

WHEN DISASTER STRIKES
A HUMAN RIGHTS ANALYSIS OF THE 2005 GULF
COAST HURRICANES

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I. INTRODUCTION¹

In August and September of 2005, two powerful hurricanes slammed into the Gulf Coast of the United States, flattening coastal towns in Texas, Louisiana, Mississippi and Alabama. Over a thousand lives were lost, and millions of people have been uprooted from their homes.² In images broadcasted on the nightly news, two groups of individuals stood out – one for its visibility and the other for its absence. Heartrending images of African American Gulf Coast residents pleading for assistance from rooftops above toxic waters reminded the United States of its legacy of discrimination and the persistence of poverty. The fate of immigrant communities living on the Gulf Coast remained conspicuously unaddressed by mainstream media.

The suffering of hundreds of thousands of poor people of color was not only the result of nature's fury but of the failure of the government of the United States of America (“the U.S. Government” or “the State”) to address the preexisting vulnerabilities of these communities in disaster planning and response. Unfortunately, the State has not learned from its mistakes. The needs and the rights of low-income African Americans and immigrants continue to be ignored during the reconstruction and resettlement efforts which are currently underway.

Natural disasters have devastating and far-reaching effects on the impacted communities, but these negative consequences can be significantly reduced with adequate government planning.³ Under international law, it is the duty of the State to ensure that the human toll of natural disasters is minimized not only through effective humanitarian response, but also by

¹ This document was written by the International Human Rights Law Clinic at the University of California, Berkeley School of Law (Boalt Hall) by Clinical Interns Azmina Jasani, Emily Proskine, and Teresa Wang, under the direction of Clinical Lecturer Roxanna Altholz and edited by Clinical Professor Laurel Fletcher.

² Committee on House Government Reform: Subcommittee on Select Katrina Response Investigation, Oct 19, 2005. (Testimony by Michael Chertoff, Security Secretary) (hereinafter “Chertoff testimony”. See also Spencer Hsu, 2 *Million Displaced By Storms*, WASH. POST, Jan. 13, 2006.

³ Marjorie Cohn, *The Two Americas*. TRUTHOUT PERSPECTIVE. Sept. 3, 2005, at http://www.truthout.org/docs_2005/printer_090305Y.shtml. Cuba is an example of best practice. When a Category 5 storm hit Cuba in September 2004, 1.5 million people were evacuated to higher ground. 20,000 houses were destroyed but not one person died. The key to Cuba's success was early warning and a civil defense strategy: people knew where to go. *Id.*

addressing the human rights challenges that victims may face. As evidenced by the 2004 Tsunami, groups vulnerable before a catastrophe strikes – the economically disadvantaged, racial or ethnic minorities, women and children, the elderly, undocumented and documented immigrants and refugees, and persons with disabilities – are exposed to risk of human rights violations after disaster strikes. Consequently, the failure of national authorities, international agencies and non-government organizations (“NGOs”) to take the preexisting vulnerabilities of these at-risk populations into account in disaster response exposes these populations to the risk of numerous human rights violations.

This submission highlights the importance of incorporating human rights protections in natural disasters preparedness, response and recovery through an assessment of the impact of Hurricanes Katrina and Rita (“the Gulf Coast Hurricanes”) on the human rights of low-income African American and immigrant communities. This document is being submitted in support of the presentations by local community leaders and Hurricane Katrina survivors made during the March 3rd, 2006 general thematic hearing on “Human Rights and Natural Disasters” before the Inter-American Commission on Human Rights (“Inter-American Commission”).⁴

There are four specific objectives of this document. First, it provides the Inter-American Commission with general factual information related to the Gulf Coast Hurricanes’ impact on the affected region. Second, it identifies and explores the preexisting human rights conditions that rendered low-income African American and immigrant communities particularly vulnerable to the destructive forces of the Gulf Coast Hurricanes. Third, it sets forth the human rights legal framework that applies in natural disaster contexts. Finally, it evaluates the U.S. Government’s

⁴Advocates for Environmental Human Rights, a Coalition Partner of the People’s Hurricane Relief Fund and Oversight Commission, the Brookings Institution, Causeway Concentration Camp Foundation for Social Justice, and Mississippi Immigrant Rights Alliance.

practices and policies regarding evacuation, humanitarian assistance, return and reconstruction in light of its international human rights obligations.⁵

II. BACKGROUND

a. The Gulf Coast Hurricanes

The 2005 hurricane season was the most active on record.⁶ Five hurricanes hit Central America and the Caribbean, killing almost one thousand victims.⁷ Mudslides resulting from heavy rains brought on by tropical storms and hurricanes caused extensive damage and loss of life in Central America in 2005; five hundred people were buried alive by a mudslide in a Mayan village in Guatemala in October,⁸ and in the same month seventeen people were killed by mudslides in Haiti.⁹ Seven of 2005's storms were major hurricanes, those storms ranked category 3 or higher; of these, a record-breaking four hurricanes hit the U.S., including Hurricanes Katrina and Rita, which devastated states along the Gulf of Mexico.¹⁰

⁵ This report examines the State's responsibility in protecting the victims of natural disasters in light of the American Declaration of the Rights and Duties of Man ("American Declaration"), including the principle international human rights' treaties and relevant international instruments like the United Nations Guiding Principles on Internally Displaced Persons, the International Covenant on Civil and Political Rights, the International Covenant for Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the UN Charter.

⁶ National Weather Service, National Hurricane Center, *available at* <http://www.nhc.noaa.gov/>. 2005 (hereinafter "National Hurricane Center Summary"), had the most named storms (27, beating 1933's total of 21), the most hurricanes (14, beating 1969's total of 12), and the most Category 5 storms ever. An average season based on the past 40 years would have had 11 named storms and 6 hurricanes, including 2 major hurricanes. For the first time since the current naming system was introduced in 1953, all 21 names on the year's list were used, forcing the National Hurricane Center to name 6 later storms after Greek letters. *Id.*

⁷ "Latin American and the Caribbean: Hurricane Season 2005 Fact Sheet," USAID, Nov. 7, 2005, *available at* <http://www.reliefweb.int/rw/RWB.NSF/db900SID/HMYT-6HWM5?OpenDocument>.

⁸ Krissah Williams, *Mudslides Devastate Mayans in Guatemala*, WASH. POST, Oct. 11, 2005.

⁹ *Tropical Storm Alpha Kills 26 in Haiti, Dominican Republic*, WASH. POST, Oct. 27, 2005.

¹⁰ National Hurricane Center Summary, *supra* note 6.

Government officials, including the Federal Emergency Management Agency (“FEMA”), the lead governmental agency for disaster preparedness,¹¹ as well as scientists and journalists had warned of a major hurricane hitting the Louisiana city of New Orleans for years,¹² making Hurricane Katrina the most anticipated disaster in modern U.S. history.¹³ Nonetheless, when Hurricane Katrina¹⁴ struck, the Gulf Coast region was woefully ill-prepared.¹⁵ As predicted, Hurricane Katrina caused “human suffering incredible by modern standards.”¹⁶

In the early morning of August 29, 2005, Hurricane Katrina made landfall just east of New Orleans, Louisiana.¹⁷ The subsequent storm surge overtopped the inadequately constructed and maintained levees along the Mississippi River and Lake Pontchartrain and caused extensive flooding across the region.¹⁸ More than a third of the region’s 1.7 million residents were affected by flooding or moderate to catastrophic storm damage.¹⁹ The storm displaced over two million

¹¹ See FEMA Website, at <http://www.fema.gov>. FEMA was formerly an independent agency that became part of the new Department of Homeland Security in March 2003. FEMA is tasked with responding to, planning for, recovering from and mitigating against disasters. FEMA traces its beginnings to the Congressional Act of 1803, the first piece of disaster legislation that provided assistance to a New Hampshire town following an extensive fire. “About FEMA: FEMA History,” FEMA Website, at <http://www.fema.gov/about/history.shtm>.

¹² Jia-Rui Chong and Hector Becerra, *Katrina’s Aftermath*, L.A. TIMES, Sept. 8, 2005, at A1. “U.S. Geological Survey seismologist Lucy Jones remembers attending an emergency training session in August 2001 with the Federal Emergency Management Agency that discussed the three most likely catastrophes to strike the United States. First on the list was a terrorist attack in New York. Second was a super-strength hurricane hitting New Orleans. Third was a major earthquake on the San Andreas fault. *Chertoff: Katrina Scenario did not Exist*, CNN.COM, Sept. 5, 2005.

¹³ Hobart King, *Rebuilding New Orleans*, Jan. 12, 2006, available at www.geology.com.

¹⁴ Valerie Bauerlein, *Battle Rages over Cause of Deadly Storms*, WALL ST. J., Feb. 19, 2006.

¹⁵ See *An Unnatural Disaster: The Aftermath of Hurricane Katrina*, A Center for Progressive Reform Publication, Sept. 2005, available at http://www.progressivereform.org/Unnatural_Disaster_512.pdf.

¹⁶ Giles Whittell, *Warnings were Loud and Clear - but Still City Drowned*. TIMES ONLINE, Sept. 8, 2005, available at <http://www.informationclearinghouse.info/article10193.htm>.

¹⁷ Willie Drye, *Hurricane Katrina Smashes Gulf Coast*, NATIONAL GEOGRAPHIC NEWS, Aug. 29, 2005. Hurricane Katrina grew from a tropical depression near the Bahamas on August 23, and touched down as a Category I storm in Florida on August 25, killing 11 people in its wake. *Id.*

¹⁸ *Is Bush to Blame For New Orleans Flooding?* FACTCHECK.ORG, Sept. 2, 2005, available at <http://www.factcheck.org/article344.html>. In 2005 the Army Engineers Corps requested \$22.5 million for the Lake Pontchartrain levee project, but Congress allocated only \$3.9 million; Congress increased the amount to \$5.5 million. The Corps’ fact sheet notes that “Seven contracts are being delayed due to lack [of] funds.” For fiscal year 2006 the administration’s proposed appropriation fell further to \$3.0 million and the overall budget of the New Orleans District of the Corps was cut by \$71.2 million. *Id.*

¹⁹ John Logan, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, Brown University, 2005 (hereinafter “Brown University Study”). The majority of people living in damaged areas were in the city of New

people and killed more than 1,300 Gulf Coast residents.²⁰ Almost six months later, over 2,000 people remain missing.²¹ Hurricane Katrina is one of the costliest natural disasters in U.S. history, and damages are estimated between \$75 and \$200 billion.²²

In New Orleans, when critical levees protecting the city from flooding broke thousands were stranded without power, food, or drinking water for more than four days.²³ Although New Orleans captured the majority of the media attention, the situation elsewhere in the Gulf region was similarly dire. A report issued by the U.S. House of Representatives found that in neighboring Mississippi, Hurricane Katrina “completely flattened entire neighborhoods in communities such as Waveland, Bay St. Louis, and Pass Christian.”²⁴ Even well inland from the Gulf of Mexico, the damage was extensive: sixty percent of Mississippi, an area of 28,000 square miles, was transformed into “a catastrophic disaster area.”²⁵ Yet despite this devastation, in many areas of Mississippi, there was no visible government assistance for days.²⁶

Less than one month later, Hurricane Rita’s 9-foot storm surge hit coastal towns in Louisiana and Texas, taking the lives of over one hundred people and causing \$4.7 billion in damage. The evacuation and relief response, despite the lessons of Hurricane Katrina, remained

Orleans (over 350,000), with additional concentrations in suburban Jefferson Parish (175,000) and St. Bernard Parish (53,000) and along the Mississippi Coast (54,000). *Id.*

²⁰ See *2 Million Displaced By Storms*, *supra* note 2; Bruce Alpert, *White House Accused of Gag Order*, TIMES-PICAYUNE (New Orleans, LA), Jan. 25, 2006; *Death Toll from Katrina likely Higher than 1,300*, MSNBC, Feb. 10, 2006.

²¹ *Id.* See Stuart Grudgings, *Five Months On, Trail Going Cold for Katrina’s Missing*, REUTERS, Feb. 6, 2006.

²² Spencer S. Hsu, *Katrina Report Spreads Blame*, WASH. POST, Feb. 12, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/02/11/AR2006021101409_pf.html.

²³ See *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, U.S. House of Representatives, available at <http://a257.g.kamaitech.net/7/257/2422/15/feb2006/230/www.gopaccess.gov/katrinareport/mainreport.pdf>.

(hereinafter, “Congressional Report”). See also, Tom Planchet, *Updates as They Come In on Katrina*, WLTV.COM, Sept. 6, 2005; *CJ Experience: Hurricane Katrina*, Citizen Journalist’s Report at MSNBC.COM, Sept. 28, 2005.

²⁴ Congressional Report, *supra* note 23, at 8 (note: due to length, the entire report is not included as an exhibit).

²⁵ *Id.*

²⁶ Elizabeth Mehren, *‘Like We’re Invisible’; Katrina cut off an already isolated rural Mississippi, so residents helped one another*, LOS ANGELES TIMES, Sept. 19, 2005, at A1.

inadequate.²⁷ Many poor in the path of Rita could not evacuate and were forced to wait the storm out.²⁸

b. Preexisting Vulnerabilities of Gulf Coast Low-Income African American and Immigrant Communities

In the public imagination, natural disasters do not discriminate, but are instead “equal opportunity” catastrophes that do not single out victims by race, class, or gender. However, natural disasters do not occur in historical, political, social, or economic vacuums. Instead, the consequences of such catastrophes replicate and exacerbate the effects of extant inequalities, and often bring into view the implications of historic discrimination, legal status, language barriers, poverty and geographic vulnerabilities. While many vulnerable communities exist in the hurricane-affected region, this section details the preexisting vulnerabilities of low-income African American and immigrant communities which were not adequately addressed by the U.S. Government’s planning and response to the Gulf Coast Hurricanes.

In the United States poverty and race are inextricably linked. African Americans and Latinos are twice as likely as white Americans to be poor; this reality significantly impacted how communities were affected by Hurricane Katrina.²⁹ In a speech to the nation, President George W. Bush acknowledged this fact: “As all of us saw on television, there is also some deep, persistent poverty in this region as well. And that poverty has roots in a history of racial discrimination, which cut off generations from the opportunity of America.”³⁰

²⁷ Blaine Harden & Sylvia Moreno, *Thousands Fleeing Rita Jam Roads From Coast*, WASH. POST, Sept. 23, 2005.

²⁸ Larry Hales, *Hurricane Rita Exposes Capitalists’ Lack of Planning*, WWW.WORKERS.ORG, Sept. 29, 2005, available at <http://www.workers.org/2005/us/hurricane-1006/>.

²⁹ *Poverty in the United States: 2002*, U.S. CENSUS BUREAU, available at <http://www.census.gov/prod/2003pubs/p60-222.pdf>. In 2002, 8.0 percent of non-Hispanic whites lived in poverty, compared to 24.1 percent African-Americans and 21.8 percent Hispanics.

³⁰ Congressional Report, *supra* note 23 at 19.

While most of Gulf Coast citizens fled the region before Hurricanes Katrina and Rita hit, those residents lacking the means to relocate were left behind. These residents were overwhelmingly poor and people of color³¹ who lacked access to personal vehicles for evacuation.³² One study found that thirty-three percent of Latino families living on the Gulf Coast could not evacuate if a disaster were to strike due to lack of transportation; the same reason was cited by twenty-seven percent of African American, and twenty-three percent of white residents.³³ According to the 2004 U.S. Census, over 3.6 million African Americans lived in Alabama, Louisiana and Mississippi prior to Hurricane Katrina. Roughly 270,000 foreign-born persons resided in those three states and, 200,000 of these individuals were Latino.³⁴ Analysis of these Census figures with the aforementioned survey suggests that nearly 100,000 Latinos and more than one million African Americans may have remained in the Gulf Coast during Hurricane Katrina for the sole reason that they lacked transportation to evacuate the region.

The geography of the Gulf Coast makes the region vulnerable to natural disaster because it is low-lying and situated in a flood plain.³⁵ New Orleans is particularly vulnerable to natural disaster as the city developed in a 'shallow bowl' with an average elevation of 6 feet below sea-level.³⁶ The erosion of marshlands which would have acted as natural storm barriers has

³¹ Brown University Study, *supra* note 19.

³² *Essential Facts about the Victims of Hurricane Katrina*, CENTER ON BUDGET AND POLICY PRIORITIES, Sept. 19, 2005.

³³ *Stalling the Dream: People of Color Less Likely to Own Cars, Less Able to Escape Hurricanes and Poverty*, United for a Fair Economy, Jan. 10, 2006, at www.faireconomy.org (hereinafter, "Stalling the Dream").

³⁴ Ruth Ellen Wasem, *Hurricane Katrina-Related Immigration Issues and Legislation*, Congressional Research Service Report for Congress, Sept. 19, 2005, available at http://openrcs.cdt.org/rpts/RL33091_20050919.pdf. Jeffrey Passel, a demographer who specializes in unauthorized migration, estimates that 20,000 to 35,000 unauthorized migrants were victims of Katrina. *Id.*

³⁵ *Mississippi Delta*, Union of Concerned Scientists, Aug. 5, 2005, available at <http://www.ucsusa.org/gulf/gcplacesmis.html>.

³⁶ Adam Blenford, *New Orleans: Nature's Revenge?* BBC NEWS, Aug. 31, 2005, available at <http://news.bbc.co.uk/1/hi/world/americas/4201060.stm>.

increased the region's geographic vulnerability.³⁷ Manmade storm barriers did not replace the protection that such natural barriers would have provided, because levees and barriers around Lake Pontchartrain and up the Mississippi River were inadequately constructed.³⁸ Additionally, the Gulf of Mexico's warm waters are breeding grounds for hurricanes³⁹ and the after-effect of such storms, namely storm surges and flooding, carry the greatest potential for loss of life.⁴⁰

Low-income African American communities bore the brunt of the immediate devastation brought on by Hurricane Katrina because, for the most part, these communities were located in the lower-lying, more flood prone areas.⁴¹ A report on New Orleans by the Brookings Institution observed, "With greater means and power, the white population occupied the better-drained sections of the city, while blacks typically inhabited the swampy 'rear' districts."⁴² Thus, New Orleans was extremely segregated by both race and income at the time of the storm,⁴³ and, as the Brookings Institution concluded, "Blacks and whites were living in quite literally different worlds before the storm hit."⁴⁴ Many low-income African Americans lived in concentrated hubs of poverty in the Gulf Coast's most vulnerable geographic areas. In New Orleans, blacks and other minority groups made up fifty-eight percent of those whose neighborhoods were flooded, though they encompassed just forty-five percent of the metropolitan population.⁴⁵

³⁷ *Washing Away: In Harm's Way*, TIMES-PICAYUNE (New Orleans, LA). June 23, 2002, available at <http://www.nola.com/hurricane/?/washingaway/>.

³⁸ Nicole T. Carter, *New Orleans Levees and Floodwalls: Hurricane Damage Protection*, Congressional Research Service Report for Congress, Sept. 2005, available at <http://www.fas.org/sgp/crs/misc/RS22238.pdf>.

³⁹ NOAA Scientists Survey Gulf of Mexico's Warm Water Reservoirs, 'Fuel Injectors' For Hurricane Intensification, NOAA, Aug. 3, 1999, available at <http://www.publicaffairs.noaa.gov/releases99/aug99/noaa99r516.html>.

⁴⁰ *Id.*

⁴¹ *New Orleans After the Storm: Lessons Learned from the Past, a Plan for the Future*, The Brookings Institution Metropolitan Policy Program, Oct. 2005, available at http://www.brookings.edu/metro/pubs/20051012_NewOrleans.pdf (hereinafter, "*New Orleans After the Storm*").

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

While this situation was particularly stark in New Orleans, the whole Gulf Coast region suffered from the storm's exacerbation of these geographic and economic vulnerabilities. The Gulf Coast is one of the poorest regions in the United States. According to the 2004 U.S. Census, twenty-one percent of Mississippi residents live below the poverty line, making it the poorest state in the country.⁴⁶ With nineteen percent of its families in abject poverty, Louisiana ranks second.⁴⁷ A sluggish economy further depressed these dismal poverty statistics in the Gulf Coast, for example, in New Orleans, forty-four percent of African American males age sixteen or older were not participating in the labor force.⁴⁸

Compounding the effects of these geographic and socioeconomic vulnerabilities, the African American experience in the Gulf Coast region has also been shaped by historic discrimination: "The Deep South is stuck with [a] unique legacy – the legacy of slavery, Jim Crow, and white resistance to equal justice for all."⁴⁹ This discrimination has led to a general distrust of the U.S. Government on the part of segregated communities, as African American communities remain underrepresented in the relevant decision-making bodies, including government regulatory agencies.⁵⁰

The vulnerabilities of the region's Asian and Latino immigrant communities were also magnified the Gulf Coast Hurricanes, as these populations were subject to both de facto and de jure discrimination by the U.S. Government.⁵¹ Many of these immigrants had come to the Gulf

⁴⁶ U.S. Census Bureau, *2004 U.S. Census*, available at http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1701&-ds_name=ACS_2004_EST_G00_-format=US-30.

⁴⁷ *Id.* Alabama is ninth at 16.1 percent. *Id.*

⁴⁸ *New Orleans after the Storm*, *supra* note 411.

⁴⁹ Bullard, Robert D., *Dumping in Dixie: Race, class, and environmental quality*. 1990, Boulder, CO: Westview.

⁵⁰ Of 27 U.S. Congressional Representatives in Mississippi, Alabama and Louisiana, only 3 are African American. No Asian American or Latino Americans are represented. *See* Contacting the Congress, available at <http://www.visi.com/juan/congress/cgi-bin/newseek.cgi?site=ctc&state=al>; <http://www.visi.com/juan/congress/cgi-bin/newseek.cgi?site=ctc&state=ms>; <http://www.visi.com/juan/congress/cgi-bin/newseek.cgi?site=ctc&state=la>.

⁵¹ Louisiana was home to more than 60,000 Asian Americans, more than half of whom are Vietnamese. *Katrina and the Asian American Community*, National Council of Asian Pacific Americans, available at <http://www.advancing>

Coast region for employment opportunities, generally in low-wage service jobs. A large number of Latino immigrants were employed by the booming casino industry on Mississippi's Gulf Coast, while Vietnamese worked in shrimp farming. These immigrant communities tended to be poor as they held low-wage jobs, and many sent remittances back to their family's abroad.⁵²

The shortage of trained bilingual staff limited immigrants' access to mainstream service providers in the wake of the Gulf Coast Hurricanes.⁵³ Before the Gulf Coast Hurricanes hit, these barriers and discriminatory practices against immigrants were already pervasive in the region. Just five years ago, Mississippi's school system was still refusing to register children of undocumented persons,⁵⁴ in violation of a U.S. Supreme Court ruling.⁵⁵ Additionally, there are reports that casinos employed undocumented migrants on construction jobs, and subsequently called Immigrations and Customs Enforcement ("ICE") to have the workers deported, rather than to pay them.⁵⁶ State immigration policies that denied "unqualified aliens," many of whom were legally in the U.S., access to public resources, coupled with a general fear of deportation, impeded immigrant integration into the larger society. These preexisting vulnerabilities of the Gulf Coast region – its geography, poverty, history of discrimination, immigration consequences, and language barriers – should have informed the United State's planning for, and response to

equality.org/files /ncapa_katrina.pdf. Southern Mississippi was home to more than 7,000 Asian Americans. In addition to Vietnamese, populations of Lao, Filipino, Chinese, Korean and Bangladeshi lived in the Gulf coast and were affected by the Hurricanes. *Id.* Additionally, approximately 200,000 documented Latino immigrants lived in Louisiana and Mississippi. Diego Cevallos, *Latin American Storm Victims Adrift*, IPS NEWS, Sept. 21, 2005, available at <http://www/ipsnews.net/news.asp?idnews=30370>. Of these, nearly 120-150,000 were Hondurans living in Louisiana. Other Latino populations included Mexicans and El Salvadorans. *Id.*

⁵² Katharine Donato & Shirin Hakimzadeh, *The Changing Face of the Gulf Coast*, MIGRATION POLICY INSTITUTE, Jan. 1, 2006.

⁵³ *Briefing Highlights Katrina's Toll on Asian American Communities*, CIVILRIGHTS.ORG, Oct. 19, 2005.

⁵⁴ See "All Children Have the Right To Attend Public Schools in Mississippi" flyer distributed in 2002, by Mississippi Immigrants Rights Alliance (MIRA) used to inform immigrant communities about the Mississippi Senate Bill 2225 (2002) Section I, that brought Mississippi into compliance with U.S. law.

⁵⁵ *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that schools must provide equal public education for all children, regardless of immigration status; schools are prohibited from asking for documentation of a student's immigration status; schools cannot use the social security number as prerequisite for enrollment; and schools are prohibited from sharing any information about a student's immigration status with any individual or institution).

⁵⁶ Adam Lynch, *Immigrants Left Behind*, JACKSON FREE PRESS, Vol. 41, no. 2, Sept. 29-Oct. 5, 2005.

the 2005 hurricane season. Unfortunately, the manner in which the State turned a blind eye to such historic, social, political and economic factors only exacerbated the plight of already vulnerable low-income African American and immigrant communities.

III. LEGAL FRAMEWORK

a. UN Guiding Principles on Internal Displacement

In the immediate aftermath of a natural disaster, authorities and relief agencies usually focus on addressing the immediate needs of the affected communities: search and rescue, food, clothing, potable water, shelter, and medical attention. Human rights are too often overlooked in the chaos following disaster and survivors are left vulnerable to a host of human rights violations such as lack of accessible humanitarian assistance, discrimination in the distribution of aid, sexual and gender-based violence, forced recruitment of children, loss of documentation, safe and voluntary return or resettlement, and issues of property restitution.⁵⁷

The frequency and magnitude of natural disasters manifest the absolute necessity of applying a human rights framework to ensure the protection of persons left vulnerable from acts of nature. A human rights framework helps to ensure the effectiveness of relief, recovery and reconstruction efforts *after* disaster strikes, as well as to shape disaster preparedness plans. By internalizing and implementing a human rights framework as it applies to natural disaster, states can protect their residents in the aftermath of natural disasters.

⁵⁷ “Often such [human rights] violations are not consciously planned and implemented but result from inappropriate policies or simple neglect. They could easily be avoided if the relevant human rights guarantees were taken into account from the beginning by national as well as international actors.” UN Representative to the Secretary General on the Human Rights of Internally Displaced Persons, Draft Operational Guidelines on Human Rights Protections in Situations of Natural Disasters, with Particular Reference to the Persons Who Are Internally Displaced (Feb. 7, 2006) (Hereinafter, “*Draft Guidelines on Human Rights and Natural Disasters*”).

The United Nations has sought to identify and encourage states to address the multiple human rights challenges victims displaced by human-made or natural disasters may face by developing the United Nations Guiding Principles on Internal Displacement (“Guiding Principles”).⁵⁸ The activities of the United Nations Representative of the Secretary-General on Internally Displaced Persons (“UN Representative on IDPs”) also assist states to address the human rights of the internally displaced. The UN Representative on IDPs has visited the regions affected by the 2004 South Asian Tsunami to document the plight of displaced persons in light of the Guiding Principles.⁵⁹ Additionally, the UN Representative on IDPs currently is drafting Operational Guidelines on Human Rights and Natural Disasters.⁶⁰ These Operational Guidelines address the human rights concerns that specifically confront persons affected by natural disasters and seek to guide governmental and nongovernmental actors in integrating human rights standards into disaster response, recovery, and reconstruction efforts.⁶¹

The Commission can address the human rights consequences of natural disasters as a means of ensuring the respect and protection of the fundamental rights of vulnerable communities. As the primary human rights body in a region affected by numerous natural disasters each year,⁶² the Commission should urge OAS member states to incorporate human rights norms in their disaster preparation and response plans, in order to safeguard the rights of all persons affected by disaster without discrimination.

⁵⁸ Though the classification of internally displaced persons (“IDPs”) has, up to this point, been used to primarily refer to persons forced to leave their homes and villages because of armed conflict, the Guiding Principles explicitly recognize the applicability of the IDP classification to victims of natural disasters. In the introduction to the UN Guiding Principles, IDPs are those persons obliged to flee, ‘in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or *natural or human-made disasters*’ (emphasis added). United Nations Guiding Principles on Internal Displacement, U.N. Doc E/CN.4/1998/53/Add.2 (1998) (hereinafter, “Guiding Principles on IDPs”).

⁵⁹ Walter Kälin, *Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons*, Feb. 27 - March 5, 2005.

⁶⁰ *Draft Guidelines on Human Rights and Natural Disasters*, *supra* note 5757.

⁶¹ *Id.* at 10.

⁶² See Section II(a): Background Information, Gulf Coast Hurricanes, *supra* p.3

b. The American Declaration of the Rights and Duties of Man

Under the Charter of Organization of American States and the Statute of the Inter-American Commission, this Commission may determine the scope and nature of the U.S. Government's human rights obligations under the American Declaration of the Rights and Duties of Man ("American Declaration").⁶³ Accordingly, this document examines the rights of disaster-affected persons as they have been enshrined in the American Declaration.

The Gulf Coast Hurricanes displaced roughly two million residents from the Gulf Coast region.⁶⁴ To understand the rights afforded to IDPs by the American Declaration, we principally will employ the Guiding Principles.⁶⁵ The Guiding Principles interpret the specific needs of displaced persons in light of the basic rights guaranteed within the American Declaration as well as other instruments including the International Convention on Civil and Political Rights

⁶³ In a case involving the interdiction of Haitians on the high seas (Case No. 10.675, Report No. 51/96), the Commission established: "For member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization." Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion of the Inter-Am. Ct. H.R., OC-10/89 (ser. A) No. 10, at par. 45 (July 14, 1989).

⁶⁴ 2 *Million Displaced By Storms*, *supra* note 2. Although FEMA originally estimated that roughly 450,000 to 600,000 families were displaced by the storm, further investigation prompted FEMA to increase this amount to 685,635 households. Prior estimates failed to account for families receiving aid under a traditional disaster aid program. FEMA approximates that each household includes 3 people. *Id.*

⁶⁵ The UN Guiding Principles on IDPs have been met with international approval. The Principles, developed in 1998 by the UN Representative on IDPs, Francis Deng, unite existing human rights norms pertinent to situations of internal displacement, while interpreting these norms in light of the specific needs of the internally displaced. The Principles, though not binding, have been recognized by the U.N. Commission on Human Rights (55 countries), and numerous states have adopted these principles into their internal practices. See Walter Kälin, *The Guiding Principles on Internal Displacement- Introduction*, 10 INT'L J. REFUGEE L. 557 (1998). See also Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, 10 GLOBAL GOVERNANCE 459 (2004), and Patrick Schmidt, *The Process and prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment*, 35 GEO. J. INT'L L. 483, 503 (2004). The UN Guiding Principles on IDPs define IDPs as persons (i) forced or obliged to flee or to leave their homes or places of habitual residence who (ii) have not crossed an internationally recognized State border. Guiding Principles on IDPs, *supra* note 58, par. 2.

(“ICCPR”⁶⁶ and the International Convention on Economic, Social and Cultural Rights (“ICESCR”).⁶⁷

The Inter-American Commission previously has recognized the Guiding Principles as relevant authority in interpreting the rights established in the American Convention. The Commission has noted that the Guiding Principles restate “in more specific detail” the protections afforded to IDPs, and “address the grey areas and gaps in the law” regarding IDPs.⁶⁸ The Inter-American Court of Human Rights also employed the Guiding Principles in addressing the plight of displaced persons in the *Masacre de Maripiripán*⁶⁹ and *Moiwana Village*⁷⁰ cases which involved persons displaced by armed conflict. We now request that the Inter-American Commission apply the same interpretative approach to the American Declaration to protect the rights of persons displaced by natural disasters.

c. State Obligations of Nondiscriminatory Protection of Survivors of Natural Disasters

The State’s duty to act in a nondiscriminatory manner and address situations where discrimination persists is of paramount concern in each stage of the lifecycle of a natural

⁶⁶ The United States signed (Oct. 5 1977) and ratified the ICCPR (June 8, 1992).

⁶⁷ The U.S. has signed (Oct. 5, 1977) but not ratified the ICESCR, and as a signing party, has the duty to not act in contravention of its terms.

⁶⁸ 1999 Report on Colombia, Ch. VI, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.102, Doc. 9 rev. 1 (February 26, 1999), pars. 8, 10, *available at* <http://cidh.org/countryrep/Colom99en/chapter-6.htm>. More recently, in its 2004 session, the Commission used the Guiding Principles in its issuance of precautionary measures against Colombia in protection of 35 displaced families. Precautionary Measures Granted in 2004 (Granted on August 17, 2004), Inter-American Commission of Human Rights, Report no. OEA/Ser.L/V/II.122, Doc. 5 rev. 1, Ch. III on Precautionary Measures, par.21, *available at* <http://cidh.org/annualrep/2004eng/chap.3b.htm#Precautionary>.

⁶⁹ *Caso de la “Masacre de Maripiripán” vs. Colombia*, Inter-American Court of Human Rights, Decisions and Judgments (ser.C) no.134 at Pars. 164, 176 (Sept. 15 2005).

⁷⁰ *Case of Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Decisions and Judgments (ser. C) No. 124 at par.111 (June 15 2005), noting how the Guiding Principles “illuminate the reach and content of Article 22 of the American Convention in the context of forced displacement.”

disaster: evacuation, humanitarian assistance, return, and reconstruction stages.⁷¹ The Guiding Principles provide that national authorities have the primary duty and responsibility to protect and assist victims of natural disasters within their jurisdiction without discrimination,⁷² mirroring the prohibition against discrimination enshrined in the American Declaration.⁷³ This principle of nondiscrimination is of particular importance following a natural disaster, when opportunities for exploitation and discrimination arise, and preexisting discrimination is often worsened.⁷⁴

This Commission has recognized the principle of nondiscrimination as a norm of *jus cogens* nature, holding, “the principle of equality before the law, equal protection before the law and nondiscrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.”⁷⁵ A number of human rights instruments that the U.S. has either signed or ratified, also affirm the fundamental importance of the principle of nondiscrimination.⁷⁶

⁷¹ Guiding Principles on IDPs, *supra* note 58, are divided into sections entitled, “Protection From Displacement,” “Protection During Displacement,” “Humanitarian Assistance,” and “Return, Resettlement, and Reintegration.”

⁷² Guiding Principles on IDPs, *supra* note 58, Principle 3(1): National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, and Principle 4(1), These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

⁷³ American Declaration, Article II.

⁷⁴ Walter Kälin, “Natural Disasters and IDPs’ Rights,” Special Issue: Tsunami, Learning from the Humanitarian Response, FORCED MIGRATION REVIEW, July 2005, available at <http://www.fmreview.org/FMRpdfs/Tsunami/03.pdf>.

⁷⁵ The Inter-American Commission has recognized nondiscrimination as taking on a *jus cogens* form, see *Caso de la Masacre de Mampiripán*, *supra* note 69, par.178. See also Advisory Opinion OC-18/03, Sept. 17, 2003, Inter-American Court of Human Rights, on the *Juridical Condition and Rights of the Undocumented Migrants*, par. 101 (hereinafter “*Advisory Opinion on the Juridical Condition and Rights of the Undocumented Migrants*”).

⁷⁶ See International Covenant for Economic, Social, and Cultural Rights (“ICESCR”), Articles 1 and 24; The International Covenant on Civil and Political Rights (“ICCPR”), Article 26; The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), Article 2; The Convention on the Rights of the Child (“CRC”); and The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Convention on the Rights of Migrant Workers”), Article 7.

d. State Obligation to Protect Human Rights of Survivors of Natural Disasters

In accordance with international human rights law, states have the obligation to respect, protect and fulfill human rights. With respect to its jurisdiction to monitor and protect human rights, the Inter-American Commission has noted that its jurisdiction extends to investigating alleged violations of the American Declaration by member States of the OAS for the acts or omissions of state agents or organs.⁷⁷ Any state agent, regardless of rank, can generate international state responsibility by violating the guarantees enshrined by the American Declaration. Moreover, the Commission observes that its jurisdiction also encompasses “cases of transgressions of these same rights by private persons or groups who are, in effect, state agents or when such transgressions by private actors are acquiesced in, tolerated, or condoned by the State.”⁷⁸ Throughout this document, we will highlight the ways in which the U.S. Government has failed to protect and provide life-sustaining assistance to its residents in times of natural disaster.

In the context of Hurricanes Katrina and Rita, international state responsibility is generated by the acts and/or omissions of U.S. Government agents at every level of government, including federal, state and local authorities. In addition, in accordance with the jurisprudence established by the Inter-American Commission and Court, the U.S. Government may be responsible for the acts and/or omission of the Red Cross. Although the Red Cross is an “independent entity”⁷⁹ that is organized as a “nonprofit, tax-exempt, charitable institution” pursuant to a charter granted to it by the United States Congress, it has the legal status of “a

⁷⁷ Introduction Section, Context for the Analysis of the Human Rights Situation in Colombia, 1999, par. 4, *available at* <http://www.cidh.org/countryrep/Colom99en/chapter-1.htm>.

⁷⁸ *Id.*

⁷⁹ The Federal Charter of the American Red Cross. <http://www.redcross.org/museum/charters.html>.

federal instrumentality.”⁸⁰ Under its charter, the Red Cross is required “to carry out responsibilities delegated to it by the federal government.”⁸¹ Among these is the responsibility to “maintain a system of domestic and international disaster relief, including mandated responsibilities under the National Response Plan coordinated by the Federal Emergency Management Agency (FEMA).”⁸²

Having outlined the factual context of the Gulf Coast Hurricanes, the Gulf region’s preexisting vulnerabilities, and the human rights laws pertinent in natural disaster contexts, this document will proceed to illustrate the human rights concerns that have arisen and continue to arise in the different phases of the natural disaster lifecycle. This analysis examines the concerns that arise in four areas in particular: evacuation, humanitarian assistance, return, and reconstruction.

IV. GOVERNMENT RESPONSE: EVACUATION EFFORTS

Government complacency, poor planning and dereliction of duty prior to and during the evacuation of Hurricane Katrina contributed to over a thousand deaths and jeopardized the welfare of Gulf Coast residents who did not evacuate the region before the hurricane hit.

Human rights law maintains that humanitarian assistance must be provided without discrimination of any kind on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status.⁸³ Therefore, when an imminent natural disaster endangers the life or physical integrity and health of affected individuals and communities, the governing state must take all appropriate measures necessary to

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ ICESCR, Article 12. *See* Section III(c): Legal Framework Section: State Obligations of Nondiscriminating Protection of Survivors of Natural Disasters at 14.

protect those in danger.⁸⁴ If such measures would be insufficient, endangered persons should be ordered to leave the danger zone or, to the extent that they cannot do so on their own, be evacuated in a manner that fully respects the right to life, dignity, liberty and security of those affected.⁸⁵

a. Lack of Transportation and Shelter

The U.S. Government's evacuation plans did not take into account the difficulties faced by low-income African American and immigrant communities and effectively abandoned these communities to fend for themselves in the face of a Category 4 hurricane. The U.S. Government's evacuation efforts failed in three respects: it failed to (1) issue a mandatory evacuation in a timely manner; (2) organize effective transportation from the most vulnerable areas; and (3) provide adequate and appropriate shelters to enable those left behind to safely weather the storm.

The governor of Louisiana and the mayor of New Orleans did not order mandatory evacuation until less than twenty-four hours before the storm hit.⁸⁶ The lack of warnings had dire consequences: more than one hundred thousand people were left behind when Katrina made land. The U.S. Government left critical decisions regarding transportation for evacuation to the last minute.⁸⁷ Deciding "at the spur of the moment," however, proved to be a badly flawed approach to accomplishing mass evacuation out of the city.

⁸⁴ See The American Declaration, Articles I, XI.

⁸⁵ See Guiding Principles on IDPs, *supra* note 58, Principles 1, 7, and 8. See also, *Draft Guidelines on Human Rights and Natural Disasters*, *supra* note 57.

⁸⁶ *New Orleans Braces for 'the Big One'*, CNN.COM, Sept. 29, 2005.

⁸⁷ *NBC's Meet the Press: Transcript for September 11*, MSNBC, Sept. 11, 2005, available at <http://www.msnbc.msn.com/id/9240461>.

Most evacuees who remained in their homes during Hurricane Katrina cited a lack of access to transportation as their primary reason for staying.⁸⁸ Government evacuation plans identified personal vehicles as the primary means of evacuation,⁸⁹ although it was widely known that the region's poorest people did not own cars.⁹⁰ Furthermore, because the storm was at the end of the month, and many low-income residents of the Gulf Coast live from paycheck to paycheck, economic resources for self-evacuating were particularly scarce.

U.S. Government evacuation efforts failed to address the needs of these residents who lacked transportation to evacuate. Most of the vehicles designated to transport such individuals went unused because the U.S. Government could not find willing drivers.⁹¹

Designated sites for those without transportation out of the region to gather and be collected were not located in areas of great need. In areas like East and Central New Orleans where concentrated poverty was the most prevalent, pickup locations were few and far between. With full knowledge of the shortage of privately owned vehicles in poor areas of the Gulf Coast, the region's evacuation plans focused on traffic management for those with cars.⁹²

In New Orleans, many of these residents who could not self-evacuate were shuttled to shelters in the city, such as the Superdome, in apparent contradiction of the city's standing mandatory evacuation order.⁹³ The New Orleans Convention Center, although never officially designated as a place of refuge, swarmed with residents who arrived there awaiting buses to

⁸⁸ *Survey of Hurricane Katrina Evacuees*, The Washington Post/Kaiser Family Foundation/Harvard University, Sept. 2005, available at <http://www.kff.org/newsmedia/upload/7401.pdf>.

⁸⁹ The Southeast Louisiana Hurricane Evacuation and Sheltering Plan, 2000, p. 13, at <http://www.letxa.com/katrina/EOPSupplement1a.pdf>.

⁹⁰ *Stalling the Dream*, *supra* note 33.

⁹¹ *NBC's Meet the Press: Transcript for September 11*, MSNBC, *supra* note 87.

⁹² *Stalling the Dream*, *supra* note 33.

⁹³ Elana DeLozier and Nina Kamp, *Hurricane Katrina Timeline*, The Brookings Institution, available at <http://www.brookings.edu/fp/projects/homeland/katrinatimeline.pdf> (hereinafter "Hurricane Katrina Timeline").

evacuate them out of the city; those buses never came.⁹⁴ Nearly 25,000 people were eventually evacuated to the Superdome and nearly 20,000 gathered at the Convention Center.⁹⁵ An estimated 50,000, overwhelmingly African American, remained elsewhere in New Orleans, on rooftops and in upper floors of office buildings.⁹⁶

The State had no plan in place to provide assistance or to carry out evacuation measures for the approximately 25,000 people who were evacuated to the Superdome and the approximately 20,000 evacuees in the Convention Center. In fact, the State has claimed that it did not even know about the evacuees in the Convention Center until three days after Hurricane Katrina hit.⁹⁷ Even so, evacuation measures from these shelters did not begin until three days after the hurricane hit and it took another four days to complete the evacuation process.⁹⁸ Governor Blanco of Louisiana requested buses to rescue the thousands of people from the fetid Superdome and Convention Center.⁹⁹ However, by the third night only a fraction of the 500 vehicles promised by federal authorities had arrived.¹⁰⁰ During this evacuation phase government and nongovernmental shelters were grossly undersupplied.¹⁰¹ In fact, very few were pre-positioned with supplies.¹⁰² As a result, some people went without food or clean drinking water for three or four days.¹⁰³

⁹⁴ Wil Haygood & Ann Scott Tyson, *It Was as if All of Us Were Already Pronounced Dead*, WASH. POST, Sept. 15, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/14/AR2005091402655.html>.

⁹⁵ *Convoys Bring Relief to New Orleans*, CNN.COM, Sept. 2, 2005, available at <http://www.cnn.com/2005/US/09/02/katrina.impact/>.

⁹⁶ *Id.*

⁹⁷ Joseph B. Treaster, *First Steps to Alleviate Squalor and Suffering at Convention Center*, N.Y. TIMES, Sept. 3, 2005, at A16.

⁹⁸ *Hurricane Katrina Timeline*, *supra* note 94.

⁹⁹ *Hurricane Katrina Timeline*, *supra* note 94.

¹⁰⁰ *Hurricane Katrina Timeline*, *supra* note 94.

¹⁰¹ "Opening Statement of Senator Susan M. Collins, Chairman, Committee on Homeland Security and Governmental Affairs." Jan. 24, 2006, available at http://72.14.207.104/search?q=cache:csZTVbUIy2kJ:hsgac.senate.gov/_files/012406SMCOpen.pdf+Katrina+shelters+undersupplied&hl=en&gl=us&ct=clnk&cd=1.

¹⁰² *Id.*

¹⁰³ See, e.g., Wil Haygood & Ann Scott Tyson, *It Was as if All of Us Were Already Pronounced Dead*, *supra* note 95.

In sum, the U.S. Government's evacuation plans benefited those in the best position to evacuate and not the most vulnerable communities. Such discrimination demonstrates the State's failure to take into account preexisting vulnerabilities. Consequently, the evacuation exacerbated the disaster and created a catastrophe of human suffering.

b. Lack of Response to Immigrant Populations

The U.S. Government failed to alert immigrant populations of the impending storm in their native languages or to ensure their access to essential provisions. The State did not issue warnings about the approaching hurricanes in any language other than English.¹⁰⁴ In fact, even now, nearly six months after the storm, scant information is available on how immigrant communities were warned of the storm.¹⁰⁵ The limited press reports indicate that the main source of information for the Spanish-speaking population was provided by private individuals on a volunteer, ad-hoc basis. For example, a small Spanish-language AM-radio station provided the New Orleans area with information,¹⁰⁶ while in Mississippi the owner of a grocery store that caters to the Latino population went from church to church where Spanish speaking parishioners gathered, to warn of the impending storm and distribute information about evacuation the Sunday before the storm hit.¹⁰⁷ In the absence of information from the government, this Mississippi volunteer relied on a one page Spanish-language article that had been printed that

¹⁰⁴ Three months after the hurricanes, the Emergency Alert System conducted an internal review and reformed their warning system so that warnings would be issued in the primary language that is used by the station or cable system broadcasting the announcement. *See* Review of the Emergency Alert System, before the Federal Communications Commission, E.B. Doc. No. 04-296, Nov. 3, 2005, *available at* <http://www.fcc.gov/eb/Orders/2005/FCC-05-191A1.html>.

¹⁰⁵ *Rita and the Asian American Community*, National Council of Asian Pacific Americans, *available at* <http://www.advancingequality.org/files/RitaAACCommunity.pdf>.

¹⁰⁶ *After Katrina: How Radio Saved the City of New Orleans*, UMass Amherst, *available at* <http://www.umass.edu/umhome/events/articles/24777.php>.

¹⁰⁷ Nikki Davis Maute, *Volunteer Informs Hispanics of Storm*, HATTIESBURG AMERICAN, Aug. 29, 2005.

day in the local paper.¹⁰⁸ In the face of one of the most powerful hurricanes in U.S. history, the only early warning system immigrant communities could rely on was word of mouth.

After the hurricanes struck, the inability to communicate effectively was a particular vulnerability for immigrant communities as it impeded their access to critical information. Language barriers resulted in instances of residents not understanding the health concerns related to drinking contaminated water.¹⁰⁹ Without language-accessible information, Asian American evacuees and many Latino evacuees sought out humanitarian assistance at local religious centers.¹¹⁰ State agencies failed to reach out to these centers, which became known places of refuge for migrant communities.¹¹¹ For example, a leader of a Buddhist Temple in Biloxi that served as a distribution center for food and supplies and provided temporary shelter to many Asian-American families observed that U.S. Government officials never visited the Temple to inquire about disaster survivors.¹¹² This situation was mirrored across the Gulf Coast states.¹¹³

V. GOVERNMENT RESPONSE: HUMANITARIAN ASSISTANCE

In accordance with the American Declaration and the Guiding Principles, national authorities have the primary duty to provide protection and assistance to internally displaced persons.¹¹⁴ National authorities should guarantee that essential goods and services, such as food, potable water, basic shelter, housing, appropriate clothing, and essential medical services, including psychological and social services and sanitation are available and accessible to

¹⁰⁸ Nikki Davis Maute, *Spreading word to Hispanics a Concern*, HATTIESBURG AMERICAN, Aug. 28, 2005.

¹⁰⁹ *Id.*

¹¹⁰ Kari Lyderson, *Some Immigrants Suffer Doubly After Hurricane Katrina*, NEW STANDARD, Sept. 28, 2005, available at <http://newstandardnews.net/content/index.cfm/items/2410>.

¹¹¹ “Katrina and the Asian American Community” Congressional Briefing: Testimony of Reverend Thich Hang Dat, Sept. 29, 2005, available at <http://www.advancingequality.org/files/hang.pdf>.

¹¹² *Id.*

¹¹³ *Laotian-American Victims of Hurricane Katrina Seek Refuge in Wat Lao Thammarattanaram of Louisiana*, VOANEWS.COM, Sept. 9, 2005.

¹¹⁴ Guiding Principles on IDPs, *supra* note 58, Principle 3.

internally displaced persons without discrimination.¹¹⁵ Furthermore, national authorities should respect and guarantee the right of displaced persons to request and to receive protection and assistance from authorities without being subject to persecution or punishment.¹¹⁶

Unfortunately, the U.S. Government has failed to provide low-income African American and immigrant populations with adequate and accessible assistance in a nondiscriminatory fashion.

a. Availability and Access to Assistance

During the first critical days of the Gulf Coast disaster, necessary relief and health workers and essential provisions were desperately in short supply. The evacuees in the New Orleans Superdome and the Convention Center, most of whom were African American,¹¹⁷ did not have access to medical staff, and these shelters lacked sick bays.¹¹⁸ Much of the medical staff who had been working in the “special needs” areas were evacuated before residents, who were left in destroyed areas after the storm.¹¹⁹

The U.S. Government also failed to provide adequate access to humanitarian assistance after the storm to low-income residents. The American Red Cross did not set up shelters in flood-prone areas, including New Orleans and the Mississippi coastal flood plains, because of liability concerns.¹²⁰ In rural Mississippi, neither the federal government nor the Red Cross

¹¹⁵ Guiding Principles on IDPs, *supra* note 58, Principles 4, 10, 18.

¹¹⁶ Guiding Principles on IDPs, *supra* note 58, Principle 3.

¹¹⁷ See Section II(b): Background Information: Preexisting Vulnerabilities of Gulf Coast Low-Income African American and Immigrant Communities, *supra*, p.6. See also, Bill Quigley, *Six Months After Katrina: Who Was Left Behind- Then and Now*, Common Dreams News Center, Feb. 21 2006, available at <http://www.commondreams.org/views06/0221-36.htm>; DeWayne Wickham, *Blacks Suffering Over Race or Class? Some of Both*. U.S.A. Today, Sept. 13, 2005, at 13A.

¹¹⁸ *Superdome Evacuation Completed*. ASSOCIATED PRESS, Sept 3, 2005, available at <http://www.msnbc.msn.com/id/9175611/>.

¹¹⁹ *Id.*

¹²⁰ Stephanie Strom & Campbell Robertson, *As Its Coffers Swell, Red Cross is Criticized on Gulf Coast Response*, N.Y. TIMES, Sept. 20, 2005, at A5.

arrived to provide needed shelter, food, ice, or water in Hurricane Katrina's wake.¹²¹ In some cases, it took twelve days for the Red Cross to reach people without cars and homes in certain areas of Mississippi.¹²² Government officials and the Red Cross knew, or should have been aware that more than 1.6 million people, half of Mississippi's population live in storm-affected rural areas.¹²³ Stranded without access to shelters, the only assistance came from charitable community groups and heroic individuals, who attempted to rescue their neighbors from the floodwaters.¹²⁴

Furthermore, community advocacy organizations reported that the Red Cross failed to set up operations in low-income African American jurisdictions, while establishing assistance centers in higher-income white communities.¹²⁵ Low-income hurricane victims in search of aid often traveled large distances (though they often lacked access to cars) to remote shelter locations. In one incident, an African American couple that traveled to shelter outside of their town to access assistance was sent to the back of the line because they were not from the area.¹²⁶

The lack of critical assistance was not due to the lack of resources. The conditions in the Gulf Coast drew offers of assistance in various forms. However, FEMA, the U.S. Government's disaster agency, rejected offers of trains to evacuate Gulf Coast residents¹²⁷ as well as water supplies provided by retail stores.¹²⁸ Needed help by hundreds of firefighters was also delayed

¹²¹ Elizabeth Mehren, *'Like We're Invisible'; Katrina cut off an already isolated rural Mississippi, so residents helped one another*, *supra* note 26.

¹²² Reene Montagne & Howard Berkes, *Red Cross response to Katrina criticized*. NAT'L PUB. RADIO, Oct. 6, 2005.

¹²³ *Id.*

¹²⁴ Declaration of Victoria Cintra, Operations Coordinator, MIRA, taken by UC Berkeley's International Human Rights Law Clinic, signed on March 2, 2006, at ¶ 15 (on file with the UC Berkeley International Human Rights Law Clinic).

¹²⁵ Committee on House Government Reform; Subcommittee on Select Katrina Response Investigation, Dec. 6, 2005 (Testimony by Barbara Arnwine, Executive Director, Lawyers Committee for Civil Rights), (hereinafter "Congressional Subcommittee Testimony").

¹²⁶ *Id.*

¹²⁷ *Bush's FEMA Turns Natural Disaster Into Bureaucratic Disaster*. U.S FED News. Sept. 7th, 2005.

¹²⁸ *Id.*

so that proper bureaucratic processes could be observed, though some volunteers complained that this critical delay translated into the loss of lives.¹²⁹

The housing and cash assistance programs enacted by FEMA were complex and confusing to applicants. In testimony before Congress, a FEMA official admitted these programs were inaccessible and failed to deliver aid in a timely fashion.¹³⁰ Deadlines were not well-communicated and consistently changed, leaving displaced persons confused as to the amount of aid available to them. Furthermore, FEMA officials have advocated that aid amounts should be raised because they are insufficient for low-income disaster victims.¹³¹ For example, FEMA ended hotel payments for twelve thousand families across the country on February 13, 2005, despite the fact that many of these displaced persons have no other housing options.¹³² Though FEMA claims that most victims will still receive apartment rental assistance or trailers, by the agency's own accounts, seventy-seven thousand people who requested trailers are still waiting.¹³³

b. Immigrant Access to Emergency Aid

National laws exclude certain classes of immigrants from most of the major federal assistance programs.¹³⁴ These individuals are not eligible for *any* of the federal government's

¹²⁹ *Id.*

¹³⁰ Committee on House Government Reform: Subcommittee on Select Katrina Response Investigation, Dec. 8, 2005 (Testimony of Scott Wells, FEMA Federal Coordinating Officer).

¹³¹ *Id.*

¹³² Shaila Dewan, Hotel Aid Ends; Katrina Evacuees Seek Housing Again. N.Y. TIMES, Feb. 14, 2005, *available at* <http://www.nytimes.com/2006/02/14/national/nationalspecial/14hotels.html>.

¹³³ Transcripts, Anderson Cooper 360 Degrees. CNN.com Jan. 23rd, 2006, *available at* <http://transcripts.cnn.com/TRANSCRIPTS/0601/23/acd.01.html>.

¹³⁴ Certain groups of migrants are categorized as "unqualified aliens." As defined by the 8 U.S.C. § 1641., the term "qualified alien" includes "anyone who has been granted legal permanent residence ("green card"), refugee or asylee status, withholding of deportation, conditional entry, parole into the U.S. for at least one year; or a Cuban-Haitian Entrant; or a battered spouse or child(ren) with a pending or approved spousal petition or petition for relief.

long-term shelter or food assistance programs,¹³⁵ though they may be eligible for certain short-term, non-cash, emergency services. What emergency assistance is available to immigrants is often nullified by *de facto* discriminatory practices. As a result, many immigrant survivors have been denied access to basic shelter, food, and medical care.

1. Failure to Assure Equal Access to Assistance

Promises of short-term assistance for all immigrants, regardless of documentation status, were illusory, as FEMA effectively discouraged these persons from accessing short-term disaster assistance by failing to assure them that aid seekers would not be prosecuted for immigration violations.¹³⁶ In previous natural disaster situations, the U.S. Government had provided such assurances¹³⁷ which made FEMA's refusal to do so after the Gulf Coast Hurricanes particularly conspicuous. In fact, FEMA told immigrants they would *not* have immunity from deportation when providing information required to receiving federal aid.¹³⁸ Numerous media accounts chronicled how immigrants, Latino immigrants in particular, did not seek federal aid because they feared deportation.¹³⁹

These fears of deportation were not unfounded. Just days after Hurricane Katrina hit, two unauthorized immigrants were taken into custody by state police in West Virginia, after a military cargo plane carrying approximately three hundred evacuees arrived.¹⁴⁰ In a second

¹³⁵ Kate Meiss et al., Power Point Presentation "Benefits for Hurricane Katrina Survivors. Training for Legal Services and Pro Bono Attorneys in Louisiana," Sept. 20, 2005, available at http://www.lsnr.net/disaster/katrina_fema_final_09-21-05.pdf.

¹³⁶ Suzanne Gamboa, *Feds Stop Short in Assurances for Illegal Immigrants*, ASSOCIATED PRESS, Sept. 8, 2005; E. Eduardo Castillo, *Illegal Immigrants Afraid to Get Storm Aid*, ASSOCIATED PRESS, Sept. 9, 2005.

¹³⁷ *All Who Need Help Should Seek Help Regardless of Immigration Status*, FEMA Press Release, Oct. 13, 2001, at <http://www.fema.gov/news/newsrelease.fema?id=5632>.

¹³⁸ Darryl Fears, *For Illegal Immigrants, Some Aid Is Too Risky; Fears Abound as Government Won't Promise Immunity From Deportation*, WASH. POST, Sept. 20, 2005.

¹³⁹ Suzanne Gamboa, *Feds Stop Short in Assurances for Illegal Immigrants*, and Eduardo Castillo, *Illegal Immigrants Afraid to Get Storm Aid*, *supra* note 137.

¹⁴⁰ Darryl Fears, *For Illegal Immigrants, Some Aid is Too Risky*, *supra* note 139. Immigration and Customs Enforcement officials said the two men were friends and were taken into custody after state police received a complaint that one had been accused of a sexual assault. *Id.*

incident, three undocumented migrants who had been evacuated to El Paso, Texas, were met at the airport by immigration agents and placed in deportation proceedings.¹⁴¹

On September 28, 2005, police and the U.S. Marshals raided a Red Cross shelter in Long Beach, Mississippi, and demanded identification from approximately sixty people who looked Latino.¹⁴² Witnesses, including the shelter's staff, confirmed that the officers blocked the parking lot and exits and pulled people out of the shower and bathroom.¹⁴³ These individuals were then informed they had to leave the shelter within two days or else they would be deported.¹⁴⁴ A week later, in D'Iberville, Mississippi, all of the Latino residents of two Red Cross shelters were rounded up and ordered to leave within 48 hours, under an assumption that they were newly-arrived migrant workers and not hurricane survivors.¹⁴⁵ In Hattiesburg and Laurel, Mississippi, Red Cross volunteers asked anyone who appeared to be foreign-born to produce a social security card and/or a birth certificate before receiving emergency services.¹⁴⁶ Many people had lost such documents in the storms and flooding. Hundreds of disaster victims were turned away.¹⁴⁷ These events, together with the absence assurance from the U.S. Government that aid was accessible without fear of deportation, led many Latino immigrants to

¹⁴¹ Suzanne Gamboa, *Handful of Katrina Victims in Deportation*, ASSOCIATED PRESS, Sept. 19, 2005.

¹⁴² Chad Tehrune and Evan Pérez, *Roundup of Immigrants in Shelter Reveals Rising Tensions*, WALL ST. JOURNAL, Oct. 3, 2005, at B1; see also Tracy Dash and Joshua Norman, *Is This Law Enforcement or Profiling?*, SUN HERALD (Biloxi, MS), Oct. 7, 2005, at <http://www.sunherald.com/ml/sunherald/12838799.htm>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Hurricane Katrina Response and Immigrants, Select Bipartisan Committee to Investigate the Preparation and Response to Hurricane Katrina, Dec. 6, 2005, Written Testimony for the Record by Bill Chandler, President/Director Mississippi Immigrants Rights Alliance (MIRA) and Guadalupe Gamboa, Program Officer and Immigration Attorney, Oxfam America.

¹⁴⁶ Declaration of Victoria Cintra at ¶ 20, *supra* note 125. The Red Cross is an "independent entity" that is organized as a "nonprofit, tax-exempt, charitable institution pursuant to a charter granted to it by the United States Congress. "It has the legal status of 'a federal instrumentality' due to its charter requirements to carry out responsibilities delegated to it by the federal government." Among these is the responsibility to "maintain a system of domestic and international disaster relief, including mandated responsibilities under the National Response Plan coordinated by the Federal Emergency Management Agency (FEMA)."

<http://www.redcross.org/museum/history/charter.asp>. See Section III(d): Legal Framework: State Obligation to Protect Human Rights of Survivors of Natural Disasters, at p.15.

¹⁴⁷ *Id.*

weather the storm and its aftermath without federal aid, and as a result, often lacked essential subsistence and other provisions.¹⁴⁸

The U.S. Government's assistance regulations fail to provide longer-term assistance to immigrants who are legally in the country. Once short-term emergency shelters are dismantled,¹⁴⁹ the U.S. Government does not provide certain classes of immigrants with any further assistance. While "qualified aliens" are provided with a range of federal disaster assistance programs¹⁵⁰ which reflect the depth of the U.S. Government's resources, both unauthorized and certain categories of lawfully present immigrants are denied access to adequate housing, food, or health care.¹⁵¹ For instance, many of the 120,000 to 150,000 Hondurans living along the Gulf Coast when the hurricanes struck were lawfully present within the United States. These individuals were protected by the U.S. Government's Temporary Protected Status (TPS) program, which grants nationals of a foreign state relief from removal if the U.S. Government finds that such nationals are unable to safely return to their home country because of ongoing armed conflict, the temporary effects of an environmental disaster, or other extraordinary and temporary conditions.¹⁵² After Hurricane Mitch ravaged Central America in 1998, the United

¹⁴⁸ *Id.*

¹⁴⁹ The Red Cross is structured to provide emergency shelter and feeding services for two through thirty days of a disaster. Congressional Report citing Interview by Select Committee staff with Joseph C. Becker, Sr. Vice Pres., Preparedness and Response, American Red Cross in Wash., D.C. (Oct. 14, 2005).

¹⁵⁰ See Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121, *et seq.* Under the Stafford Act, qualified households are eligible for housing and food assistance, plus up to \$25,000.00 in financial assistance (adjusted annually for inflation).

¹⁵¹ Under Title IV of the Personal Responsibility to Work Opportunity Act of 1996, 8 U.S.C. §§ 1601-1646, a "qualified alien" includes "anyone who has been granted legal permanent residence ("green card"), refugee or asylee status, withholding of deportation, conditional entry, parole into the U.S. for at least one year; or a Cuban-Haitian Entrant; or a battered spouse or child(ren) with a pending or approved spousal petition or petition for relief." *Id.* § 1641; see also FEMA FAQs. This definition excludes undocumented migrants and many categories of persons lawfully residing within the United States, including individuals here on temporary work, student, or tourist visas and nationals of a foreign state granted Temporary Protected Status (TPS). FEMA's Policy on Verification of Citizenship, Qualified Alien Status and Eligibility for Disaster Assistance, issued by the Office of Legislative Affairs. Finally, this definition apparently excludes all persons with pending asylum applications.

¹⁵² 8 U.S.C. § 1254.

States designated Honduras for the TPS program.¹⁵³ Ironically, Hondurans along the Gulf Coast who received relief after a hurricane hit their own county are ineligible for hurricane relief for the storm they survived here.

2. Failure to Bridge Language and Cultural barriers

After the hurricanes struck, the U.S. Government's failure to account for language barriers impeded immigrant communities' access to critical, life-saving information. Language barriers resulted in instances of residents not understanding the health concerns related to drinking contaminated water.¹⁵⁴

In the absence of assurances and language-accessible information from the government, as discussed above in Section IV,¹⁵⁵ Asian American evacuees and many Latino evacuees sought out humanitarian assistance at local religious centers.¹⁵⁶ Concerns were raised by the U.S. Congress and Latino, Asians and Native Americans advocacy groups that Red Cross shelters failed to provide enough translators and lacked cultural sensitivity.¹⁵⁷ Evacuees who spoke little or no English, including Latino and Asian immigrants along the Gulf Coast, as well as French-speaking members of the Houma United Nation tribe (an indigenous people) in Louisiana, struggled to make themselves understood because there were so few translators at shelters.¹⁵⁸ Red Cross leaders admitted that they failed to meet the needs of immigrant communities due to a lack experience and training in dealing with diverse populations.¹⁵⁹

¹⁵³ See 64 Fed. Reg. 524 (Jan. 5, 1999).

¹⁵⁴ *Id.*

¹⁵⁵ Section IV(b), Government response: Evacuation Efforts, Lack of Response to Immigrant Populations, *supra*, p.20.

¹⁵⁶ Kari Lyderson, *Some Immigrants Suffer Doubly After Hurricane Katrina*, *supra* note 111.

¹⁵⁷ Jacqueline Salmon, *Red Cross Bolstering Minority Outreach*. WASH. POST, Dec 5, 2005, at A01.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Additionally, U.S. Government failed to make basic health and survival information accessible to persons with limited proficiency in English (LEP).¹⁶⁰ Reportedly, one LEP Latino family returned home after Hurricane Katrina and, finding their home without electricity, lit a match that ignited leaking natural gas and blew up the house, killing everyone inside.¹⁶¹ Such a tragedy might have been avoided if the U.S. Government had ensured that health and safety warnings were issued in Spanish.¹⁶² In Mississippi, local announcements instructing listeners where to get ice, water, food, and shelter were only broadcast in English, *de facto* denying LEP residents access to the barest necessities.¹⁶³ Mississippi's LEP residents were also unable to access essential health warnings, putting them at greater risk for a "litany of health problems – from carbon-monoxide poisoning from generators to skin rashes and gastrointestinal problems from unclean drinking water."¹⁶⁴

VI. HUMAN RIGHTS AND RECONSTRUCTION

This section highlights areas of concern regarding the extent to which the U.S. Government is fulfilling or failing to fulfill its international obligations to protect the right of hurricane-displaced individuals to return to their homes. Violations of the right to return have already begun to emerge in these early stages of return and reconstruction, and the U.S. Government must act quickly and equitably to prevent returnees' rights from being further jeopardized.

¹⁶⁰ Petition for Immediate Interim Relief, Before the Federal Communications Commission, EB Docket NO. 04-296, at 1 (hereinafter "FCC Petition").

¹⁶¹ *Id.* At 1, footnote 2. .

¹⁶² Petition

¹⁶³ Petition at 7.

¹⁶⁴ Beth Musgrave, *Vietnamese and Latino Communities Could be More at Risk*, *SUN HERALD* (Biloxi, MS), Sept. 12, 2005, at A11.

The American Declaration guarantees the right to reside where one chooses as a matter of basic dignity and liberty.¹⁶⁵ The occurrence of a natural disaster may temporarily prevent individuals from exercising this right, but the State has the responsibility to take steps so that individuals can, following a disaster, again choose their residence as soon as possible. Specifically, the Guiding Principles recognize the State's obligation to facilitate the return of internally displaced persons as soon as return is feasible.¹⁶⁶

There are four (4) dimensions to the right to return that require U.S. Government action. The State must (1) ensure community participation in rebuilding and resettling efforts;¹⁶⁷ (2) protect residents' right to property in an equitable manner, including following proper measures to restore property or compensate owners for demolished property; (3) protect residents' right to shelter, including temporary shelter where necessary;¹⁶⁸ and, finally, (4) reestablish safe and healthy environmental conditions in disaster-affected regions. Underlying these four

¹⁶⁵ American Declaration, Article VIII, *The Right to Residence and Movement*: Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

¹⁶⁶ Guiding Principles on IDPs, *supra* note 58. Principles 28, 29: *Principle 28(1)*: Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons. *Principle 28(2)* Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration. *Principle 29(1)* Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services; *Principle 29(2)* Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

¹⁶⁷ *Id.*, Guiding Principle 28(2).

¹⁶⁸ Guiding Principles on IDPs, *supra* note 58, Principles 29 and 21(1). In accordance with IDP's rights to property, Principle 29 and Principle 21(1) No one shall be arbitrarily deprived of property and possessions. (2) The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts: (a) Pillage; (b) Direct or indiscriminate attacks or other acts of violence; (c) Being used to shield military operations or objectives; (d) Being made the object of reprisal; and (e) Being destroyed or appropriated as a form of collective punishment. (3) Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use. *Id.*

responsibilities is the U.S. Government's duty to act in accordance with the principle of nondiscrimination. In the Gulf Coast region, these low-income communities are largely composed of African American and immigrant populations,¹⁶⁹ and efforts to properly inform, assist, and otherwise ensure their rights of return must take into account the specific needs of these populations.

a. The Right to Community Participation in Rebuilding and Resettling Efforts

Consistent with the American Declaration's guarantee of the right to residence, U.N. Guiding Principle 28(2) articulates that special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration. Protecting the right to community participation is in keeping with not only the right to residence, but also the rights to dignity and property guaranteed in the American Declaration.¹⁷⁰

The primary way in which the U.S. Government has breached its duty to encourage community participation is through omission. The State has failed to provide a meaningful voice for displaced persons in reconstruction planning and implementation processes, particularly regarding rebuilding of residential areas. As an initial matter, displaced persons who hope to return have no meaningful access to basic information about when and if their homes will be habitable again. This failure to inform preempts any opportunity for displaced persons to exercise their right to participate in resettlement decisions, because it excludes them from the decision-making process altogether.

The U.S. Government's efforts to engage displaced residents have been meager, and they have failed to take into account the post-hurricane diaspora. The handful of town hall forums in

¹⁶⁹ See Section II(b): Background Information: Preexisting Vulnerabilities of Gulf Coast Low-Income African American and Immigrant Communities, *supra*, p.6

¹⁷⁰ American Declaration, Preamble, and Article XIII, Right to Property.

cities outside Louisiana where displaced persons have taken up residence, such as Atlanta, Georgia and Houston, Texas, were ineffective, as they were inaccessible to persons who lacked transportation and thus were poorly attended.¹⁷¹

Accordingly the U.S. Government must first develop a coherent plan that informs displaced persons of their rights and how they will be permitted to rebuild or be compensated for their home loss.¹⁷² Six months after Hurricane Katrina no such plan has been enacted. In the city of New Orleans in particular, the mayor's proposed plan has not yet become concrete, leaving an information vacuum for residents who are unsure if they can return or rebuild their homes.¹⁷³

The Guiding Principles not only point out the need to make special efforts to engage community participation, Principle 29 also provides that displaced persons should not be discriminated against on the basis of their displaced status, but should be allowed to participate fully and equally in public affairs. Voting, a right enshrined by the American Declaration,¹⁷⁴ is a critical part of this participation that is currently in jeopardy, as efforts to reach Louisiana voters displaced in other states may be inadequate. A domestic civil rights group has sued to postpone

¹⁷¹ See Brenda Goodman, *Forum for Evacuees in Atlanta Draws Small, Unhappy Crowd*, Jan. 22, 2006, N.Y. TIMES, at 1.23. See also Will Sentell and Kevin Blanchard, *Louisiana Speaks**Housing, Levees Top Meetings List*, THE ADVOCATE (Baton Rouge, LA), Jan. 22, 2006, at 1A.

¹⁷² The latest plan, unveiled on February 20, 2006 by Louisiana Governor Blanco, proposes federal buyouts of devastated property. See Adam Nossiter, *Louisiana Unveils a Plan With Cash to Rebuild Homes*, N.Y. TIMES, Feb. 21, 2006, p. A5.14. Louisiana Congressman Baker's bill that proposed the federal government ultimately offer buyouts to homeowners and pay off mortgages was rejected by President Bush's administration, see Adam Nossiter, *Rejection of Building Plan Causes Dismay in Louisiana*, N.Y. TIMES, Jan. 25, 2006, at A.1.16.

¹⁷³ Linton Weeks, *The Big Easy? Now It's Limbo Land*, WASH. POST, Feb. 9, 2006, at A01. The mayor's proposed plan requires that neighborhoods demonstrate that over 50% of neighborhood residents intend to return before rebuilding efforts begin in earnest; this is troubling because the very uncertainty perpetuated by the state has prevented displaced residents from deciding on returning. See Frank Donze and Gordon Russell, *4 MONTHS TO DECIDE; Nagin panel says hardest hit areas must prove viability; City's footprint may shrink; full buyouts proposed for those forced to move; New housing to be developed in vast swaths of New Orleans' higher ground*, TIMES-PICAYUNE (New Orleans, LA), Jan. 11, 2006, at 1.

¹⁷⁴ American Declaration, Article XX.

New Orleans' upcoming mayoral elections until the voting rights of these displaced residents are guaranteed.¹⁷⁵

b. The Right to Property

The U.S. Government's policies regarding property demolition and restoration fail to respect and protect hurricane victims' rights to residence and property as guaranteed under the American Declaration. In fulfilling these duties, the U.S. Government must abide by the norm of nondiscrimination.

In compliance with the principle of nondiscrimination, the U.S. Government must take into account returnees' cultural and historical ties to land, or as may be the case for Gulf Coast shrimping communities, ties to the sea.¹⁷⁶ In coastal regions devastated by Hurricanes Rita and Katrina, such as Port Arthur, Texas and Bayou La Batre, Alabama, many Vietnamese immigrants make their living through shrimping and fishing.¹⁷⁷ The U.S. Government's refusal to help these hurricane victims recover their shrimping boats is not just a denial of their economic livelihood, but also a violation of their right to return to their homes because it gives displaced shrimpers little incentive to return. Where it is impossible to recover shrimpers' boats, or where other factors such as increased fuel prices and the destruction of the seafood industry's

¹⁷⁵ Cain Burdeau, *Group Claims New Orleans Election Plan Hurts Blacks; Lawsuit Filed*, ASSOCIATED PRESS, Feb. 9, 2006. In contrast to Louisiana, with many residents displaced out of state, in Mississippi, efforts to register displaced voters have been facilitated by the fact that most evacuees did not leave the state. See Elizabeth White, *Katrina-Ravaged States Plan for Elections*, ASSOCIATED PRESS, Feb. 5, 2006.

¹⁷⁶ Guiding Principles on IDPs, *supra* note 58, Principle 9(2): States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

¹⁷⁷ See Timothy Boone, *Seafood Industry Pleads Its case*, THE ADVOCATE (Baton Rouge, LA), Jan. 5, 2006, at 1D; see also Edward Hegstrom, *Port Arthur: Vietnamese Worry About the Future of Shrimping*, HOUSTON CHRONICLE, Oct. 8, 2005, at B1; and Matt Apuzzo, *Stricken Shrimpers Face Desperate Times in Gulf*, THE ADVOCATE (Baton Rouge, LA), Sept. 15, 2005, at 1D.

infrastructure may prevent shrimpers from returning to their pre-disaster occupation, the U.S. Government must continue its efforts to provide them with training in alternative industries.¹⁷⁸

The U.S. Government must also take into account the cultural and historical ties to the region of many of the low-income African American communities. For example, many African American residents of New Orleans trace their ties to the city to before the U.S. Civil War.¹⁷⁹ Another factor to consider is the high percentage of the pre-hurricane Gulf Coast population that was born and raised in the region.¹⁸⁰ Demographers have noted that these high rates of native-born residents suggest that displaced residents are more likely to be connected to the region and more eager to return, but may be prevented by persisting uncertainties about housing and employment in their home cities.¹⁸¹

In observance of these ties, the U.S. Government's affirmative duty to protect of IDPs' property against destruction and further damage¹⁸² is shown in sharp relief. Low-income African American residents who, because of cultural and historical ties, strongly wish to return, have not been able to do so, because of the government's failure to communicate a coherent rebuilding and demolition strategy. The U.S. Government has thus far lagged in protecting returning residents' rights to property in taking adequate measures to ensure proper inspection of houses before issuing demolition orders, properly notifying owners of demolition, and, where demolition or elevation is mandated, providing compensation to owners.

To date, adequate inspections of flood-damaged houses have not taken place. Many inspections have either been "rapid exterior inspections" or satellite-produced.¹⁸³ The failure to

¹⁷⁸ *Port Arthur: Vietnamese Worry About the Future of Shrimping*, *supra* note 178.

¹⁷⁹ James Dao, *In New Orleans, Smaller May Mean Whiter*, N.Y. TIMES, Jan. 22, 2006, at 1.1

¹⁸⁰ Audrey Singer and Katharine M. Donato, *In Katrina's Wake, Who Will Return?* Brookings Institute Web Exclusive, Sept. 27, 2005, available at http://www.brookings.edu/views/op-ed/20050927_singer.htm.

¹⁸¹ *Id.*

¹⁸² Guiding Principles on IDPs, *supra* note 58, Principle 21(3).

¹⁸³ Eric Lipton, *FEMA Calls 60,000 Houses in Storm Area Beyond Repair*, N.Y. TIMES, Nov. 5, 2005, at A14.

properly inspect houses before slating them for either demolition or expensive flood-proofing violates residents' right to property by depriving them of their homes without procedural safeguards. And where demolition or elevation is proper, the U.S. Government has failed to provide low-income residents with the means to pay for flood-proofing or receive reparations for their homes.

Furthermore, compounding the effects of inadequate inspection, insufficient notice about demolition has also deprived residents of their right to property. The New Orleans city government only agreed to adequately notify owners of the demolition of their homes after settling a lawsuit.¹⁸⁴ Until that point, displaced persons could not ascertain whether or not their homes were slated for demolition, much less seek judicial recourse to contest the act. An ad hoc appeals process has emerged to permit residents with damaged homes to appeal city orders to demolish or flood-proof damaged homes. However, this crude review process is available only to those residents who can physically access New Orleans city hall, not those who are displaced outside the city or who lack transportation.¹⁸⁵

Residents have sought these ad hoc review measures because the U.S. Government has insufficiently protected the right of homeowners to reparation where their property cannot be restored to them. Guiding Principle 29(2) provides that "competent authorities will provide or assist in obtaining appropriate compensation or another form of just reparation."¹⁸⁶ Although the State of Louisiana recently released a plan outlining reparations for homeowners that deemphasizes buyouts and attempts to encourage homeowners to return and rebuild, the plan has

¹⁸⁴ *Demolition Process and Notification*, City of New Orleans Website, <https://secure.cityofno.com/portal.aspx?portal=37&load=~/Services/SafetyAndPermits/Permits/DemolitionExhibit.ascx>, stating, "Pursuant to a Consent Decree between the City of New Orleans and plaintiffs in, *Kirk, et al v. The City of New Orleans*, notification will be published in Times-Picayune newspaper for three (3) consecutive days, beginning Monday, February 6, 2006, and will also be posted online at www.cityofno.com. The City will also send notification by U.S. Mail to the last known address of the homeowner, if the address of the homeowner can be determined."

¹⁸⁵ Adam Nossiter, *Sparing Houses in New Orleans Spoils Planning*, N.Y. TIMES, Feb. 5, 2006, at 1.1.

¹⁸⁶ Guiding Principle on IDPs, *supra* note 58, Principle 29(2).

not yet been put into effect.¹⁸⁷ As the U.S. Government implements the reparation plan, care must be taken to guarantee low-income and limited English proficient individuals receive adequate information about the scope of the compensation provided.

c. The Right to Shelter

Currently, the State is jeopardizing residents' right to return¹⁸⁸ by failing to provide adequate temporary housing near residents' original homes, which would enable returnees to reestablish their communities and oversee the rebuilding process. The U.S. Government must overcome logistical hurdles, such as delivery, installation, electrical and sewage services, in delivering promised trailers, which enable residents to return and reestablish their communities.¹⁸⁹ As of mid-February of this year, sixty percent of the 90,000 requests for manufacturing housing in Louisiana have not been met.¹⁹⁰ The importance of delivering the promised trailers is reinforced by the termination of housing and hotel voucher programs which has left residents, particularly low-income residents without other resources to resettle, without shelter.¹⁹¹

Furthermore, the U.S. Government must establish temporary housing areas in accordance with principles of nondiscrimination. Some neighborhoods have resisted the installation trailers by citing concerns about property value decline and crime rates, though community groups note

¹⁸⁷ See *Louisiana Unveils a Plan With Cash to Rebuild Homes*, *supra* note 173 .

¹⁸⁸ American Declaration VIII, XXIII; Guiding Principles on IDPs, *supra* note 58, Principle 29(2).

¹⁸⁹ Spencer Hsu, *Post-Katrina Promises Unfulfilled; On the Gulf Coast, Federal Recovery Effort Makes Halting Progress*, WASH. POST, Jan. 28, 2006, at A01. See also Eric Lipton, *Trailer Dispute May Mean Thousands Will Go Unused*, N.Y. TIMES, Feb 14, 2006, at A.18; Jennifer Steinhauer and Eric Lipton, *Storm Victims Face Big Delay To Get Trailers*, N.Y. TIMES, Feb 9, 2006, at A.1

¹⁹⁰ *Storm Victims Face Big Delay to Get Trailers*, *supra* note 190. In Mississippi, officials report that installation efforts have been far more successful, in part because Louisiana has faced problems with "not in my neighborhood protests," *Id.*

¹⁹¹ James Varney, *People in Hotels Urged to Move; Not Everyone Will Get Trailer, FEMA Says*, TIMES-PICAYUNE (New Orleans), Feb. 2, 2006, p.1. See also, Michelle Goldberg, *Homeless Again in New Orleans*, Salon.com, Feb. 7, 2006, available at www.salon.com/news/feature/2006/02/07/hotels.

that these concerns demonstrate a thinly veiled effort to exclude persons of different economic classes or race from their neighborhoods.¹⁹² Because of these “not in my neighborhood” protests against trailer installation, only a small fraction, 1,632 of 30,000 of the requested trailers have been installed in New Orleans.¹⁹³

d. The Right of Return and to a Safe and Healthy Environment

The State must protect returnees’ rights to return, life, health by monitoring and establishing safe, livable conditions for former residents. The U.S. Government’s responsibilities in this regard include clearing the affected areas of harmful debris and monitoring residents’ potential exposure to toxins in the soil, air, and water. The U.S. Government also has the duty to candidly inform residents who hope to return about toxicity levels in the region. State officials have reiterated, “there are generally no unacceptable long-term health risks directly attributable to environmental contamination resulting from the two hurricanes.”¹⁹⁴ Early reports in October and November 2006 found toxicity levels that were lower than expected,¹⁹⁵ according to environmental monitoring officials. However, these findings have been not been confirmed and government officials admit that monitoring efforts are not yet complete.¹⁹⁶ Contrary to these government reports, regional environmental groups dispute the government’s findings and point to high arsenic and toxin levels in water and soil that

¹⁹² Rob Nelson & James Varney, ‘Not in My Back Yard’ Cry Holding Up FEMA Trailers: Emotional Tone of Opposition Hints at Role of Stereotypes of Race, Class, TIMES-PICAYUNE (New Orleans), Dec. 26, 2005, at 1. See also, Ellen Tandy, Trailers Anger Neighbors, THE ADVOCATE (Baton Rouge), Jan. 31, 2006, available at www.theadvocate.com/news/2255091.html.

¹⁹³ *Id.*

¹⁹⁴ Letter from Mike McDaniel, Secretary, Louisiana Department of Environmental Quality to Natural Resources Defense Council, (February 2, 2006), stating that though environmental sampling was not complete, it indicated that no immediate health risk existed. The first major report on environmental considerations was issued on October 13, 2005. A second report was issued in January 2006.

¹⁹⁵ Amy Wold, ‘Toxic Soup’ Concerns- All Hype? THE ADVOCATE (Baton Rouge, LA), Feb. 13, 2006.

¹⁹⁶ “Further efforts to evaluate the potential long-term health effects...are ongoing”- Letter from Louisiana Department of Environmental Quality, *supra* note 195.

are up to 10 times Louisiana standards; these groups also point to the government's failure to conduct sufficient testing and make those results public.¹⁹⁷

The U.S. Government must continue to carefully monitor all indicia of environmental safety and inform the public about any changes to its current analyses. Furthermore, the U.S. Government must observe the right to nondiscrimination by ensuring that cleanup proceeds equitably – taking into account neighborhoods with older houses, older plumbing systems and dangerous building materials such as asbestos may require more intensive efforts that must account for particular safety hazards.

VII. WORKERS' RIGHTS IN THE RECONSTRUCTION PHASE

a. Human Rights of Reconstruction Workers

Natural disasters such as hurricanes endanger the human rights of a number of populations, not only those immediately impacted by the disaster. In the context of the Gulf Coast Hurricanes, the U.S. Government's duty to safeguard the human rights of individuals within its borders extends to the cleanup and reconstruction workers. Our analysis will specifically focus on the large population of migrant workers who have participated in reconstruction efforts. Nongovernmental organizations have chronicled the plethora of human rights violations against these workers, including the U.S. Government's failure to monitor employers who fail to pay wages, abide by adequate health and safety precautions, or remedy discrimination issues.

¹⁹⁷ Matthew Brown, *Debate Renewed as Soil is Retested- EPA Downplays Risk but Activist Cries Foul*, TIMES-PICAYUNE (New Orleans, LA), Feb. 10, 2006, at 1. *See also*, New Testing Shows Widespread Toxic Contamination in New Orleans Soil, National Resources Defense Council Press Release, Dec. 1, 2005, at <http://www.nrdc.org/media/pressreleases/051201.asp>.

Within the Inter-American system, the rights of migrant workers to life, health, and remuneration, regardless of immigration status, have been consistently recognized. The Inter-American Court recently affirmed these rights in its Advisory Opinion on the *Juridical Condition and Rights of the Undocumented Migrants*.¹⁹⁸ This opinion’s discussion of migrant workers’ rights within employment relationships is of particular relevance to our present analysis of the Gulf Coast hurricane reconstruction effort: “a person who enters a State and assumes an employment relationship, acquires his labor human rights in the State of employment, irrespective of his migratory status, because respect and guarantee of the enjoyment and exercise of those rights must be made without any discrimination.”¹⁹⁹ This holding simply interprets the rights to life, health, and remuneration enshrined in the American Declaration in light of the principle of nondiscrimination found in Article II of the same instrument.²⁰⁰

The State has responsibilities to migrant workers when it is itself an employer, but also in cases where third party employers act with the State’s “tolerance, acquiescence, or negligence.”²⁰¹ Thus, whether the State is the primary employer or not, it must protect worker rights by creating legislation that defines the labor relationship, monitoring the compliance with that legislation, and providing recourse for workers when their rights are violated.²⁰²

b. Right to Remuneration

Immediately following the Gulf Coast Hurricanes, President Bush suspended legislation requiring payment of prevailing wages for federally-funded reconstruction contracts as well as

¹⁹⁸ *Juridical Condition and Rights of the Undocumented Migrants*, *supra* note 75.

¹⁹⁹ *Id.* at par. 133.

²⁰⁰ American Declaration, Article I, *Right to life*; Article II, *Right to Equality*; Article XI, *Preservation of health and Well-being*; Article XIV, *Work and Fair Remuneration*.

²⁰¹ *Juridical Conditions and the Rights of the Undocumented Migrants*, par. 152, *supra* note 75.

²⁰² *Id.* at pars. 146-152

requiring employers to maintain payroll records.²⁰³ The effect of suspending this legislation not only gave contractors license to pay lower wages to workers, it also permitted contractors leeway to keep their payroll records private, which leaves room for worker exploitation.²⁰⁴ Although the legislation has since been reinstated, several large subcontracts were signed during this suspension period.²⁰⁵

By waiving this legislation, without implementing accompanying measures to keep employers accountable for proper remuneration, the U.S. Government has neglected the reconstruction workers' rights to remuneration. Advocacy organizations and media outlets in the Gulf Coast have documented numerous cases of workers who have not been paid for their work.²⁰⁶ Furthermore, not only do contractors fail to pay workers, they also place them in unhealthy living conditions and fail to provide them with food after promising them room and board in addition to work.²⁰⁷ Though the U.S. Government's Department of Labor has obtained back pay for unpaid workers in cases involving one Gulfport, Mississippi subcontractor, the Government must increase these efforts to remedy remuneration violations.²⁰⁸

Two domestic lawsuits have been filed against large reconstruction firms on behalf of migrant workers who are particularly vulnerable to exploitation because of their reluctance to

²⁰³ Memorandum from Alfred Robinson, Deputy Administrator of U.S. Department of Labor Employment Standards Administration (Sept. 22, 2005).

²⁰⁴ Davis-Bacon Act was suspended by the U.S. Department of Labor, Employment Standards Administration, *see* Thomas Edsall, *Bush Suspends Pay Act in Areas Hit by Storm*, WASH. POST, Sept. 9, 2005, at D03.

²⁰⁵ *See* Edsall, *supra* note 205.

²⁰⁶ Justin Pritchard, *Immigrants Often Unpaid for Katrina Work*, ASSOCIATED PRESS, Nov. 6, 2005. Joshua Norman, *All Work and No Pay Is Plight of Some- Latino Workers Face Fight to Receive Their Due*, SUN HERALD (Biloxi, MS), Nov. 19, 2005, at A1. *See also* Darryl Fears, *Firms in Gulf Coast Allege Nonpayment: 150 Immigrants' Cases Sent to Labor Dept.*, WASH. POST, Nov. 4, 2005, at A04. *See also*, Kristen Gelineau, *Civil Rights Leaders Say Hispanic Immigrants Going Unpaid for Katrina Work*, ASSOCIATED PRESS, Nov. 19, 2005.

²⁰⁷ Robin Pogrebin, *Lured to U.S. by the Work but Struggling for Fair Pay*, N.Y. TIMES, October 17, 2005, at A15.

²⁰⁸ *U.S. Labor Department Recovers Over \$141,000 in Back Wages for 106 Workers Involved in Hurricane Clean-up Work*, News Release, U.S. Department of Labor, Jan. 25, 2006.

report wage abuses.²⁰⁹ The companies involved in the lawsuits allegedly refused to pay overtime and used a subcontracting system to avoid paying wages to hundreds of workers, the majority of whom were Latino. The plaintiffs cleaned mold, mud, and toxic contamination from flooded government buildings including courthouses, schools, and hospitals, and were either under compensated or not compensated at all for their labor.²¹⁰

The U.S. Government's failure to uphold migrant workers' right to remuneration amounts to *de facto* discrimination. The U.S. Government's duty to provide procedural safeguards to prevent wage violations failed to take into account Latino workers' hesitancy to approaching government authorities,²¹¹ as the only government labor agencies where workers can file wage complaints are located in the same buildings as immigration enforcement offices.²¹² The U.S. Government's prerogative to enforce immigration laws should not conflict with workers' right to seek legal recourse for wage violations. Thus, the U.S. Government must take adequate measures to distinguish between agencies enforcing workers' rights from those enforcing immigration laws and to inform all workers of their right to remuneration without fear of immigration consequences. To that end, the Government must prevent labor violations by monitoring and holding accountable employers who attempt withhold wages by calling immigration enforcement to round up workers who have completed their work but have not yet been paid.²¹³

²⁰⁹ *Center Seeks Justice for Katrina's Migrant Workers*, Press Release by Southern Poverty Law Center, Feb.2, 2006, available at www.splcenter.org/legal/news/article.jsp?aid=160&site_area=1&printable=1.

²¹⁰ *Id.*

²¹¹ See Section II(b): Background Information: Preexisting Vulnerabilities of Gulf Coast Low-Income African American and Immigrant Communities, *supra*, p.6. See also, *All Work and No Pay is Plight of Some*, *supra* note 207, noting that the - Department of Labor is just down the hall from ICE.

²¹² *All Work and No Pay is Plight of Some*, *supra* note 211.

²¹³ *Id.*, see also Joshua Norman, *Labor Management – Latinos Here to Work*, SUN HERALD (Biloxi, MS), Dec. 4, 2005, at A1.

c. Rights to Health and Life

The U.S. Government breached the duty to safeguard the health and life of all individuals, including migrant workers following the Gulf Coast Hurricanes, by failing to implement adequate and accessible health and safety monitoring and enforcement measures in the months following the Hurricanes. The U.S. agency responsible for monitoring workplace health and safety, the Occupational Health and Safety Administration (“OSHA”), suspended its routine inspection and enforcement of Gulf Coast workplaces for several months, and only resumed monitoring on January 25, 2006.²¹⁴ Though this suspension was supposed to make OSHA more effective at targeting egregious violations, it breached the rights of migrant workers by failing to implement health and safety monitoring, as well as training, at the time when it was most necessary. The health of cleanup workers has been critically jeopardized by this lack of adequate inspection; workers are clearing out sites with asbestos and hazardous waste without adequate safety gear or training.²¹⁵

Furthermore, given migrant workers’ particular reluctance to approach government agencies,²¹⁶ the U.S. Government should have made special efforts to reach out to these workers, many of whom were engaged in the most hazardous cleanup activity. Instead, government officials discouraged this population from accessing proper health and safety training by blurring the lines between OSHA and immigration enforcement agencies. In an incident in North Carolina, in October 2005, shortly after the Gulf Coast Hurricanes, Latin American migrant

²¹⁴ *OSHA Resuming Regular Enforcement Along Most of Gulf Coast*, OSHA National News Release, January 20, 2006, available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=11805.

²¹⁵ Robin Pogrebin, *Lured to U.S. by the Work but Struggling for Fair Pay*, *supra* note 208. Bill Chandler of Mississippi Immigrants Rights Advocates reports lack of safety gear, such as goggles and gloves, as well as inadequate vaccinations for tetanus and other diseases likely to arise on cleanup sites. *Id.* See also *EPA Warns of Cleanup Dangers*, *TIMES-PICAYUNE* (New Orleans, LA), Sept. 14, 2005, listing safety precautions for cleanup workers.

²¹⁶ See Section II(b): Background Information: Preexisting Vulnerabilities of Gulf Coast Low-Income African American and Immigrant Communities, *supra*, p.6.

workers were detained by immigration officials posing as OSHA officials at a mock health and safety training set up specifically to ensnare undocumented persons.²¹⁷ The U.S. Government has stated that it will not disavow these methods in the future, despite the chilling effect they have on workers' willingness to attend training sessions.²¹⁸ Such intentionally deceptive measures will only further endanger workers' health and safety, as they become increasingly suspicious of government attempts to address and improve their working conditions.

d. Discrimination Against Migrant Workers

As a population particularly vulnerable to exploitation, migrant workers must be protected from discrimination.²¹⁹ The State has perpetuated discrimination against migrant workers through failing to monitor and effectively address workers' rights violations. By failing to enact and communicate a consistent policy on immigration enforcement that separates human rights protections from legal enforcement of domestic immigration laws, the U.S. Government places in jeopardy the effective protection of workers' rights. By permitting employers to use, with impunity, immigration enforcement as a mechanism to avoid paying workers, the U.S. Government also jeopardizes the workers' rights to remuneration and nondiscrimination. By implementing inadequate health and safety training and monitoring measures, the U.S. Government violates workers' rights to life and health.

Cleanup efforts, though underway, will continue in the months to come. Much of the large-scale, government-funded rebuilding contracts have not yet begun. In total, \$1.6 billion

²¹⁷ Letter from Monica Guizar, Employment Policy Attorney, National Immigration Law Center, to Jonathan Snare, Deputy Assistant Secretary of OSHA, U.S. Department of Labor (Oct. 4, 2005).

²¹⁸ Steven Greenhouse, *U.S. Officials Defend Ploys To Catch Immigrants*, N.Y. TIMES, February 11, 2006, at A8.

²¹⁹ *Juridical Condition and Rights of the Undocumented Migrants*, *supra* note 75.

dollars has already been allocated by the federal government toward rebuilding efforts.²²⁰ In addition to acknowledging existing violations of migrant workers' rights, the U.S. Government must act to prevent further discrimination from occurring in the rebuilding that is yet to come.

VIII. CONCLUSION

By ignoring the needs and rights of the region's most vulnerable communities, the U.S. Government magnified the destructive effects of the Gulf Coast Hurricanes. The human toll of future disasters can be significantly reduced if States address the human rights challenges faced by survivors and recovery workers participating in reconstruction efforts. The Commission is in a unique position to promote the protection of human rights in natural disaster preparedness, response and recovery. Based on the factual and legal analysis presented in this written submission, we respectfully request that the Commission adopt the following objectives to ensure that the rights of natural disaster survivors and recovery workers are respected and protected by each Member State of the OAS.

The Commission should:

- promptly undertake an onsite visit to the Gulf Coast region in order to address the urgent human rights situation of persons displaced by the Gulf Coast Hurricanes and workers participating in reconstruction efforts;
- provide comments to the UN Representative on IDPs on the Draft of the Operational Guidelines on Human Rights Protections in Situations of Natural Disasters;
- generate awareness of Member States' duty to respect and protect the human rights of victims of natural disasters and recovery workers;

²²⁰ Spreadsheet: Hurricane Katrina Contracts, The Federal Procurement Data System, at <http://www.fpds.gov/>. The Federal Data Procurement System's latest information on hurricane-related contract awards, as of March 2, 2006, notes that the total amount of funds allotted to post-Katrina contracts stands at \$1.6 billion (most FEMA and Defense Department contracts are not included). The largest portions of this amount are attributed to Homeland Security, the Environmental Protection Agency, and the Department of Transportation.

- make specific recommendations to Member States on areas related to the protection and promotion of the rights of disaster survivors, so that they adopt measures in their favor;
- prepare reports and special studies on the situation of disaster survivors and, more broadly, studies on issues pertaining to human rights and natural disasters; and
- act promptly on petitions or communications in which it is noted that the human rights of disaster survivors are violated in any Member State of the OAS.