated into the same treaties that guarantee similar right to adults, these rights as they relate to children are emphasized in the CRC. Article 6 states that "every child has the inherent right to life" and indicates that states must "ensure to the maximum extent possible the survival and development of the child." Additional articles provide for specific rights such as health, an adequate standard of living, education, and engaging in play.¹⁰⁹ While the CRC also guarantees a number of important civil and political rights to children, to the extent that these rights are generally viewed as primary to economic, social, and cultural rights, there is an argument that for children the reverse is true. Economic, social, and cultural rights may be more important than civil and political rights to a child's growth, development, and human dignity.¹¹⁰ Many, if not all, of these rights are compromised or severely limited when a child experiences homelessness. Furthermore, the CRC requires states to assist parents in assuring that their children fully realize the rights listed in the Convention.¹¹¹ The United States' failure to provide adequate housing for all parents clearly inhibits a parent's ability to guarantee the proper growth and development of their children.

2. PROTECTION AGAINST DISCRIMINATION IN ACCESS TO HOUSING

According to various international instruments including the Convention on the Elimination of Discrimination Against Women, the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the Elimination of Racial Discrimination, states are prohibited from discriminating on the basis of gender in regard to access to adequate housing. Adequate housing has been identified as an important economic, social, and cultural right and there exists an international obligation to refrain from and prevent activities that have discriminatory purposes or effects with regard to housing. Discrimination has been defined as

¹⁰⁵ *Id.*

¹⁰⁶ 2007 Greater Los Angeles Homeless Count, *supra* note 67, at 78.

¹⁰⁷ McKinney-Vento Homeless Education Act codified at 42 U.S.C. § 11432(g)(1)(J)(iii)(2002). Wiik, *supra* note 103, at 878.

¹⁰⁸ See Homeless Children: America's New Outcasts, *supra* note 86, at 2.

¹⁰⁹ CRC, *supra* note 73, at arts. 24, 27, 28, 31.

¹¹⁰ Wiik, *supra* note 103, at 905.

¹¹¹ See CRC, *supra* note 73, at art. 18, ¶ 2, art. 27, ¶ 3.

any distinction, exclusion, or restriction made on the basis of sex and gender which has the effect or purpose of creating disparities or inequalities.¹¹²

Women in the United States face structural discrimination with regards to access to housing. In fact, women are particularly vulnerable to housing insecurity due to a long history of discriminatory practices by the U.S. government, which, as noted in the introduction of this submission, has historically fostered the concept of the nuclear family in the single family home. The U.S. government deeply influences the type of housing available and its affordability through aggressive tax and expenditure policies. It has consistently provided two streams of housing support for its citizens. The first is a vigorous system of market incentives and tax-breaks to promote the private development of single family homes. The second is an underfunded system of subsidies to benefit primarily poor single women who are often heads of households.¹¹³

The vast majority of housing support provided by the United States government has benefitted homeowners.¹¹⁴ In 1997, "in absolute terms, the United States spent more than twice as much on one tax benefit--the home mortgage interest deduction--as on all traditional housing programs, including section 8 vouchers and public housing."¹¹⁵ While "[f]ederal housing assistance budget authority has decreased 48% since 1976, [] housing related tax expenditures increased by 260% since 1976, totaling \$119.3 billion in 2004."¹¹⁶ The high rates of homeownership in the United States actually depend on this level of government intervention.¹¹⁷ These subsidies are skewed toward the wealthy, white, and male.¹¹⁸

¹¹² Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), arts. 1, 2(d), 2(e), 2(f), 13. Dec. 1994. A/RES/34/180; Committee on the Elimination of all forms of Discrimination Against Women (CEDAW), General Recommendation No. 19, ¶¶ 9, 10; A/47/38 (1993); ICESCR, *supra* note 71 at art. 3; United Nations Committee on Economic, Social, and Cultural Rights (UNCESCR), General Comment 16 ¶ 4 (Aug. 11, 2005), E/C.12/2005/4.; Committee on the Elimination of Racial Discrimination (CERD) art. 5(e)(3). Dec. 1965. A/RES/20/2106.

¹¹³ Gail Radford, *Modern Housing for America: Policy Struggles in the New Deal Era*, The University of Chicago Press (1996); Fritz, *supra* note 3.

¹¹⁴ There is "a strong public element to so-called private housing in the United States." 60 HASTINGS L.J. 699, 706. The heavily subsidized homeowners in the United States "are largely unaware of the operation of the scheme and rarely consider that their message to the government is retain their subsidies but do not support transit or housing for the less affluent." James Kushner, *Comparative Urban Planning Law: An Introduction to Urban Land Development Law in the United States through the Lens of Comparing the Experience of Other Nations* 301. (Ed. Kushner 2003)

¹¹⁵ Mann, *supra* note 55, citing Christopher Howard, *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* 28 (1997).

¹¹⁶ League of Women Voters, *Federal Assisted Housing Programs* <http://www.lwvmd.org/baltcity/02FederalAssistedHousing.pdf> (Last visited Oct. 23, 2009).

¹¹⁷ "[L]eaving homeownership to the dictates and uncertainty of the private market has never been adequate in developing homeownership for most Americans...government subsidies have been a necessary component to increasing homeownership." Rivera et al., *supra* note 22, at 32.

¹¹⁸ Historically, the mortgage interest deduction has only been available to homeowners who itemize their deductions; since most Americans do not earn enough money to benefit from itemizing their deductions, they use the standard deduction and receive no benefit. *See generally* John G. Steinkamp, *A Case for Federal Transfer Taxation*, 55 ARK. L. REV. 1, 34 (2002); Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L.J. 1155; Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND L.J. 189, 194-195; Katharine B. Silbaugh, *supra* note 21, at 1844.

Government interventions into the private housing market have traditionally failed to adequately support racial minorities, especially women, and low-income families. And as reflected below, women – especially women of color – are denied access to credit and wealth building and consequently pushed into an unstable private rental market or government subsidies which are severely underfunded and inadequate.

A. Underfunding Rental Subsidies (Section 8): A Violation of the Principle of Equity In Housing Support for Vulnerable Populations

As noted earlier, housing subsidies are primarily concentrated in tax breaks that have the greatest value for the wealthy, and disproportionately benefit white men. Funding for programs like rental subsidies (Section 8) are so inadequate that they cannot meet the need of many individuals and families seeking government housing assistance, who are often placed on waiting lists.¹¹⁹ Because the need is overwhelming, waiting lists become so long that local Public Housing Authorities (PHA) will close the lists to new applicants, and in some localities where the lists are closed, the waiting lists will open to new applicants just one week every two years.¹²⁰ The average waiting time of an individual or family who has managed to make their way on to a voucher waiting list is twenty-six months,¹²¹ and even if they do manage to obtain a voucher, there is no guarantee that they will be able to secure housing that meets the U.S. Department of Housing and Urban Development's (HUD) requirements and has a landlord willing to participate in the Section 8 program¹²² within the 60-120 day time restriction before the voucher expires and they are forced to begin again on the waiting list.¹²³

The right to adequate housing is guaranteed in the International Covenant on Economic, Cultural and Social Rights. General Comment 3 to the ICESCR provides: the reason for the existence of the "Covenant...is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."¹²⁴ The voucher waiting lists are a result of lack of funding for HUD, due to government funding cutbacks. Additionally, according to HUD, of the over 2 million persons utilizing Section 8 vouchers, eighty-four percent of the households were

¹¹⁹ National Housing Institute, "Section 8 Is Broken," <http://www.nhi.org/online/issues/127/section8.html>, last visited October 23, 2009.

¹²⁰ Housing Authority of Maricopa County, "FAQ- General Eligibility and Wait List Questions," <http://www.maricopahousing.org/faq/faqg.htm>, last visited October 23, 2009.

¹²¹ National Housing Institute, "A Withering Commitment," <http://www.nhi.org/online/issues/94/bratt.html>, last visited October 23, 2009.

¹²² Teater, Barbra" Factors Predicting Residential Mobility Among the Recipients of the Section 8 Housing Choice Voucher Program." *Journal of Sociology & Social Welfare* 36.3 (2009): 159-178. Academic Search Complete. EBSCO. Web. 23 Oct. 2009.

¹²³ Housing Authority of the City of Fort Myers, "Section 8 Voucher Program," <http://www.hacfm.org/web/page.asp?urh=Section8>, last visited October 23, 2009.

¹²⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 3 ¶9. 1990. HRI/GEN/1/Rev. 9 (Vol. I).

female-headed and fifty-six percent were female-headed with children.¹²⁵ Government cutbacks in funding (in particular those that cannot be justified by lack of resources) to programs where a majority of the participants are women and minorities are both retrogressive and discriminatory measures.

B. Failure to Adequately Address Private Actor Discrimination in Section 8

Landlords who participate in the Section 8 program receive certain benefits. Section 8 residents mean guaranteed rent payments from the local PHA, stricter renter responsibilities imposed on renters via PHAs, renters who are eager to comply so as not to lose their government assistance, ability to demand and receive market-rate rent (even when the rental market is down and renters are hard to find or in neighborhoods where rental prices tend to be lower) and rent security from residents who are unlikely to want to move again after having secured Section 8 housing.¹²⁶ Despite these positives, landlords often refuse to rent to Section 8 tenants.

Negative stereotypes against women/women of color/single mothers permeate landlords' views about Section 8 residents. Stereotypes include a belief that Section 8 tenants are bad tenants, they cannot do anything for themselves, will not pay utilities on time, where they live will become known as "welfare buildings," their children are not well-behaved, and they will break their leases.¹²⁷ These stereotypes can effect how willing landlords are to participate in the voluntary Section 8 program. These stereotypes manifest themselves in many ways. In New Orleans, a 2009 Greater New Orleans Fair Housing Action Center study found that of a sample of advertised "for rent" affordable housing in New Orleans, that did not state a preference for or against Section 8 voucher holders, only eighteen percent of those were willing to accept the vouchers outright (without the addition of further requirements making it nearly impossible for voucher holders to qualify). In New Orleans Parish, ninety-nine percent of voucher-holders are African-American and the primary users of vouchers in the area are African-American female-headed households, so this rate of refusal to accept Section 8 clearly disparately effects people of color, notably, women of color. Three types of test calls were also made, first from a white tester without a voucher, second a white female with a voucher, and finally an African American female with a voucher. In nearly ten percent of the test calls, a landlord first told a white female that they accepted vouchers and then told a black female they did not for the same property.¹²⁸ Landlords were using wide amounts of discretion as private actors in deciding whether or not to accept Section 8 tenants and their decisions were disproportionately affecting African American women, resulting on a reduction in access for women of color.

¹²⁵ U.S. Department of Housing and Urban Development, "A Picture of Subsidized Households," <http://www.huduser.org/picture2000/index.html>, last visited October 23, 2009.

¹²⁶ Housing Authority of Portland, "Section 8 Landlord Opportunities and Benefits," <http://www.hapdx.org/resident/sc8benefits.html>, last visited October 23, 2009.

¹²⁷ Svetlana Vidovic, "Renting to Section 8 Tenants-What to Expect," <http://www.isellbuildings.com/chicago-apartment-buildings-portal/real-estate-reports/renting-to-section-8-tenants---what-to-expect.html>, last visited October 23, 2009..

¹²⁸ Greater New Orleans Fair Housing Action Center, "Housing Choice in Crisis: An Audit Report on the Discrimination Against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market," <http://www.gnofairhousing.org/pdfs/HousingChoiceInCrisis2009.pdf>, last visited October 23, 2009.

The government has an obligation to prevent discriminatory actions by landlords on the basis of sex, gender, or race that exclude women from access to adequate housing and provide adequate remedies for victims of such action. Because Section 8 participation is voluntary, landlords can allow their personal bias to masquerade as a neutral decision not to participate based on non-discriminatory factors such as the extra paper work/bureaucracy that participating in a government program entails or discrimination based on economic status (which is not currently a protected category in the United States),¹²⁹ when their real purpose is to exclude persons of color/single mothers based on bias.¹³⁰ Additionally, in accordance with international law, even if the landlord's purpose is not discriminatory, if the effect of the action is to disproportionately exclude women from access to housing it also triggers a government obligation to provide remedies and prevent further exclusion.

C. Discrimination Decreases the Security of Homeownership

As the number of white women and minority homeowners has increased, homeownership has become increasingly insecure. The foreclosure crisis has revealed that African-Americans and Latinos,¹³¹ especially women,¹³² are disproportionately subject to housing insecurity even when they are homeowners.¹³³ This crisis raises the question of whether it is possible to achieve universal secure housing under the current system, or whether the commodification of housing security, absent a recognized and protected right to housing, will inevitably result in inequality.

Wealth inequality continues to undermine housing security for minority, especially women, homeowners. During the 1980s, a cornerstone of President Reagan's economic policy was to concentrate wealth, with the purported expectation that that wealth would "trickle down" and stimulate the economy. Though the wealth was successfully concentrated, it did not trickle down. The homeownership tax credit (where the larger the mortgage is, the larger the tax deduction is) continued to benefit the wealthy and the social safety net, which had been slashed

¹²⁹ *Id.*

¹³⁰ Fernandez, Manny. New York Times, "Bias Is Seen as Landlords Bar Vouchers," http://www.nytimes.com/2007/10/30/nyregion/30section.html?pagewanted=1&_r=3&ref=todayspaper, last visited October 23, 2009.

¹³¹ "[M]inority neighborhoods received a disproportionate amount of subprime loans." National Community Reinvestment Coalition et al. *Homeownership and Wealth Building Impeded: Continuing Lending Disparities for Minorities and Emerging Obstacles for Middle-Income and Female Borrowers of All Races* 14 (April 2006). "[M]inority neighborhoods obtained 28.4 percent of the subprime home purchase loans, which was almost twice as great in percentage point terms than their share of the nation's owner-occupied housing units," while "white neighborhoods received a lower percent of subprime loans (70.7 percent) than their share of the nation's owner-occupied housing stock. *Id.* at 15.

¹³² "African American women represent almost half (46.7 percent) of African American home purchase borrowers. Latino women make up nearly one in three (31.4 percent) of Latino purchase mortgage borrowers. White women constitute more than a fourth (28.4 percent) of white home purchase borrowers...The disparity in subprime lending to women generally and women of color in particular has a deleterious impact on their ability to build wealth through homeownership." Fishbein, *supra* note 56, at 7.

¹³³ "The delinquency rate on all mortgage loans in the first quarter of 2009 (the data are reported with a lag) was at its highest level since the series began in 1972, according to the Mortgage Bankers Association. The foreclosure start rate on all mortgages also set a record high after remaining steady since the second quarter of 2008. In the first quarter of 2009, "[t]he delinquency rate for all mortgage loans was 9.12 percent"; for subprime loans it was 24.95. U.S. Housing Market Conditions, 4 (2nd Quarter 2009). <http://www.huduser.org/periodicals/ushmc/summer09/summary.pdf>. (Last visited Oct. 21, 2009).

to pay for tax cuts for the wealthy, provided even less security against medical emergencies, job losses, and other crises.

With these dislocations came increasingly insecure housing, as many women turned to mortgage refinancing, often at exorbitantly high interest rates, as a way of surviving these crises. Lenders preyed upon the vulnerability of these applicants.¹³⁴ According to the Consumer Federation of America (CFA) “[s]ubprime lending is concentrated in [the] refinance and home improvement segment of the mortgage market, so these borrowers often face higher prices than purchase mortgage borrowers.”¹³⁵ The Federal Trade Commission has found that “[u]nexpected health-care costs or loss of a job are the top two reasons why consumers may suddenly find themselves unable to meet their monthly mortgage obligations.”¹³⁶

Yet, the drastically different rates at which whites and racial minorities are given subprime loans cannot be explained by wealth inequality alone. Racial minorities are more likely to receive subprime loans than are similarly situated whites.¹³⁷ The discriminatory patterns in lending are shocking: among upper incomes, black women are five times as likely as upper income white men to receive subprime loans.¹³⁸ Throughout the 1990s, lenders steered¹³⁹ applicants who qualified for traditional loans¹⁴⁰ toward subprime loans, resulting in unnecessarily exorbitant interest rates, and, frequently, foreclosure. “From 1994 to 2005, the subprime home loan market grew from \$35 billion to \$665 billion.”¹⁴¹ To the Consumer Federation of America (CFA), discriminatory subprime lending is simply a new form of redlining. According to the CFA, predatory lending frequently includes such violations of “fair lending laws by targeting women, minorities and communities of color.”¹⁴² The CFA finds that

¹³⁴ “[O]nly 11 percent of subprime loans went to first-time buyers [in 2007]. The vast majorities were refinancing that caused borrowers to owe more on their homes under the guise that they were saving money. Too many of these borrowers were talked into refinancing their homes to gain additional cash for things like medical bills.” Rivera et al., *supra* note 22, at 12.

¹³⁵ Fishbein, *supra* note 56 at 7.

¹³⁶ Federal Trade Commission comment, 9/14/06, at 9.

<http://www.ftc.gov/os/2006/09/docketop1253commentfedreservehomeeqlendimagev.pdf>. (Last visited Oct. 20, 2009).

¹³⁷ Low- and moderate-income (LMI) “borrowers in minority neighborhoods were 2 times more likely than their LMI counterparts in white neighborhoods to receive subprime loans. [Middle- and upper- income] borrowers in minority neighborhoods were also 2 times more likely than MUI [middle- and upper-income] borrowers in white neighborhoods to receive subprime loans.” National Community Reinvestment Coalition et al., *supra* note 131, at 27.

¹³⁸ Fishbein, *supra* note 56 at 4.

¹³⁹ The “illegal and discriminatory practice” of steering “was coupled with giving subprime loans to middle- and lower-income families and households (typically people of color) that qualified for conventional (market-rate) loans but were given higher-cost loans instead.” Rivera et al., *supra* note 22, at 11.

¹⁴⁰ Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall St. J., Dec. 3, 2007 (Last visited Nov. 4, 2009) (“In 2007, “[a]n analysis for The Wall Street Journal of more than \$2.5 trillion in subprime loans made since 2000 show[ed] that as the number of subprime loans mushroomed, an increasing proportion of them went to people with credit scores high enough to often qualify for conventional loans with far better terms. In 2005, the peak year of the subprime boom, the study says that borrowers with such credit scores got more than half - 55% -- of all subprime mortgages that were ultimately packaged into securities for sale to investors, as most subprime loans are.”).

¹⁴¹ Ellen Schloemer & Wei Li, Center for Responsible Lending, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners* 7. (December 2006).

¹⁴² National Community Reinvestment Coalition et al., *supra* note 131, at 4.

“women have faced historical disparity at the loan window with higher rejection rates than men and women are often the target of predatory lenders. The higher incidence of subprime lending to women borrowers may be the latest extension of this pattern of disparate treatment by lenders.”¹⁴³ Subprime lenders deliberately and disproportionately targeted elderly women of all races.¹⁴⁴

Loan applicants accepted subprime loans because those were frequently the only loans available to them. Highly segregated¹⁴⁵ minority neighborhoods have not been served by traditional banks, which had engaged in redlining for decades. These underserved communities were vulnerable to predatory lenders, who were successfully able to target these neighborhoods because they were often the only lenders present.¹⁴⁶ Predatory lenders methodically and systematically stripped equity from entire communities,¹⁴⁷ causing “the greatest loss of wealth to people of color in modern US history,”¹⁴⁸ estimated at “between \$164 billion and \$213 billion for subprime loans taken [between 2000 and 2008].”¹⁴⁹

According to the Consumer Federation of America (CFA), “[w]omen are more likely to receive subprime mortgages than men” and African American and Latina women receive the “highest rates of subprime lending.”¹⁵⁰ A December 2006 report by the CFA “found that these patterns of subprime gender disparity exist for home purchase, refinance and home improvement lending.”¹⁵¹ The Center for Responsible Lending, which appropriately categorizes predatory mortgage lending as a “women’s issue” writes that “[L]enders have discriminated on the basis of gender with respect to how much homeowners paid for their loans” and that “[t]he discriminatory effect is multiplied for women who are also older and/or ethnic minorities.”¹⁵²

¹⁴³ Fishbein, *supra* note 56, at 7.

¹⁴⁴ Center for Responsible Lending, “Predatory Mortgage Lending: A Women’s Issue,” Issue Brief (No. 15, 2004).

¹⁴⁵ “The average White person in metropolitan America lives in a neighborhood that is 80% White and 7% Black.” In stark contrast, “[a] typical Black individual lives in a neighborhood that is only 33% White and as much as 51% Black, making African-Americans the most residentially segregated group in the United States.” Rivera et al, *supra* note 22, at 4.

¹⁴⁶ John P. Relman, John P., *Symposium: The Fair Housing Act After 40 Years: Continuing the Mission to Eliminate Housing Discrimination and Segregation: Foreclosures, Integration, and the Fair Housing Act*, 41 IND L. REV. 629, 629 (2008).

¹⁴⁷ “Since subprime loans often cost \$50,000 to \$100,000 more than comparable prime loans, a neighborhood receiving a disproportionate number of subprime loans loses a significant amount of equity and wealth. Instead of building family wealth, the equity was transferred from the family to the lender...the equity drain from a neighborhood can be tremendous.” Even using the most conservative estimates, if 300 families of a 2,000-person minority neighborhood are inappropriately given subprime loans, the total loss will be at least \$15 million. National Community Reinvestment Coalition et al., *supra* note 131, at 5.

¹⁴⁸ Rivera et al., *supra* note 22, at v.

¹⁴⁹ The Institute for Policy Studies estimates the “total loss of wealth for people of color to be between \$164 billion and \$213 billion for subprime loans taken during the past eight years...From subprime loans, Black/African American borrowers will lose between \$71 billion and \$92 billion, while Latino borrowers will lose between \$75 billion and \$98 billion for the same period...If subprime loans had been distributed equitably, losses for white people would be 44.5% higher and losses for people of color would be about 24% lower.” *Id.* at vii.

¹⁵⁰ Fishbein, *supra* note 56, at 1.

¹⁵¹ *Id.*

¹⁵² Center for Responsible Lending, *supra* note 144, at 1.

These disparities are not attributable to differences in income or credit history; in fact, [o]n average, women have slightly higher credit scores than men.”¹⁵³ The CFA reported that “women are more likely to receive subprime and higher-cost mortgages” than are men; women “are significantly over-represented in the pool of subprime mortgages” and “are more likely to receive subprime mortgages of all types regardless of income, and disparity between men and women increases as incomes rise.”¹⁵⁴ Overall, about a third of women receive subprime mortgage loans, while only a quarter of men receive them.¹⁵⁵ Among those receiving subprime loans, women are also more likely to receive “high-cost” subprime loans that are “more than 5 percentage points above comparable Treasury notes.”¹⁵⁶

Women of color “are the most likely to receive subprime loans and white men are the least likely to receive subprime loans at every income and the gap grows with income;” and women “are more likely to receive subprime mortgages than men of the same race and women of color are much more likely to receive subprime mortgages than [are] white men.”¹⁵⁷ Although gender disparity exists across all incomes and racial backgrounds, white women are less likely to receive a subprime loan than are African American or Latino men. Racial minorities are more likely to receive negatively amortized mortgages; “African American and Latinos were more likely to receive payment option mortgages than whites and African Americans were more likely to receive interest only mortgages.”¹⁵⁸

The gendered disparity is highest “at the highest levels of income,”¹⁵⁹ and the most egregious disparity occurs among rates for “upper income African American women,” who are “nearly five times more likely to receive subprime purchase mortgages than upper income white men”¹⁶⁰ and (3 times) more likely to receive them than are white women.¹⁶¹ Racial disparities in the share of borrowers receiving subprime loans were greater for upper-income borrowers than lower-income borrowers¹⁶² and “[w]ithin races, the disparity in subprime shares of loans to females relative to males widened as income level increased.”¹⁶³

¹⁵³ Fishbein, *supra* note 56, at 2.

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *Id.* at 10.

¹⁵⁶ *Id.* at 11.

¹⁵⁷ *Id.* at 4.

¹⁵⁸ Allen Fishbein & Patrick Woodall, *New Analysis of Non-Traditional Mortgage Borrowers Shows Less Wealthy, Weaker Credit than Industry Suggests: African Americans, Latinos More Likely to Receive Negatively Amortized Mortgages* 1. (2006).

¹⁵⁹ Fishbein, *supra* note 56, at 12.

¹⁶⁰ *Id.* at 16.

¹⁶¹ “The disparity in subprime market share between white and minority females was higher for [middle- and upper-income] MUI borrowers than [low- and moderate-income] LMI borrowers. The subprime market share of loans to LMI African-American females is 3.2 times greater than to LMI white females. The subprime market share of home purchase loans to MUI African-American females was 3.4 times greater than the market share of loans to MUI white females.” National Community Reinvestment Coalition, et al., *supra* note 131, at 30.

¹⁶² *Id.* at 2.

¹⁶³ *Id.* at 3. See also Barbara Ehrenreich & Dedrick Muhammad, “The Recession’s Racial Divide,” *The New York Times* Sept. 12, 2009. <http://www.nytimes.com/2009/09/13/opinion/13ehrenreich.html?pagewanted=print> (Last visited Sept. 13, 2009): (“[r]acial asymmetry was stamped on this recession from the beginning... People of all races got sucked into subprime and adjustable-rate mortgages, but even high-income blacks were almost twice as likely to end up with subprime home-purchase loans as low-income whites — even when they qualified for prime mortgages, even when they offered down payments.”)

A 2006 report by the National Community Reinvestment Coalition (NCRC) showed “persistent fair lending disparities for minorities and emerging obstacles for middle-income and female borrowers of all racial groups. Fair access to affordable loans has not been achieved for minorities. Instead, minorities continue to receive a disproportionate number of high cost home loans.”¹⁶⁴

These findings show clear and systematic violations of the duty to protect against discrimination in access to housing. The United States’ attempts at redress have failed in part because they generally remove barriers without actively promoting equality.¹⁶⁵

The disparate impact of predatory lending follows a history of racialized and gendered housing policies that have contributed to residential segregation, redlining, and wealth inequality in clear violation of the Race Convention. The Race Convention’s results-based standard differs from the intent-based standard applied to claims of racial discrimination under either the 5th or 14th Amendments of the United States Constitution. The Committee on the Elimination of Racial Discrimination (CERD) has recently found that a results-based standard is necessary to eradicate the current barriers to racial equality in the United States. In its 2008 report, CERD formally recommended that the United States “review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure, in light of the definition of racial discrimination provided for in article 1, paragraph 1, of the Convention, that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.”¹⁶⁶

Significantly, the provisions of the Race Convention are not limited to state action, a necessary requirement for courts to find violations of the United States Constitution in almost all cases. Under the Convention, the state becomes responsible for ending even racial discrimination carried out by private actors.¹⁶⁷ By adhering to a constitutional standard that merely requires the government to refrain from formal, intentional and state-sponsored racial discrimination, the United States has failed to address the debilitating problem of racial inequality that is perpetuated by powerful private corporations and other actors.

¹⁶⁴ National Community Reinvestment Coalition et al., *supra* note 131, at 1.

¹⁶⁵ According to the Committee on the Elimination of Racial Discrimination “the obligation to eradicate all practices of [racial segregation] includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.” Committee on the Elimination of Racial Discrimination, General Recommendation No. 19: Racial Segregation and Apartheid, art. 3, ¶2. 18/08/95. Thus, what is perceived as the state’s “positive” obligation to actively participate in the eradication of discrimination may more accurately be characterized as a negative obligation to refrain from continuing its overt and covert policies of racial discrimination.

¹⁶⁶ United Nations Report on the Committee on the Elimination of Racial Discrimination 72nd and 73rd Sessions, ¶ 481 (2008).

¹⁶⁷ “Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination *by any persons, group, or organization.*” CERD, *supra* note 112 at art. 2 ¶1(d). In 1995, CERD observed that “while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons.” CERD, General Recommendation No. 19, *supra* note 165, at art. 3 ¶ 2.

Although the United States guarantees, without regard to sex, an individual's right to own property alone, the gendered patterns of the foreclosure crisis reveal systemic, sex-based discrimination through which women were given subprime loans at disproportionate rates. Since subprime loans have resulted in higher levels of foreclosure, these lending patterns mean that a woman's ability to secure and maintain her own property is compromised when she purchases it alone. The gendered implications of racial discrimination are especially significant, given the frequent intersection between race and gender¹⁶⁸

3. RIGHT TO PRIVACY AND FREEDOM OF ASSOCIATION

The United States government has infringed upon the right to privacy of residents of public housing in a myriad of ways. As noted earlier, due to vulnerabilities created by discriminatory government policies, approximately seventy-five percent of families in public housing are female headed¹⁶⁹ and therefore these violations of the right to privacy have a disparately gendered impact.

The right to privacy has been well established in international human rights instruments. Three major human rights treaties call for the prohibition of "arbitrary or unlawful interference" with an individual's privacy.¹⁷⁰ The United Nations Human Rights Committee further explains the right to privacy in General Comment 16. The Committee asserts that the term "arbitrary" can extend to interferences provided for by law. Therefore, even if an invasion of privacy is sanctioned in law, if its nature is arbitrary, its occurrence is violative of the human right to privacy. Furthermore, any interference should be reasonable in the specific circumstances in which it is carried out. Individuals must also be protected from interferences in privacy by state as well as private actors; and states must adopt legislative and other measures to ensure protection against such interferences.¹⁷¹

Intimately connected to the invasion of privacy are state interferences with an individual's right to association. There are only narrow circumstances in which an individual's right to association may be infringed upon. The International Covenant on Civil and Political Rights dictates that everyone has a right to freedom of association. That right may only be infringed upon when it is proscribed by law and "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."¹⁷²

¹⁶⁸ The Committee on the Elimination of Racial Discrimination "notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men." Committee on the Elimination of Racial Discrimination, General Recommendation No. 25: Gender related dimensions of racial discrimination, ¶1. 20/03/2000.

¹⁶⁹ "A Picture of Subsidized Households – 2000," United States Department of Housing and Urban Development (2000), <http://www.huduser.org/picture2000/index.html>

¹⁷⁰ International Convention on Civil and Political Rights (ICCPR), art. 17. Dec. 1966. A/RES/21/2200 A; CRC, *supra* note 73 art. 16(1); CRPD, *supra* note 72 at art. 22(1).

¹⁷¹ International Convention on Civil and Political Rights (ICCPR), General Comment No. 16. HRI/GEN/1/Rev. 9 (Vol. I).

¹⁷² ICCPR, *supra* note 170, at art. 22.

A. Privacy Invasions in Public Housing

A telling example of public housing policies in the United States can be found in the New York City Housing Authority Public Housing Management Manual 10-06.¹⁷³ According to the manual, a public housing tenant can be evicted for numerous reasons ranging from “non-desirability” to violations of regulations that micro-manage the tenants’ lives. “Non-desirability” includes conduct which is in the nature of a “moral offense,” the definition of which is left for the housing authority to determine,¹⁷⁴ but is stated as including “sodomy.”¹⁷⁵ The regulations that the tenants are forced to comply with (and may be evicted if they do not) are as trivial as installing an appliance without prior permission from the housing authority¹⁷⁶ or painting a bedroom wall a color that is not approved by the housing authority.¹⁷⁷ The violations may be discovered in a number of ways, including during required yearly inspections of the apartments.¹⁷⁸ Furthermore, the Housing Manager is saddled with the duty to “ensure that tenants maintain a reasonable standard of housekeeping.” These regulations regarding eviction in New York City, which are illustrative of public housing across the country, permit invasion into the lives of tenants to an extent that is grossly unreasonable and violative of the human right to privacy. The United States legislature has given the housing authorities the power to regulate the management of public housing developments under their control. Therefore, these invasive eviction policies are sanctioned by law. However, the arbitrary nature of these infringements are painstakingly clear, as here the government is passing judgment on the morality of an individual’s actions in her private home and inspecting private homes to search for any minor regulation infractions.

In *New York City Housing Authority v. Escalera*,¹⁷⁹ the Second Circuit ruled that prior to a public housing tenancy being terminated, for other than non-payment of rent or excess income, the resident must be given a hearing in which specific charges are written and of which the resident receives notification. The *Tyson/Randolph*¹⁸⁰ cases also require that, in the United States, if termination of tenancy proceedings have been initiated due to actions committed by a member of the tenant’s family, then the tenant will not be evicted if he or she can show that the offending member of the family has been excluded from the household. This results in state sanctioned fracturing of families.

Some local housing administrations have also instigated banning policies that include lists of specific people that are not allowed to step foot on the public housing developments.¹⁸¹

¹⁷³ *The New York City Housing Authority Public Housing Management Manual 10-06*, New York City Public Housing Authority, Chapter VII (2006)

¹⁷⁴ *Id.* at Chapter V, p. 11.

¹⁷⁵ *Id.* at Chapter VII(III)(A)(2), p. 5.

¹⁷⁶ *Id.* at Chapter IV(B)(2), p. 11.

¹⁷⁷ *Id.* at Chapter IV(VII)(II)(b), p. 1.

¹⁷⁸ *Id.* at Chapter VII, p. 3.

¹⁷⁹ *New York City Housing Authority v. Escalera*, 425 F.2d 853 (2nd Cir. 1970)

¹⁸⁰ *Joseph Tyson Sr. v. New York City Housing Authority and Myrdes Randolph v. New York City Housing Authority*, 73 C 859, 74 C 1856, 74 C 2556, 74 C 2617 (S.D.N.Y 1976, Metzner, J.)

¹⁸¹ “Trespass and Ban Policy of The Housing Authority of the City of Greenville,” The Housing Authority of the City of Greenville and the Public Housing Authorities Directors Association (2004), <http://www.phada.org/library/>; Complaint submitted to the court by plaintiffs in *Sharps v. The Housing Authority of the City of Annapolis*,

A person can be banned for various reasons including past convictions and even past acquittals.¹⁸² This has resulted in fathers and mothers being unable to visit and take part in their children's lives as well as other forms of family separation which leads to lack of needed emotional and financial support from family members. The American Civil Liberties Union has recently filed suit, in the state courts of Maryland, against the Housing Authority of the City of Annapolis claiming that their banning policy violates the rights of the public housing residents and their families and friends to free association, privacy and quiet enjoyment in their own homes.¹⁸³

Because of the high rates of male incarceration in poor minority communities,¹⁸⁴ and because conviction and incarceration are a basis for being placed on the banned list, there is strong evidence to suggest that women and families in public housing developments with banning policies are being left without support from many of their male family members. In addition, due to a high percentage of public housing residents being African-American,¹⁸⁵ and a disproportionately high percentage of African-American men being subjected to the United States' Criminal Justice System,¹⁸⁶ the number of public housing tenants who have family members and friends being excluded from their homes may be particularly high.

According to the International Covenant on Civil and Political Rights, there are narrow circumstances in which imposition on the right to freedom of association is permitted. The forced exclusion of offending family members and the banning policies are both obvious intrusions on an individual's right to freedom of association because individuals are being restricted from associating with their own family members within their own homes. The government is likely to argue that there is a public safety justification for the banning policies and the forced exclusion of offending family members in public housing. But the current regulations place no burden on the government to demonstrate that there is a public safety justification; rather, it is a vague theoretical assumption that does not bear out with even a cursory review of the types of people being separated and excluded (many non-violent offenders and many who were not ever actually convicted). Moreover, there is strong social science data that indicates that public safety is fundamentally jeopardized when families are fractured and

American Civil Liberties Union, submitted to the court Aug. 12, 2009,

http://www.aclu.org/pdfs/womensrights/sharpsvhaca_complaint.pdf

¹⁸² "ACLU Challenges Unlawful Housing Policy that Tears Families Apart," American Civil Liberties Union (2009), <http://www.aclu.org/womensrights/crimjustice/haca.html>; Complaint submitted to the court by plaintiffs in *Sharps v. The Housing Authority of the City of Annapolis*, American Civil Liberties Union, submitted to the court Aug. 12, 2009, http://www.aclu.org/pdfs/womensrights/sharpsvhaca_complaint.pdf

¹⁸³ *Id.*

¹⁸⁴ *Prison Statistics*, U.S. Department of Justice, Bureau of Justice Statistics (2008),

<http://www.ojp.usdoj.gov/bjs/prisons.htm>

¹⁸⁵ In 2000, nationwide, 69% of public housing tenants were minorities and 46% were African-American. *A Picture of Subsidized Households – 2000*, HUD USER, U.S. Department of Housing and Urban Development, Office of Policy Development and Research (2000), <http://www.huduser.org/picture2000/index.html>

¹⁸⁶ "Nationwide, black men are incarcerated at 9.6 times the rate of white men. In eleven states, black men are incarcerated at rates that are twelve to twenty-six times greater than those of white men." *Incarceration and Race*, Human Rights Watch (2000), <http://www.hrw.org/legacy/reports/2000/usa/Rcedrg00-01.htm>; "At midyear 2008, there were 4,777 black male inmates per 100,000 U.S. residents being held in state or federal prison and local jails, compared to 1,760 Hispanic male inmates per 100,000 U.S. residents and 727 white male inmates per 100,000 U.S. residents." *Prison Statistics*, U.S. Department of Justice, Bureau of Justice Statistics (2008), <http://www.ojp.usdoj.gov/bjs/prisons.htm>

troubled members are excluded from the support the family can offer. These policies are massively over-inclusive, do not meet the goal of maintaining public safety, and violate an individual's human right to the freedom of association.

4. RIGHT TO SECURITY OF TENURE AND PROTECTION AGAINST FORCED EVICTIONS

International law recognizes the right of security of tenure as a component of the right to adequate housing. Security of tenure is a guarantee of some legal protection against forced evictions, harassment and other threats, and imposes an obligation on state parties to grant security of tenure to parties that are lacking such protection. Forced evictions are “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹⁸⁷ Women, especially those who are also members of other marginalized groups, suffer disproportionately from forced evictions and are especially vulnerable due to other forms of discrimination to which they are subject.¹⁸⁸

A. Strict Liability Evictions for Public Housing Tenants

In 1988, Congress used the lack of public support for public housing and the fervor of the war against drugs to pass the Anti-Drug Abuse Act. The Act amends the 1937 United States Housing Act and allows tenants of public housing to be evicted if the tenant, any member of the tenant's household, or any guest or other person under the tenant's control engages in any criminal activity that is drug-related or criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants. Furthermore, in 2002, the Supreme Court ruled, in *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002), that the Anti-Drug Abuse Act of 1988 unambiguously requires that public housing leases include provisions to allow local public housing authorities to evict tenants for drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity. This type of strict liability rule leaves tenants in a constant state of insecurity because they could be evicted from their homes for the behavior of others of which the tenants have no knowledge.

These provisions represent serious violations to the human right to security of tenure. The resulting eviction for tenants falling victim to this policy is undoubtedly forced. In addition, by allowing evictions based on activities of which the individual being evicted has no knowledge, access to legal or any type of protection is non-existent because there is virtually nothing that can protect someone from something that they are not aware, or even could be aware, is happening.

¹⁸⁷ UNCESCR, General Comment 7, ¶ 3. HRI/GEN/1/Rev. 9 (Vol. I).

¹⁸⁸ ICESCR, *supra* note 71 at art. 11; UNCESCR General Comments 4, *supra* note 70; UNCESCR, General Comment 7, *supra* note 187; Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), U.N. Doc., A/810, art. 25.

B. Public Housing Evictions for Minor Regulatory Infractions

Security of tenure is also violated when public housing authorities carry out policies of eviction for menial regulatory infractions. According to the New York City Housing Authority Public Housing Management Manual 10-06, a tenant in New York City public housing can be evicted due to prohibited conduct by a tenant or a member of the tenant's family, or for non-payment of rent. Grounds for termination of tenancy are non-desirability, breach of rules and regulations, chronic breach of rules and regulations, chronic rent delinquency, non-verifiable income, assignment or transfer of possession, and misrepresentation. These grounds are virtually all encompassing. The basis of “non-desirability” is defined by the New York City Public Housing Authority as the conduct of the tenant or any other person occupying the space that constitutes: “a danger to the health and safety of the tenant's neighbors; conduct on or in the vicinity of the Authority premises which is in the nature of a sex or a moral offense; a source of danger or a cause of damage to the employees, premises or property of the Authority; a source of danger to the peaceful occupation of other tenants; or a common law nuisance.” These definitions are open to very different interpretations and encompass an extremely wide range of activities. Furthermore, the “Breach of Rules and Regulations” allows eviction proceedings to commence based on “breach by the tenant, or any person occupying the tenant's premises, of any applicable rule, regulation or resolution of the Authority.” For example, in New York City, a tenant may be evicted for not allowing the exterminator into his or her apartment¹⁸⁹ or for installation of an electric clothes dryer (which is on the list of “Prohibited Appliances,” published by the Housing Authority).¹⁹⁰ Inspections of homes to determine if violations of the regulations are occurring are to be done at least annually.¹⁹¹ [See additional facts in the Right to Privacy section.]

Eviction policies in public housing developments in the United States are so broad that housing authorities are able to utilize them to instigate evictions at their will. This leaves residents of public housing completely vulnerable and without protection against these forced evictions.

C. HOPE VI Demolitions and Displaced Public Housing Residents

One source of funding for United States public housing is the federal program, Housing Opportunities for People Everywhere (HOPE VI). HOPE VI gives grants to agencies to revitalize public housing. The grants can be used for renovation, demolition, construction of replacement housing, acquisition of land for new public housing developments, and social services for families that are displaced due to the revitalization.¹⁹² Funding for this program has been significantly cut in recent years.¹⁹³ There is also much debate around the effects of the

¹⁸⁹ *The New York City Housing Authority Public Housing Management Manual 10-06*, *supra* note 173 at Chapter V, p. 11.

¹⁹⁰ *Id.* at Chapter V, p. 13.

¹⁹¹ *Id.* at Chapter VII, p. 4.

¹⁹² “The Unchartered, Uncertain Future of HOPE VI Redevelopments,” Martin D. Abravanel and Diane K. Levy, Metropolitan Housing and Communities Center, pg. 3 (July 2009)

¹⁹³ “Policy Basics: Introduction to Public Housing,” Center on Budget and Policy Priorities (18 Dec 2008), <http://www.cbpp.org/cms/index.cfm?fa=view&id=2528>

HOPE VI housing program.¹⁹⁴ The goal of the program, at its inception in 1992, was to replace severely distressed public housing, de-concentrate public housing projects, and generally improve public housing.¹⁹⁵ However, in many cases, these goals have not been met in meaningful ways. On the contrary, the program has caused a depletion of public housing stock through demolition without real replacement.¹⁹⁶

There have been many instances in which HOPE VI funding has been used to tear down existing public housing developments but the displaced residents have not been given proper support and many have not been able to return to the redeveloped housing. It is estimated that only twenty to less than fifty percent of residents displaced by HOPE VI are able to return to the revitalized communities.¹⁹⁷ There have also been instances where HOPE VI funding has been used to tear down public housing developments, the residents have been displaced, and new buildings have not been built to replace the lost units. In addition, in many circumstances, the renovated public housing developments have significantly fewer units available; therefore, only people that meet certain eligibility requirements have been allowed to return to the developments.¹⁹⁸

A substantial obstacle that families displaced by HOPE VI demolitions face are admission policies that limit occupancy to working households, homes that are designed for smaller families, strict requirements regarding prior histories of even minor criminal conduct, and credit requirements that are based on private rental market standards.¹⁹⁹ The least likely families to gain re-access to the new HOPE VI units are “hard-to-house” families, which are households that contain people with disabilities; large households; “grandfamilies” consisting of elders caring for minor children; elderly households; and families with multiple barriers to access to housing, such as histories of mental illness, substance abuse, lack of education or work history, and criminal backgrounds.²⁰⁰ Because women are likely represented in large numbers in these groups, it suggests that women may be being particularly disadvantaged by the HOPE VI program and by stringent admission policies to the re-developed housing.

The government’s actions surrounding the HOPE VI project have served to violate many families’ right to security of tenure. Residents have been removed from their homes against their will, in some cases permanently and in others only temporarily. Many have also been left

¹⁹⁴ “Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs,” Henry Korman, 14-SUM J. Affordable Housing & Community Dev. L. 292 (Summer 2005); “The Unchartered, Uncertain Future of HOPE VI Redevelopments,” Martin D. Abravanel and Diane K. Levy, Metropolitan Housing and Communities Center, pg. 3 (July 2009)

¹⁹⁵ “The Unchartered, Uncertain Future of HOPE VI Redevelopments,” *supra* note 192.

¹⁹⁶ Kalima Rose, Annie Clark, and Dominique Duval-Dlop, “A Long Way Home: The State of Housing Recovery in Louisiana, 2008,” pg. 22, Policy Link (2008), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/equityatlas.pdf>

¹⁹⁷ “Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs,” *supra* note 194.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ “A Decade of HOPE VI: Research Findings and Policy Challenges,” The Urban Institute, The Brookings Institution, pg. 34 (May 2004); “Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs,” Henry Korman, 14-SUM J. Affordable Housing & Community Dev. L. 292, 310 (Summer 2005)

without any meaningful form of protection or redress against the forced eviction. This violation has led to violations of other kinds, including the right to family.

D. Serial Displacement and Security of Tenure in Section 8

Section 8 housing choice vouchers are meant to give low-income families the ability to choose where they want to live, on the open housing market, with private landlords. When a family or individual holding a voucher selects a housing unit they would like to occupy, not only does the unit have to meet fair market price requirements set by HUD, but also has to pass government inspections done on these private buildings by government inspectors. Once the unit passes the initial inspection, the landlord's ability to collect government Section 8 funds on that unit can be revoked if the unit fails a future inspection, causing it to no longer be qualified for voucher use and the tenants will have to vacate.²⁰¹

A 2005 analysis done in Chicago revealed that large private complexes that housed mostly Section 8 residents were failing government inspections (passage of which is required be able to continue to receive government Section 8 voucher funds) at a rate of four out of every ten inspections over a five-year period.²⁰² The circumstances for failing such inspections ranged from the very serious: lead poisoning, electrical hazards, plumbing/sewer/toilet issues, lack of heat, and absence of/lack of working smoke detectors, to the easily remedied such as a window that won't open,²⁰³ but any of these infractions can be enough to displace the Section 8 tenants occupying the apartment.

If an apartment fails to pass inspections, while the landlord may lose eligibility to receive Section 8 government funds on that individual rental unit or possible fines,²⁰⁴ the real punishment is doled out to the family being displaced, who now faces the difficult task of having to re-acquire housing that is both willing to accept the vouchers and meets Section 8 requirements. Once a family is forced out of their housing they must find new acceptable housing before they lose their vouchers (vouchers are generally valid for 60-120 days with a requested extension before they expire)²⁰⁵ and then the family will have to go back on the waiting list. Since 2006, in some areas, as many as two-thirds of voucher holders have been unable to find a place to rent,²⁰⁶ and thus lose their vouchers and must go back on the waiting list. Desperate families in this situation, instead of moving into a better quality neighborhood with better living conditions and opportunities, as per the goals of the Section 8 program, move from one economically depressed neighborhood to another where the housing market is soft in order to be able to use their vouchers.²⁰⁷

²⁰¹ Bebow, John, Darnell Little, John Olivio, Chicago Tribune, "Landlords Fail to Fix Poor's Housing Woes," <http://www.chicagotribune.com/news/nationworld/chi-0505220393may22,0,65477777.story>, last visited Oct. 23, 2009.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ New York State Department of Housing and Community Renewal, "Section 2.0 Issuing Vouchers," http://www.dhcr.state.ny.us/Publications/Section8AdminPlan/AdminPlan_sec2.pdf, last visited Oct. 23, 2009.

²⁰⁶ Grunbaum, Mara, Street News Service, "Sectioned Out,"

http://www.streetnewsservice.org/index.php?page=archive_detail&articleID=2379, last visited Oct. 23, 2009.

²⁰⁷ Bebow, *supra* note 201.

Women, especially those who are single mothers, face unique challenges in this situation. Not only can an apartment failing an inspection force them to relocate (and start the arduous process of finding housing that will accept their vouchers anew), but it can cause a disruption in their employment, a dangerous situation when women's jobs often hang in a more delicate balance.²⁰⁸ Also, women as the primary caretakers of children are forced to uproot their children. Not only are the women being affected, but the children in their care are experiencing instability in their home life and having educational opportunities threatened from a constant changing of schools when their families cannot find new Section 8-friendly housing in the same school district.

The permanent removal of Section 8 tenants against their will from their homes due to landlords' failure of government inspections without legal recourse clearly meets the definition of forced evictions under General Comment 7(3) to the International Covenant on Economic, Social and Cultural Rights. While the government justification is valid – ensuring adequate conditions for housing in the voucher program – its methods serve only to displace tenants without having created viable alternatives. In these instances, the government has an obligation to craft a remedy that protects the tenant's security of tenure (perhaps imposing daily fines on landlords after some grace period until the situation is resolved as an example), rather than catalyzing displacement and possible homelessness in the name of protecting housing.

E. Domestic Violence in Section 8 Housing

A 2007 National Law Center on Homelessness and Poverty report²⁰⁹ conducted a survey that addressed housing evictions and denials due to domestic violence in public housing, including Section 8 housing. Nearly 5,500 evictions per year were handled by the legal and social service providers that responded to the survey. Thirty-seven percent of the evictions were from either public housing or Section 8 (nine percent were from other federally subsidized housing and fifty-two percent from private) and, of the total, eleven percent of the evictions were domestic violence victims who were being evicted because of the domestic violence they had experienced. Victims of domestic violence are often denied housing precisely because they have been a victim of violence. According to the same survey, providers who handled 1,251 denials of housing applications per year reported that sixty-four percent of those denials were for public housing or Section 8, and of that total about 28% were denied because the applicant was or had been a victim of domestic violence. Examples of previous domestic violence considered in housing denials included: previous residence being a domestic violence shelter, history of civil protection orders, history of calling police on abuser and previous landlord stating there had been incidences of domestic violence.

²⁰⁸ Mantell, Ruth. Market Watch, "Families at Risk in Recession: Women's jobs are more vulnerable in downturn, report says," <http://www.marketwatch.com/story/womens-jobs-are-more-vulnerable-in-a-downturn-report-says>, (2008), last visited October 23, 2009.

²⁰⁹ National Law Center on Homelessness and Poverty, "Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country," http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20_February_20072.pdf, last visited October 23, 2009.

In an attempt to address the issue of domestic violence in housing, the 2005 Reauthorization of the Federal Violence Against Women Act²¹⁰ included new housing legal protections, some particularly addressing the issues facing women in voucher-based section 8 housing. These protections were: amendments clarifying that victims of domestic violence may not be evicted/denied housing because of their status as victims, amendments to ensure needs of victims are considered in local planning processes, a new federal grant program “for public and assisted housing agencies to address domestic violence through agency policy changes, training, and best practices,” a new federal grant program for local community collaboration in developing long-term and affordable housing for victims of violence and “clarifying changes in federal transitional housing for victims.”²¹¹ These protections are applicable when an incident of violence improperly forms the basis for a PHA or landlord’s action against a victim/tenant. “VAWA explicitly provides that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a ‘serious or repeated violation of the lease’ or ‘good cause for terminating the assistance, tenancy, or occupancy rights of the victim.’”²¹² It also allows for the bifurcation of leases to allow the victim to stay while the offender is removed. These new protections also cover immediate family members of the victim’s family. Though, a tenant may still be evicted if there is an actual/imminent threat to other tenants or those employed on the premises.²¹³ These provisions should be applauded and considered good practices on this issue.

F. Rental Foreclosures

The foreclosure crisis has undermined the housing security of renters, as well as owners. Renters, who have always lacked control over the security of their tenure (most leases are for one or two years and in most places there is no obligation to renew them), are dispossessed of it entirely when they continue to pay rent without knowing that their homes were being foreclosed upon.²¹⁴ Since 2007, the National Low Income Housing Coalition (NLIHC) reports being “told of renters receiving notice that their homes had been foreclosed upon, sometimes just days or hours before they were asked to vacate their home...it appeared these tenants had no opportunity to defend their tenancy or delay their eviction.”²¹⁵ Renters “are rarely directly a party to the foreclosure, and the only notice a renter often receives is when the sheriff appears at the door to serve an eviction. Without notice and often with lower levels of income and savings, renters displaced by foreclosure are more likely to experience homelessness than are homeowners.”²¹⁶ Foreclosures impacting renters who have been paying rent until the day they are thrown out, often with no notice whatsoever, are clearly forced evictions.

²¹⁰ Violent Crime Control and Law Enforcement Act of 1994, Title IV, sec. 40001-40703, reauthorized in 2005.

²¹¹ National Law Center on Homelessness and Poverty, “Impact of the 2005 Violence Against Women Act on the Housing Rights and Options of Survivors of Domestic and Sexual Violence” <http://www.ncdsv.org/images/ImpactofVAWAHousingFAQ.pdf>, last visited October 23, 2009.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ While “owners are most often aware that they are not paying their mortgage and receive notice of delinquency and imminent foreclosure,” renters “are rarely directly a party to the foreclosure, and the only notice a renter often receives is when the sheriff appears at the door to serve an eviction. Without notice and often with lower levels of income and savings, renters displaced by foreclosure are much more likely to experience homelessness than are homeowners.” National Low Income Housing Coalition, *Renters in Foreclosure* 7 (December 2008).

²¹⁵ National Low Income Housing Coalition, *Renters in Foreclosure* (December 2008).

²¹⁶ *Id.*

The disproportionate attention that the media has paid to homeowner foreclosures belies the rates at which renters are affected by foreclosures. In 2008, about one third of all American households rented²¹⁷; while approximately twenty percent of foreclosures are rental properties, since most are multi-unit, as many as forty percent of all victims of foreclosure are renters.²¹⁸ In 2008, as many as seven million very low income (those with thirty-fifty percent of the area median income) households in small rental properties were at risk of foreclosure.²¹⁹

Like homeowner foreclosures, rental foreclosures are concentrated in minority neighborhoods; according to NLIHC, “[e]ven at the peak of the U.S. homeownership rate in 2004, African-American and Hispanic households were more likely to rent. Thus, it is not surprising that rental foreclosures too are more concentrated in the same low income and minority communities where subprime and predatory lending were also most prevalent and that are now experiencing the greatest proportion of foreclosures in general.”²²⁰ The impact of rental foreclosures is especially devastating in those communities with the highest foreclosure rates: “Nearly sixty of every hundred foreclosed properties in high-poverty, non-white neighborhoods are multi-unit, as compared to seven of every one hundred in low poverty, white neighborhoods. Not only are properties in these neighborhoods more likely to be foreclosed upon, but each foreclosure is likely to affect more families.”²²¹

In several jurisdictions throughout the United States, sheriffs have responded to due process violations in rental evictions by refusing to carry out evictions until renters are protected by more adequate safeguards.²²² Rental foreclosure evictions may be illegal because of violations of notice requirements, or they may be illegal because the court order for the eviction names the landlord and not the tenant, though it is the tenant who is actually evicted.²²³ Inadequate process in rental foreclosures prompted Cook County (Chicago) Sheriff Thomas J. Dart to announce a moratorium on foreclosure evictions,²²⁴ which successfully pressured courts to require stronger protections.

Legal protections have varied significantly by state. According to NLIHC, as of 2008 only seven states and the District of Columbia provided “tenant protection,” defined as “providing tenants with at least 30 days notice to vacate the premises after foreclosure or requiring the new owner to become the landlord and use the judicial eviction process to displace

²¹⁷ Sheila Crowley, Danilo Pelletiere & Maria Foscarinis, *Renters in Crisis* 1 (Feb. 20, 2009).

http://www.nlihc.org/doc/NLIHC%20Renters%20Briefing%2020_20_2009.pdf (Last visited Nov. 2, 2009)

²¹⁸ National Low Income Housing Coalition, *supra* note 214, at 2-3.

²¹⁹ Crowley et al., *supra* note 217, at 6.

²²⁰ National Low Income Housing Coalition, *supra* note 214.

²²¹ *Id.*

²²² Fernanda Santos. “Effort Takes Shape to Support Families Facing Foreclosure,” *New York Times*, February 17, 2009. http://www.nytimes.com/2009/02/18/nyregion/18foreclose.html?_r=1&scp=1&sq=sheriff%20and%20eviction&st=cse (Last visited Oct. 23, 2009)

²²³ Kelly Virella, “A Renter’s Nightmare,” *The Chicago Reporter*.

http://www.chicagoreporter.com/index.php/c/Cover%20Stories/d/A_Renter%27s_Nightmare (Last visited Nov. 2, 2009)

²²⁴ John Leland, “Sheriff in Chicago Ends Evictions in Foreclosures,” *New York Times*, Oct. 8, 2008. <http://www.nytimes.com/2008/10/09/us/09chicago.html>. (Last visited Nov. 2 2009).

the tenant.”²²⁵ As of 2008, only in New Jersey and the District of Columbia did tenancy survive foreclosure.²²⁶ In May of 2009, President Obama signed the Protecting Tenants in Foreclosure Act, providing notice requirements and lease protections for renters.²²⁷

Yet, renters continue to experience high levels of housing insecurity. Absentee landlords who bought rental properties with the intention of “flipping” them and were subsequently unable to sell them or pay the mortgage are frequently unavailable to tenants when the property goes into foreclosure. A state of “ownership limbo” occurs when the landlord has gone but the bank has not processed the foreclosure. When tenants are able and willing to pay rent in the homes they have occupied, the costly practice of evicting them and allowing unoccupied buildings to deteriorate fails to further any logical policy goal.

G. Security of Tenure in Private Housing For Domestic Violence Victims

Many landlords have a “zero tolerance” policy similar to the “one-strike” policy found in Public Housing and Section 8.²²⁸ This means that a landlord has the right to evict a tenant for criminal activity that occurs in the home regardless of the causes or circumstances. In domestic violence situations, a zero tolerance policy punishes the victim for the abuser’s destructive behavior.²²⁹ Landlords may evict domestic violence victims because they believe their presence is harmful to the safety and health of other tenants or if the victim was arrested as a result of fighting back her abuser in self-defense.²³⁰

Recently, domestic violence victims evicted under zero tolerance policies have successfully argued that such actions are violations under the Fair Housing Act²³¹ or state laws prohibiting gender discrimination.²³² Regardless of a landlord’s intent, petitioners have argued that policies that terminate or deny housing to domestic violence victims have a disparate impact on women since ninety-five percent of domestic violence victims are women.²³³ Also, some landlords ascribe gender stereotypes to victims of intimate partner violence, such as the idea that they cause their own abuse, and evict individuals based on these beliefs.²³⁴ Either way, courts have recognized that denying housing due to status as a domestic violence victim is sex discrimination and a violation of the federal and state laws.²³⁵

²²⁵ National Low Income Housing Coalition, *supra* note 214.

²²⁶ *Id.*

²²⁷ Title VII of Public Law 111-22. National Low Income Housing Coalition <http://www.nlihc.org/doc/Memo-Renter-Protections-S-896.pdf> (Last visited Nov. 2, 2009)

²²⁸ “One-strike” policies are federal laws that allow public housing authorities to evict families for criminal activity committed by tenants or their family members or guests. National Coalition Against Domestic Violence, *Domestic Violence and Housing*, p.1.

²²⁹ *Id.*

²³⁰ *Fair Housing & Domestic Violence & Assault, Fair Housing of the Dakotas*, p.1-2

²³¹ The Fair Housing Act is a federal law that prohibits sex discrimination, among others, in the sale, rental, or financing of homes. Fair Housing Act, 42 U.S.C. §§ 3601 et. seq. (2009).

²³² *Fair Housing in Southern Pennsylvania* Rights Center, *Domestic Violence and Housing*, p.2

²³³ *Id.* at 2

²³⁴ *Id.*

²³⁵ *See Alvera et. al. v. C.B.M. et al.; Bouley v. Young-Sanbourin; Warren v. Ypsilanti Housing Commission* – in *Fair Housing & DV & Assault*

5. RIGHT TO FAMILY

According to human rights principles, the family, the definition of which is to be broadly construed,²³⁶ is the fundamental group of society. It is therefore entitled to protection by both society and the state, especially in regard to its duties and matters relating to children, the recognition of men and women's equal responsibilities as parents and to be free from arbitrary or unlawful interference.²³⁷

A. Difficulty Forming Permanent Relationships with Adult Partners

Single mothers face unique obstacles in Section 8 housing; not only do they face discrimination based on their status as and people's perceptions of them as single mothers, they have the added concerns and responsibilities of caring for children. While women may face discrimination as single mothers, their participation in the Section 8 program may also be inhibiting their abilities to form permanent relationships with adult partners and include those partners as part of their family.

A study of women participating in the in government housing assistance programs, including the Section 8 voucher program, revealed that part of their experiences as women on housing assistance was that these programs caused difficulties in establishing a family life with a partner.²³⁸ In order to be eligible to receive Section 8 vouchers, HUD has set the income limit, based upon total gross income and number of family members, at fifty percent of the median income of the location where the family intends to use the voucher,²³⁹ and any new members joining the household must be reported to the local PHA.²⁴⁰ Because of this very low income limit, another adult living in the residence may push the family over the income limit and out of eligibility to receive Section 8 vouchers, yet even with the additional income the family would not be able to afford market rents. Because of the too-low income limit set by HUD, many families with two working adult incomes may still not earn enough to support themselves and their families without the housing assistance, forcing them to choose between intimate partners and housing. This reduces the chance for women of getting married if they wish or having a live-in partner unless the partner they chose is able to support the family without the help of the government, effectively reducing these women's freedom of choice and right to form a family.²⁴¹

Unreasonable restrictions that do not bridge the affordability gap clearly violate the international right to family. These restrictions inhibit family stability and may even force families apart, causing parents of children to live separately, interfering with men and women's

²³⁶ ICCPR, General Comment 16, *supra* note 171 at ¶5.

²³⁷ *Id.*; ICCPR, *supra* note 170 at arts. 17(1), 23; ICESCR, *supra* note 71 at art. 10; CEDAW, *supra* note 112 at art. 5(b), 16(1)(d); CRC, *supra* note 73 at 16(1); CRPD, *supra* note 72 at 22(1).

²³⁸ Nicolas, Guerda and Varzi Jean Baptiste "Experiences of Women on Public Assistance." *Journal of Social Issues* 57.2 (2001): 299. Academic Search Complete. EBSCO. Web. 23 Oct. 2009.

²³⁹ U.S. Department of Housing and Urban Development, "Housing Choice Vouchers Fact Sheet," http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm, last visited October 23, 2009.

²⁴⁰ Technical Assistance Collaborative, "Keeping A Section 8 Voucher," <http://www.tacinc.org/Docs/HH/S8Ch7a.pdf>, last visited October 23, 2009.

²⁴¹ Guerda, *supra* note 238,

equal responsibilities as parents, and adding instability to the lives of children, who by international law are entitled to special protection in the family.

B. Family Separation Due to Homelessness

Homeless families face an increased risk of family separation. Policies affecting homeless families vary dramatically from state to state within the United States. However, overall in a given year, twenty-two percent of homeless families are separated either by choice or compulsion.²⁴² Often, near-homeless parents will go to great lengths to keep their children housed, cared for, and stable. This may mean leaving children with family members who have secure housing or are not working so as to mind the children while parents work multiple jobs, long hours, or in distant locations. Also, shelter system policies may require families to separate in order to be housed. This is true in fifty-seven percent of cities surveyed that segregate emergency shelters by gender or age.²⁴³

A further concern is that some states have laws that specify that the inability to shelter one's children is neglect. In other words, the government forcefully removes children from their parents based only on the fact that the family is homeless.²⁴⁴ Surveys show that twelve percent of homeless children are in foster care compared to only one percent of housed children.²⁴⁵ In Los Angeles County, nine percent of homeless parents have at least one child in the foster care system.²⁴⁶ Not only are homeless families disproportionately impacted by child neglect laws and denied the right to family, this separation affects future generations and their ability to realize their right to housing and their right to family. According to the National Center on Family Housing, placement in the foster care system is a childhood risk factors for adult homelessness. Furthermore, seventy percent of homeless mothers who were in the foster care system as children have at least one child in foster care.²⁴⁷

In addition to laws that assume homeless mothers to be inadequate, society also stigmatizes the thirty-one percent of unaccompanied homeless women whom are mothers separated from their children, as inappropriate parents, regardless of the circumstances.²⁴⁸ Scholars compare this treatment to historical views of enslaved black mothers whose children were forcefully removed and unmarried white mothers after World War II who were coerced into giving up children to "properly married" couples.²⁴⁹ While it is true that lone homeless women are more likely to have mental illness or substance abuse problems, homeless services are typically organized in such a manner that unless a woman is with her children or is pregnant, she will not receive family assistance and will rather be treated solely for psychiatric and substance

²⁴² Homeless Children: America's New Outcasts, *supra* note 86, at 2.

²⁴³ Foscarinis, *supra* note 75, at 455.

²⁴⁴ National Law Center on Homelessness and Poverty. Homelessness and United States Compliance with Human Rights Obligations, p.7. http://www.nlchp.org/content/pubs/UNHCHR_Report_6-07-07.pdf (last visited October 21, 2009).

²⁴⁵ Homeless Children: America's New Outcasts, *supra* note 86, at 3.

²⁴⁶ 2007 Greater LA Homeless Count, *supra* note 67 at p. 78.

²⁴⁷ Homeless Children: America's New Outcasts, *supra* note 86, at 3.

²⁴⁸ Susan M. Barrow and Nicole D. Laborde. Invisible Mothers: Parenting by Homeless Women Separated from Their Children, p. 158-59 (Sept. 27, 2008). <http://www.springerlink.com/content/742gu15730342t14/>.

²⁴⁹ *Id.* at p. 158.

disorders.²⁵⁰ Family separation issues are largely ignored because the mental health difficulties of homeless mothers are seen as both the cause of their homelessness and a source of danger to their children that makes family reunification unlikely.²⁵¹

To address the issue of family separation, the United States federal government funds state government programs that encourage and support family preservation. When a child is removed from his or her family and placed in foster care, a child welfare agency will create a permanency plan for the child and a service plan for the family with the primary goal of family reunification.²⁵² These plans consist of concrete services such as food and housing assistance, substance abuse treatment, parenting classes, mandatory visitation schedules, and intensive case management.²⁵³ Although this system is successful in returning children to their parents in more than fifty percent of the cases,²⁵⁴ homeless mothers experience significant barriers to achieving this goal. These mothers report obstacles to meeting their service plan requirements largely due to conflicting program requirements, changes in visitation schedules, finding adequate housing, and the competing interests of the staff of various agencies.²⁵⁵

The United States failure to adequately and comprehensively address the needs of homeless families is contrary to the various international human rights treaties that recognize family as the “natural and fundamental group unit of society [] entitled to protection by society and the State.”²⁵⁶ Article 10 of the ICESCR requires the “widest possible protection and assistance” to the family particularly when the family is “responsible for the care and education of dependent children.” Although the government has made some efforts to protect the family, these efforts are insufficient, particularly as they relate to adequate housing. Homeless mothers who wish to reunite with their children face long waiting lists to obtain public housing and barriers to receiving other public benefits which would assist them in providing for their families.²⁵⁷ Attempts to redress this gap through the United States court system have been unsuccessful because the moral obligation to provide decent housing is not in the purview of the courts but rather an issue of elected representatives.²⁵⁸

C. Public Housing and the Right to Family

As detailed above in The Right to Privacy and The Right to Security sections, HUD has imposed regulations on public housing residents which separate families. In addition to infringing on privacy and the right to association, these regulations violate the right to family. Combined with the limited security of tenure, the overall regulatory framework deeply destabilizes families.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Child Welfare Information Gateway. How the Child Welfare System Works., <http://www.childwelfare.gov/pubs/factsheets/cpswork.cfm>, (last visited Oct. 28, 2009).

²⁵³ Child Welfare Information Gateway. Family Reunification: What the Evidence Shows. http://www.childwelfare.gov/pubs/issue_briefs/family_reunification/. (last visited Oct. 28, 2009).

²⁵⁴ How the Child Welfare System Works, *supra* note 252.

²⁵⁵ *See* Barrow, *supra* note 248.

²⁵⁶ ICCPR, *supra* note 170 at art. 23.

²⁵⁷ Barrow, *supra* note 248 at p. 168.

²⁵⁸ *Tilden v. Hayward*, 1990 WL 131162, p. 17 (Del. Ch. Sept. 10, 1990).

6. RIGHT TO PARTICIPATION AND CONSULTATION AND THE DUTY TO MONITOR

Without the right to participation and consultation, individuals are left disenfranchised and government agencies are often left to make decisions without information regarding how those decisions will affect the people involved. For this reason, among others, international instruments have identified a right to participation and consultation. In an effort to combat discrimination against women, the Convention on the Elimination of Discrimination Against Women requires that states ensure to women the right to “participate in the formation of government policy and the implementation thereof.”²⁵⁹ Furthermore, in its General Comment 4, the Committee on Economic, Social, and Cultural Rights explains that in order to achieve the full realization of the right to adequate housing and to make decisions related thereto relevant and effective, states must adopt national housing strategies that “reflect genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.”²⁶⁰

Lack of proper identification of individuals in society and their statuses makes representation of those individuals very difficult, if not impossible. For this reason, states must undertake significant efforts to monitor the status of housing within their borders. In its General Comment 9, the Committee on the Elimination of Discrimination Against Women states that statistical information is “absolutely necessary to understand the real situation of women,” and strongly suggests that gender specific statistics are gathered.²⁶¹ The Committee has also recommended that statistics be compiled and research be done regarding the extent, causes, and effects of violence.²⁶² As violence can be a significant factor in the loss of housing, the active compilation of this data is critical to the realization of the right of adequate housing in the United States.

A. HOPE VI and Violations of the Right to Participation and Consultation

There is little evidence available that indicates that there was any meaningful consultation with public housing residents before the HOPE VI project was instigated. In this way the government failed in its obligation to adopt national housing strategies that reflect genuine consultation with those affected. Had there been genuine consultation, the residents likely would have been able to advocate for their own needs and raise questions about their security of tenure in the public housing developments.

²⁵⁹ CEDAW, *supra* note 112 art. 7(b).

²⁶⁰ UNCESCR General Comment 4, *supra* note 70 at ¶ 12.

²⁶¹ Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 9. HRI/GEN/1/Rev. 9 (Vol. I).

²⁶² CEDAW, General Recommendation No. 19, *supra* note 112 at rec. on art. 16, specific rec. 24 (c and d).

B. Under-inclusive Definition of Homelessness Used by the United States Government

In recent years, the United States Department of Housing and Urban Development (“HUD”) began collecting data on the number of homeless in the United States. According to HUD, the collection of this data is “important to understanding the nature and scope of homelessness.”²⁶³ While certainly a step in the right direction, HUD’s method underestimates the extent of the problem by failing to account for a number of individuals and subpopulations that are homeless. For example, the federal definition of homeless used by HUD is:

1. an individual who lacks a fixed, regular, and adequate nighttime residence; and
2. an individual who has a primary nighttime residence that is —
 - A. a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - B. an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - C. a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. 42 C.F.R. 119.1 §11302(a)

This definition is problematic because it does not include those living in precarious housing situations with friends or family, the most common path into homelessness.²⁶⁴ Among homeless individuals and family members, twenty-four and thirty-eight percent, respectively, were doubled up prior to entering a shelter.²⁶⁵

Furthermore, the United States’ definition of homeless is narrow and includes only those who lack roofs over their heads. The international standard of the right to adequate housing is much broader, encompassing security of tenure, affordability, adequacy, accessibility, proximity to services, availability of infrastructure and cultural adequacy.²⁶⁶ Many Americans either live in substandard housing or do not have access to affordable housing. Neither of these groups is included in HUD’s definition of homeless.

Another concern with the United States definition of homeless is that it likely undercounts the number of domestic violence victims that are homeless. In order to protect the safety and confidentiality of victims and their families, emergency shelters and homeless service programs that serve domestic violence victims and receive funds under the Violence Against Women Act are prohibited from entering identifying information into the Homeless Management Information Systems (“HMIS”).²⁶⁷ HMIS is the primary means in which the United States government assesses the extent of the homeless situation in the United States.²⁶⁸ While the

²⁶³ HUD, *supra* note 60, at 53.

²⁶⁴ *Id.* at pp. 34-35.

²⁶⁵ *Id.* at pp. 30, 39.

²⁶⁶ UNCESCR, General Comment 4, *supra* note 70 at ¶ 8.

²⁶⁷ National Law Center on Homelessness and Poverty, The impact of the Violence Against Women Act 2005 (VAWA) on the housing rights and options of survivors of domestic and sexual violence, p. 8. <http://www.ncdsv.org/images/ImpactVAWAHousing-TheProbandRemedy.pdf> (last visited October 15, 2009).

²⁶⁸ USHUD, Homeless Management Information Systems, <http://www.hud.gov/offices/cpd/homeless/hmis/> (last visited October 19, 2009).

protection of the identities of domestic violence victims in this manner is commendable, the United States government should find other means of accurately counting this group of homeless individuals.

Included in the right to adequate housing is a duty of states to effectively monitor the extent of the situation in their countries. States must gather detailed information about groups that are vulnerable to housing insecurity.²⁶⁹ This is necessary so that the state can create an effective national policy to provide adequate housing and gain insight from those particularly affected.²⁷⁰ The United States government's definition is too narrow to adequately monitor and address the homeless situation in the United States because many interested groups are left out.

7. RIGHT TO SECURITY AND TO BE FREE FROM VIOLENCE

The right to security and to be free from violence and ill-treatment, generally, is found in various international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture.²⁷¹ International treaty bodies have further emphasized this right in relation to vulnerable populations such as women, children, and those with disabilities.²⁷² A woman's right to be free from gender-based violence is encompassed in the Convention on the Elimination of All Forms of Discrimination's definition of discrimination.²⁷³ This inclusion requires states to take all appropriate measures to end and redress violence against women in any form perpetrated by any actor.²⁷⁴ Gender-based violence is a form of discrimination that seriously inhibits a woman's ability to enjoy other rights on a basis of equality with men.²⁷⁵ The Committee on the Elimination of Discrimination Against Women has labeled domestic violence "one of the most insidious forms of violence against women" and the Committee on Economic, Social, and Cultural Rights has stated that protecting women from domestic violence should be a major goal of States parties.²⁷⁶

A. Domestic Violence and Homelessness

Homeless Women

All of these problems unique to women are exacerbated by the leading cause of homelessness for women, gender-based violence.²⁷⁷ A 2007 survey of twenty-three United

²⁶⁹ UNCESCR, General Comment 4, *supra* note 70 at ¶ 13.

²⁷⁰ *Id.* at ¶¶ 12, 13.

²⁷¹ UDHR, *supra* note 188 at art. 3.; ICCPR, *supra* note 170 at art. 9.; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 16., Dec. 10, 1984. 1465 U.N.T.S. 85,

²⁷² See CEDAW, *supra* note 112; CRC, *supra* note 73 at art. 19.; CRPD, *supra* note 72 at art. 16; Convention Against Torture, General Comment 2, ¶ 22. CAT/C/GC (2008).

²⁷³ CEDAW, General Recommendation No. 19, *supra* note 112 at ¶ 4.

²⁷⁴ *Id.* at ¶ 9; Committee on Economic Social and Cultural Rights (UNCESCR), General Comment No. 16, ¶ 27. E/C.12/2005/4 (2005).

²⁷⁵ CEDAW, General Recommendation No. 19, *supra* note 112 at ¶ 1; UNCESCR General Comment No. 16, *supra* note 274 at ¶ 27.

²⁷⁶ CEDAW, General Recommendation No. 19, *supra* note 112 at ¶ 23; Committee on Economic, Social, and Cultural Rights (UNCESCR), General Comment No. 14, ¶ 12. E/C.12/2000/4 (2000).

²⁷⁷ See Homelessness and United States Compliance with Human Rights Obligations, *supra* note 244.

States' cities found that thirty-nine percent identified domestic violence as the primary cause of local homelessness for women.²⁷⁸ Around the country, twenty-two to fifty-seven percent of homeless women report that domestic violence was the immediate cause of their homelessness.²⁷⁹

Chicago:

- In 2003, 56% of homeless women reported being victims of domestic violence
- In 2003, 36% of homeless women reported experiencing physical or sexual abuse as children
- In 2003, 23% of homeless women reported that domestic violence was the immediate cause of their homelessness

Los Angeles:

- In 2007, 70% of homeless women reported experiencing domestic violence, sexual assault and/or child abuse in their lifetime
- In 2004, 58% of homeless women who had experienced domestic violence in the past year reported becoming homeless as a direct result of fleeing

New York City:

- In 2002, Almost 50% of all homeless heads of households experienced domestic violence
- In 2005, 25% of all homeless heads of households cited domestic violence as the direct cause of their homelessness

Washington D.C.:

- In 2002, 50% of family members in shelters were estimated to have experienced domestic violence

National Law Center on Homelessness and Poverty, *Some Facts on Homelessness, Housing, and Violence Against Women*, p. 1-2.

The estimated 1.3 million victims of domestic violence per year often must make the difficult decision to remain in the abusive relationship or risk homelessness for themselves and their children.²⁸⁰ As a result of either having to quickly flee the situation or years of isolation caused by the abuser, domestic violence victims have barriers to securing alternative housing. These individuals have limited, poor, or no financial resources, employment or rental histories, credit records, or social supports.²⁸¹

Combined with a lack of affordable housing and long waiting lists for assisted housing, it is no wonder that sixty-three percent of homeless women have been victims of intimate partner violence as adults and twenty-eight percent of families are homeless as a result of domestic violence.²⁸² Even when a domestic violence victim manages to leave an abusive relationship and gather the resources necessary to obtain housing, landlords often discriminate against those with orders of protection or other signs of domestic violence.²⁸³

²⁷⁸ National Law Center on Homelessness and Poverty, *Some Facts on Homelessness, Housing, and Violence Against Women*, p. 2. <http://www.nlchp.org/content/pubs/Some%20Facts%20on%20Homeless%20and%20DV.pdf> (last visited October 10, 2009).

²⁷⁹ Homelessness and United States Compliance with Human Rights Obligations, *supra* note 244 at pp. 9-10.

²⁸⁰ National Coalition Against Domestic Violence, *Domestic Violence and Housing*, p.1. [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Oct. 5, 2009).

²⁸¹ The Characteristics and Needs of Families Experiencing Homelessness, *supra* note 91, at 3.

²⁸² Domestic Violence and Homelessness, *supra* note 95, at 1.

²⁸³ *Id.* at 2.

The UN has recognized domestic violence as both a form of gender discrimination²⁸⁴ and a can be in certain circumstances a type of torture unique to women.²⁸⁵ Under CEDAW, states are required to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”²⁸⁶ Furthermore, states must take measures to modify social and cultural patterns that create a system of inferiority of women to men.²⁸⁷ A number of policies in the United States are aimed at ending discrimination against women, beginning with constitutional protections under the Fourteenth Amendment. Further protections come from the Violence Against Women Act of 2005 and the Fair Housing Act, both of which prohibit housing discrimination against domestic violence victims.²⁸⁸

While all of these measures are positive steps in the right direction, the United States government still has not fully complied with international human right. On a single day in 2007, emergency shelters in the United States had over 25,000 requests for emergency assistance from domestic violence victims. On that same day, 7,707 requests for domestic violence services, sixty-one percent of which were for housing, went unmet.²⁸⁹ Though the number and conditions of domestic violence shelters has improved, most shelters do not allow victims to stay more than ninety days despite the fact that the average amount of time it takes for a family to secure alternative housing is six to ten months.²⁹⁰ In fact, in a 2004 survey, twenty-seven cities reported a thirty-five month average wait time for Section 8 housing and a twenty month wait time for public housing. Clearly, the United States must take additional measures to end gender-based violence so that women are not only guaranteed their right to security but also so they may fully realize other human rights.

Homeless Children

The following chart illustrates that domestic violence not only affects women, but also plays a large role in the lives of homeless children.

²⁸⁴ CEDAW, General Recommendation No. 19, *supra* note 112 at ¶¶ 1, 6.

²⁸⁵ CAT, General Comment No. 2, *supra* note 272 at ¶ 18.

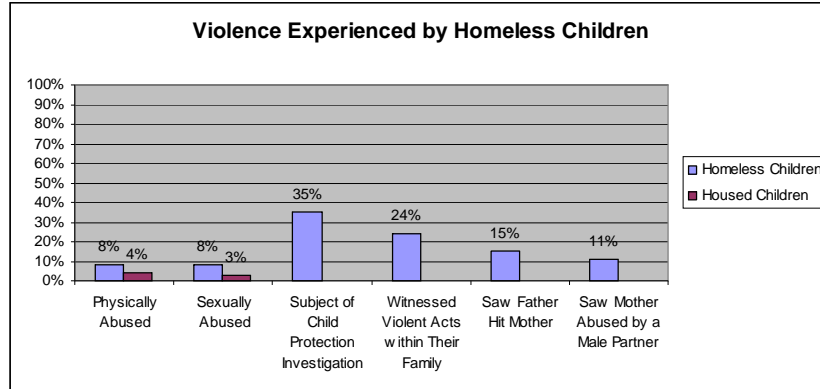
²⁸⁶ CEDAW, *supra* note 112, at art. 2.

²⁸⁷ *Id.* at art. 5(a).

²⁸⁸ The Legal Aid Society of Palm Beach County: The Fair Housing Project,. Fair Housing Protections for Domestic Violence Victims, pp. 2-3. <http://www.hud.gov/offices/fheo/PIRC/DocumentsAbstracts/Legal-Aid-Society-of-Palm-Beach-County-Inc-R4/LASPBC-Domestic-Violence/FH-Domestic-Violence-Pub.pdf> (last visited October 25, 2009).

²⁸⁹ Some Facts on Homelessness, Housing, and Violence Against Women, *supra* note 278, at 4.

²⁹⁰ Domestic Violence and Housing, *supra* note 228, at 1.



Homeless Children: America's New Outcasts, The National Center on Family Homelessness

Violence committed against children is specifically addressed in Article 19 of the Convention the Rights of the Child. States are obligated to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, [and] maltreatment or exploitation, including sexual abuse.” Both homeless and housed children in the United States are at risk of experiencing violence as a child. As the chart above demonstrates, homeless children are at least twice as likely to be victims of physical or sexual abuse. The United States must take additional measures to protect all children from violence.

B. Sexual Harassment in Section 8

There are not firm statistics available on the prevalence of sexual harassment in Section 8 housing (due to under reporting).²⁹¹ However, through anecdotal evidence it is clear this harassment exists and may consist of conduct subjecting women to such indignities as inappropriate sexual comments, unwanted touching or requests for sex/sexual favors,²⁹² but the harasser may also expressly threaten the tenant's financial assistance based on her noncompliance or bank on the tenants not wanting to complain for fear of losing the assistance or not knowing how to complain. Sexual harassment of Section 8 tenants is not only perpetrated by landlords; “resident and property managers, brokers, owners and other residents,”²⁹³ can also be guilty of sexual harassment. Those in positions of power may exploit this power differential between themselves and their more vulnerable female Section 8 tenants to sexually harass such residents. The lower a woman's income, often plus the additional factors of being responsible for children, the more likely she is to tolerate a hostile living environment rife with sexual harassment due to the lack of alternative viable housing options and the risk of homelessness this poses to her and her family.²⁹⁴

The right to be free from violence and ill treatment is especially emphasized in relation to vulnerable populations, such as women. States are required to take all appropriate measures to

²⁹¹ Jill Maxwell, *Sexual Harassment At Home: Altering the Terms, Conditions and Privileges of Rental Housing for Section 8 Recipients*, 21 WIS. WOMEN'S L.J. 223, 223 (2006).

²⁹² *Id.*

²⁹³ Butte Housing Authority of California, “Section 8 Housing Voucher Assistance Program: Participant's Briefing Handbook,” <http://www.butte-housing.com/forms/brfhandbk.pdf>, last visited Oct. 23, 2009.

²⁹⁴ Maxwell, *supra* note 291.

end and redress violence against women in any form perpetrated by any actor. While there is legislation, the Fair Housing Act (FHA),²⁹⁵ that allows women to bring legal action on sexual harassment in Section 8 housing as a form of sex discrimination, this legislation alone does not meet the state's obligation to take all appropriate measures, including legislation, imposition of sanctions, enforcement and monitoring.

IV. RECOMMENDATIONS

Foreclosure:

- Congress should enact legislation requiring localities to ensure adequate notice and adequate alternative arrangement for renters who are facing evictions due to foreclosure proceedings against their landlords. Congress should also enact legislation making rental protection laws uniform throughout the United States and requiring that localities ensure tenancies survive foreclosure.
- The Federal Reserve should create “a similar screen for gender-based pricing disparities as it has for race-based pricing disparities to determine whether any referrals should be made to [the Justice Department] to increase [Equal Credit Opportunity Act] enforcement.”²⁹⁶
- Congress should reverse the “upside-down subsidy” of homeownership by increasing funding for low-income housing until it meets or exceeds the homeownership tax benefits for those who need it least.
- The Federal Communications Commission should make public service announcements to raise awareness about lending regulations, consumer protections, and the availability of redress for fair housing violations.

Public Housing:

- HUD should review eviction policies for public housing residents to align them with international standards, and ensure no eviction is based on arbitrary minor issues that do not credibly impact the well-being of the public housing community, or on actions tenants cannot control or about which a tenant may not reasonably have knowledge.
- HUD should provide vigorous due process protections for evictions from public housing that meet international standards.
- HUD should cease all demolitions of public housing complexes and undertake a participatory process with residents to determine the future of their community. In the event that such a process leads to a decision to demolish, prior to demolition, HUD should ensure that all impacted families have adequate and decent alternative housing.

²⁹⁵ 42 U.S.C. §§ 3601, et seq.

²⁹⁶ Fishbein, *supra* note 56, at 19.

- HUD should work with other agencies, such as HHS, to provide mental health and other social services in coordinated fashion for residents (in particular children) who have suffered from displacement due to demolitions or arbitrary and unreasonable eviction policies.
- Congress should increase funding to first replace public housing that has been demolished, and then increase the available public housing stock until the affordability gap in housing is eliminated.

Section 8:

- Congress should expand funding for the Section 8 program to alleviate waiting list time and allow for greater access to adequate housing.
- HUD should implement a program for comprehensive monitoring of private actors participating in Section 8 with regard to discrimination against women, and as part of that monitoring, especially sexual harassment and the opening of more remedies and serious disincentives for landlords to address such actions when they do occur.
- HUD should reevaluate income limits for Section 8 qualification, address the affordability gap by finding a more effective and equitable method of calculating income caps in localities that insures that families who earn too much to qualify for Section 8 housing earn enough to be able to adequately support themselves and their families without government assistance.
- HUD should create a set of remedies for residents to ensure that inadequately maintained apartments do not lead to serial displacement with no corresponding adequate disincentives or penalties for landlords.
- HUD should initiate a national program, or provide support to PHA's to create and implement local programs, that aids new voucher holders, and those being relocated, in finding an apartment that accepts Section 8.

Homelessness:

- Congress should eliminate the gap between the number of individuals who lack affordable housing and the number of available affordable housing units through equitable public investment in housing.
- HUD should broaden the definition of homeless to include those who live in substandard housing and those who are precariously housed and risk homelessness by either living with friends or families or who pay more than thirty percent of their income on housing.

- State and local government should increase funding to domestic violence shelters so as to provide immediate emergency shelter to all victims of domestic and their children and allow these providers to lengthen the amount of time victims can remain in shelters to match the wait times for government-assisted housing.
- The federal government should provide additional funding to the Family Reunification Program that encourages state child welfare agencies to connect parents at risk of being separated from their children to government housing programs in order to prevent separation due to lack of shelter. The federal government should also encourage homeless service providers to adopt appropriate and convergent family reunification assistance strategies for single homeless women already living apart from their children.

General Cross-Cutting Recommendations:

- Develop a national housing plan that recognizes that housing is a human right and strives to progressively implement the right to housing, prioritizing the most vulnerable sectors of the population.
- Ratify the ICESR and the CRC, and pass implementing legislation to protect the rights contained therein.