

# **Housing and Homelessness in the United States of America**

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**Submitted by:**

National Law Center on Homelessness & Poverty, Chair,  
US Human Rights Network UPR Housing Working Group

**Working Group Members:**

Chicago Anti-Eviction Campaign  
National Coalition for the Homeless  
National Fair Housing Alliance  
National Low Income Housing Coalition  
Unity Parenting and Counseling, Inc.

**Endorsed by:**<sup>1</sup>

A Community Together, Lane County, Oregon | ACLU of Idaho | ACLU of the Nation's Capital | Boise/Ada County Homeless Coalition | CAAAV Organizing Asian Communities | Covenant House International | FEANTSA, the European Federation of National Organisations working with the Homeless | Global Initiative for Economic, Social, and Cultural Rights | Greater Cincinnati Coalition for the Homeless | Habitat International Coalition | Homeless Persons Representation Project | Integrated Community Solutions, Inc. | International Alliance of Inhabitants | International Human Rights Clinic of Loyola Law School Los Angeles | Kairos Center for Religions, Rights, and Social Justice at Union Theological Seminary | Labour, Health and Human Rights Development Centre | LUK, Inc. | Malcolm X Center for Self Determination | Medical Whistleblower Advocacy Network | Metro Atlanta Task Force for the Homeless | Metropolitan Interfaith Council on Affordable Housing | National AIDS Housing Coalition | National Center for Housing and Child Welfare | National Economic & Social Rights Initiative | National Health Care for the Homeless Council | National Lawyers Guild | Plataforma Interamericana de Derechos Humanos y Desarrollo | Poor Peoples Economic Human Rights Campaign | Poverty & Race Research Action Council | Public Justice Center | Sacramento Regional Coalition to End Homelessness | The Praxis Project | Urban Justice Center | Urban Pathways | Washington Legal Clinic for the Homeless

### **Individual Endorsements:<sup>2</sup>**

Caroline Bettinger-Lopez, Acting Director, International Human Rights Clinic, Visiting Associate Clinical Professor, The University of Miami Law School | William Nicholas Gomes, Human Rights Activist and Freelance Journalist, UK | Risa E. Kaufman, Executive Director, Human Rights Institute, Lecturer-in-Law, Columbia Law School | Noah Leavitt, Associate Dean of Students, Whitman College | JoNel Newman, Clinical Professor, Director, Health Rights Clinic, University of Miami School of Law | Connie Pascale, Attorney | Bill Quigley, Professor of Law, Loyola University New Orleans College of Law | Florence Wagman Roisman, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School of Law | Andrew Scherer, Policy Director, Impact Center for Public Interest Law at New York Law School | Andrew Thomson, Chair, City of Eugene Human Rights Commission | David Wagner, Professor of Social Work and Sociology, University of Southern Maine

**Contact Name:** Eric Tars

**Contact Phone & Email:** +1-202-638-2535 x. 120, [etars@nlchp.org](mailto:etars@nlchp.org)

## **I. Executive Summary**

1. The United States of America recognized the human right to housing in the Universal Declaration of Human Rights as well as a number of other international covenants and declarations, and accepted recommendations during the 2010 Universal Periodic Review to reduce homelessness; reinforce legal protections for homeless persons; create adequate, affordable housing for all segments of American society; and take further measures to address discrimination and inequalities in housing.
2. Since the 2010 Review, the U.S. has received findings and recommendations on its failure to uphold the right to housing or protect the rights of homeless persons -- from the Special Rapporteur on the Human Right to Safe Water and Sanitation, the Human Rights Committee, and the Committee on the Elimination of Racial Discrimination.
3. With regards to the housing-specific recommendations accepted by the U.S., since 2010:
  - a. Homelessness has not been reduced. U.S. law provides no entitlement to housing assistance for low income people; recognition of a right to even basic shelter is extremely limited. Despite gains for some sub-populations including veterans and chronically homeless individuals, the number of homeless families, children, and unaccompanied youth has risen since 2010. Thousands of federal, state, and local government-owned properties remain vacant even as families are forced onto the streets. Domestic violence remains a leading cause of homelessness among women. Lack of a right to counsel in civil cases concerning housing leads to wrongful evictions and foreclosures.
  - b. Homeless persons remain vulnerable to threats. Despite the lack of adequate housing or even shelter, many homeless people in the United States regularly face the degradation of performing basic bodily functions – sitting, eating, sleeping, and going to the bathroom – in public, a condition which is compounded when they are criminally punished for doing so. Homeless people living in encampments are routinely evicted with no provision of alternative housing. All this leads to a climate which permits brutal violence against homeless persons to take place.
  - c. Housing affordability remains at crisis levels. In no U.S. jurisdiction can a person working full time at the federal minimum wage afford a one-bedroom apartment. Due to lack of funding, only one quarter of renters eligible for federal housing assistance actually receive it, and the federal budget for developing and maintaining public housing and providing for low-income housing subsidies has decreased. No binding requirements exist for jurisdictions to plan for and create incentives for the production of sufficient adequate, affordable housing for low- income persons.
  - d. Discrimination on the basis of race, disability, gender, national origin, criminal background, and a number of other characteristics remains persistent in the housing market. Foreclosures have taken a disparate toll in minority communities, through both the foreclosures themselves, and the lack of

maintenance of foreclosed properties by institutional owners. This leads to the persistence of segregated, inadequate housing conditions for many minorities; the federal government is failing to use its full powers to correct these inequities, and in some cases is promoting them.

4. To comply with its human rights obligations, the U.S. should:
  - a. Take further steps to reduce homelessness by ensuring no family or individual is evicted without a place to go. This can be achieved by making permanent the Protecting Tenants At Foreclosure Act to prevent tenants from being evicted by new owners of foreclosed properties, prohibiting evictions of homeless encampments without providing adequate alternative housing, providing a right to counsel in all civil cases involving the potential loss of housing, and promulgating strong regulations to implement effectively the expanded housing rights to protect domestic violence survivors from eviction, enacted in the reauthorization of the Violence Against Women Act;
  - b. Better protect homeless persons by creating federal funding incentives to discourage criminalization of homelessness, passing homeless bills of rights, tracking hate crimes against homeless persons by passing the Violence Against the Homeless Accountability Act, and encouraging local tracking of violence against homeless peoples;
  - c. Ensure adequate, affordable housing by increasing funding for homelessness prevention and affordable housing programs, including by adequately and permanently funding the National Housing Trust Fund, promoting inclusionary zoning requirements that increase the amount of housing that is developed for extremely low income people, and reducing barriers to accessing housing benefits, including the limited definition of homelessness; and
  - d. Increase enforcement of anti-discrimination laws, by pursuing cases of disparate impact that create segregation, reducing the impact of federal lending policies that disproportionately harm communities of color, and requiring the maintenance of foreclosed homes.

## II. Background and Framework

### a. National Framework:

#### i. Scope of International Obligations:

5. The United States is under obligations to protect the human right to adequate housing under numerous treaties and declarations.<sup>3</sup> It specifically accepted recommendations during the 2010 Universal Periodic Review to “reduc[e] the number of homeless people,”<sup>4</sup> “[r]einforce the broad range of safeguards in favor of ... the homeless to allow them the full enjoyment of their rights and dignity,”<sup>5</sup> “continue its efforts in the domain of access to housing... in order to meet the needs for adequate housing at an affordable price for all segments of American society,”<sup>6</sup> and “take legislative and administrative measures to address a wide range of racial discrimination and inequalities in housing...”<sup>7</sup> In the past four years, the U.S. has received specific recommendations regarding the right to adequate housing and protection of homeless persons from criminalization, from the U.N.

Human Rights Committee (“HRC”) <sup>8</sup> and the Committee on the Elimination of Racial Discrimination (CERD) in 2014<sup>9</sup>, and the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (“Water Rapporteur”) <sup>10</sup> in 2012. To date, no comprehensive or specific action plan addressing the concerns and recommendations raised by any of these human rights monitoring bodies has been proposed by the Administration.

ii. Constitutional and Legislative Framework:

6. At both the federal and local levels, the U.S. has included as legislation and/or policy some of the elements of the right to housing. However, many significant elements are missing, and others are under-funded and under-implemented. Housing is not protected as a right in the Constitution or by legislation, though legislation, including the 1949 Housing Act, the 1968 Fair Housing Act, and the 1987 McKinney-Vento Homeless Assistance Act, has improved access to housing for some. Legislative programs include funding for subsidized housing, protections for the security of tenure of residents, housing codes, creation of housing discrimination enforcement bodies, and resources for homeless assistance programs. However, the Department of Housing and Urban Development (HUD) budget has decreased by more than 56% since its high point in 1978, leading to the loss of approximately 10,000 units of federally-subsidized low income housing each year.<sup>11</sup> The U.S. Interagency Council on Homelessness (“USICH”) has issued a federal strategic plan to prevent and end homelessness,<sup>12</sup> and a report on constructive alternatives to the criminalization of homelessness,<sup>13</sup> but neither provides funding for their implementation. The Special Rapporteur on the Right to Adequate Housing (Housing Rapporteur) provided extensive discussion of existing housing programs in her 2010 report on the U.S.<sup>14</sup>

iii. Institutional and Human Rights Infrastructure:

7. Housing program infrastructure is discussed in each of the below sections. In terms of human rights infrastructure, no formal mechanism exists within the government to transmit the recommendations of human rights bodies from the State Department, which receives them, to the domestic agencies at the federal and state level which would implement them, or to legislative bodies, nor is there a national human rights institution.

iv. National Jurisprudence:

8. There is no judicially enforceable right to housing or housing assistance, even where homeless individuals are evicted from temporary dwellings into further homelessness. Both the CERD and the Housing Rapporteur have raised concerns that unlike in criminal cases, there is no right to a lawyer in a civil case, including those cases where a person’s housing is being threatened.<sup>15</sup>

**b. National UPR Consultative Process:**

9. NGOs welcome the government’s willingness to reach out to civil society to engage in a consultative process. However, the lack of interaction with the government during many of these sessions prevented this process from being a

model participatory consultation. Rather than responding to the concerns raised by civil society, the government often gave prepared statements that were unrelated to the concerns presented.<sup>16</sup> We thereby reserve the right to further comment on the government's final report to the Council.

### **III. Promotion & Protection of Human Rights on the Ground**

10. The U.S. has failed to uphold its obligations to protect the human right to adequate housing, under international law and its specifically accepted recommendations on the right to housing and protection of homeless persons from the 2010 Review. According to the Committee on Economic, Social, and Cultural Rights, the human right to housing consists of seven elements: security of tenure; availability of services, materials, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy; each of which must be implemented on a non-discriminatory, progressive basis. Each aspect will be discussed below.

#### **a. Security of Tenure:**

11. According to international standards, all persons — whether renters, homeowners or occupants of emergency housing or informal settlements — should possess legal protection against forced eviction and harassment. In the U.S. today, these protections are often lacking:

##### **i. Renters:**

12. There is a 7 million unit shortage of rental housing that is affordable and available to extremely low income households (households with incomes at or below 30% of area median income).<sup>17</sup> Without assistance, these households find themselves spending more than half their income on rent, leaving very little money for other expenses, and leading to unstable housing situations and homelessness.<sup>18</sup>

13. Rental properties constitute 20 percent of all foreclosures, and of families facing eviction due to foreclosure, approximately 40 percent are renters.<sup>19</sup> Raw numbers of renters affected by the foreclosure crisis have tripled between 2010 and 2013.<sup>20</sup> Prior to the landmark Protecting Tenants at Foreclosure Act many of these renters were completely unaware that their building owners had received foreclosure notices until a new owner evicted them. “I came home from work last night and the locks were changed,” reported one tenant, who had paid his rent on time and was unaware of any pending foreclosure.<sup>21</sup> The new law provides some crucial federal protections for renters in foreclosure; some states have enacted stronger protections<sup>22</sup>. But the law is scheduled to expire in 2014; bills to make it permanent have been introduced in the House and Senate, but passage is unlikely. Moreover, implementation and enforcement are lacking and, to date, no federal agency has taken responsibility for monitoring compliance. Consequently, many renters, who are disproportionately low income and people of color, continue to lose their homes — and face homelessness — due to their landlords' foreclosures.<sup>23</sup>

ii. Homeowners:

14. From 2008 until May 2014, there were over 5 million foreclosures, representing 10 percent of all homes with a mortgage.<sup>24</sup> In just May of 2014, foreclosure notices were filed against one in every 1199 housing units.<sup>25</sup> In Florida, this rate is as high as one in every 469 units.<sup>26</sup> Many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporate *insecure* tenure by their terms, due to interest rates that explode to unsustainable levels.<sup>27</sup> During this foreclosure crisis, many banks received billions in public dollars to maintain their financial stability, with no corresponding commitment to keeping victims of foreclosure in their homes, thereby spending the nation's "available resources," but not in a way that progressively realizes the human right to housing.<sup>28</sup>
15. While federal and state governments reached a National Mortgage Settlement in February 2012 to bring \$26 billion in relief to nearly two million current and former homeowners, this settlement did not address the targeting of minority borrowers. Moreover, this settlement excluded government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, thereby excluding half of the mortgages in the U.S., even while these GSEs are under federal government receivership.<sup>29</sup> By exempting the majority of mortgages, this settlement failed to address the dire housing concerns of millions of families who have suffered from illegal lending practices and face potential homelessness, even though the federal government could easily intervene in the foreclosure process through the Federal Housing Finance Agency.<sup>30</sup>

iii. Access to Counsel:

16. To date, no court or legislature anywhere in the U.S. has recognized a right to counsel in housing matters such as evictions and foreclosures, but lack of access to counsel leads to insecure tenure and wrongful evictions for many tenants in the U.S.<sup>31</sup> In some areas of the country more than 90% of foreclosure and eviction defendants are unrepresented, while landlords and mortgage holders are represented 90% of the time.<sup>32</sup> In May 2014, the San Francisco Right to Civil Counsel Pilot Program released a report that showed 11% of families living in emergency shelter in San Francisco cited evictions (legal and illegal) as the immediate source of their homelessness.<sup>33</sup> However, the report estimated that of 752 tenants provided with representation in their pilot project, 609, or 81% were more likely to avoid homelessness, saving the city \$1,096,200 in homelessness services, given that the average shelter stay for individuals in San Francisco is estimated to be 60 days at \$30/night.<sup>34</sup> In another study, represented tenants fared twice as well as pro se tenants in terms of retaining possession of their homes, and five times as well in terms of having rent waived and obtaining monetary damages.<sup>35</sup> Still, the vast majority of litigants in housing cases remain unrepresented, and the World Justice Project's Rule of Law Index routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system, leading to homelessness and housing rights violations.<sup>36</sup>

iv. Emergency and Dire Circumstances:

17. Despite a dire lack of adequate shelter and affordable housing, homeless persons are increasingly criminalized for engaging in necessary, life-sustaining activities – like sleeping and sitting – that they often have no choice but to perform in public spaces.<sup>37</sup> Following the government’s acceptance of recommendations to “protect the rights of homeless persons” in 2010, advocates called on the federal government to increase its opposition to criminalization at the local level and create funding incentives to prevent criminalization. Following a 2009 congressional mandate that it address the issue, the U.S. Interagency Council on Homelessness (USICH) issued a report, *Searching Out Solutions*,<sup>38</sup> and has referred to criminalization of homelessness as a human rights violation.<sup>39</sup> However HUD and the Department of Justice have yet to implement funding incentives, and since 2011, city-wide bans on camping in public have increased by 60%; city-wide bans on begging in public have increased by 25%; city-wide bans on loitering, loafing, and vagrancy have increased by 35%; city-wide bans on sitting or lying down in particular public places have increased by 43%; and bans on sleeping in vehicles have increased by 119%.<sup>40</sup> Communities routinely engage in forced evictions or “sweeps” of homeless encampments with little notice and no provision of alternative housing, often destroying important documents, medicines, and what little shelter the victims have.<sup>41</sup> Not only does criminalization fail to address the root causes of homelessness, but it is actually counterproductive – it saddles homeless individuals with criminal records, making it more difficult for them to secure or maintain employment, housing, and benefits; burdens the criminal justice system; and violates homeless individuals’ civil and human rights.<sup>42</sup> Three states have passed homeless bills of rights in response to discrimination against homeless persons, but coverage is limited and enforcement is uncertain.<sup>43</sup>
18. In 2014, both the Human Rights Committee and Committee on Racial Discrimination specifically condemned criminalization of homelessness and called for its abolition in their reviews of the U.S. Both committees also echoed advocates’ recommendations to reduce the impact of criminalization through funding incentives and other measures.<sup>44</sup>
19. One of many heart-rending stories of criminalization is that of Jerome Murdough, a homeless African-American veteran living in New York City. He baked to death this year in a jail cell heated to more than 100 degrees, after being arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures.<sup>45</sup> He was incarcerated solely because he had no safe place to sleep, and he paid for it with his life.
20. Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness, by private individuals. From 1999-2013, housed individuals perpetrated 1,437 acts of violence against homeless individuals, in 47 states, Puerto Rico, and the District of Columbia, resulting in 375 deaths, though many



more may go unreported.<sup>46</sup> The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.<sup>47</sup> These crimes, including an array of atrocities from murder to beatings, rapes, and even mutilation, are believed to have been motivated by the perpetrators' biases against homeless individuals or by their ability to target homeless people with relative ease. The most crimes occur in states with the highest rates of criminalization,<sup>48</sup> including Florida, which produced four of eighteen lethal crimes against homeless persons in 2013. Among these was Frank Rudolph, a 54-year-old homeless man beaten to death with sticks and punches by three teenagers in New Port Richey, FL.<sup>49</sup>

21. Domestic violence is a leading cause of homelessness, particularly for women. More than 90% of homeless women report having experienced severe physical or sexual abuse, and many victims of abuse become homeless after escaping violence because adequate housing is not available.<sup>50</sup> The Violence Against Women Act (VAWA) of 2006 created new housing rights for survivors in some federally subsidized housing, and the 2013 reauthorization of the law expanded these protections to nearly all federally funded housing. On August 6, 2013, HUD released an initial notice regarding the applicability of VAWA 2013 to its housing assistance programs.<sup>51</sup> Although the notice was an important first step in implementing the reauthorized housing protections for survivors of domestic violence, HUD has not yet issued more instructive guidance and regulations to ensure the proper implementation of the housing safeguards that protect survivors from being denied or evicted from their housing due to the violence perpetrated against them. And as important as the federal protections are, they only cover the 4.9 million federally-funded rental households - just 12 percent of the estimated 41 million rental households in the United States.<sup>52</sup> Nearly every state has enacted some protections that expand housing protections for survivors, but only thirteen have expanded VAWA's non-discrimination provisions to private landlords, leaving many households without protection.<sup>53</sup>

22. Lack of access to housing and services for homeless youth places them at higher risk for violence. A survey of unaccompanied homeless youth in Illinois found 61% reported being victims of violent crimes, including theft, burglary, and physical or sexual assault, during the past 12 months.<sup>54</sup>

**b. Availability of Services, Materials, and Infrastructure:**

23. Existing infrastructure in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other basic services. For homeless individuals, lack of shelter often means lack of these basic resources, cited by the Water Rapporteur in her 2012 report on the U.S.<sup>55</sup> Title V of the McKinney-Vento Act requires government agencies to make available vacant federal properties to homeless service agencies to provide housing and other services. In March 2013, following litigation, a court found that many government agencies have not been complying with the law and mandated additional steps for compliance.<sup>56</sup>

24. For poor persons, water disconnections often happen when people have to choose between paying for water or rent, resulting in a violation of both the right to adequate housing and the right to water.<sup>57</sup> In June 2014, the Special Rapporteurs on Housing, Extreme Poverty, and Water called widespread water disconnections to households unable to pay water bills in Detroit “a violation of the human right to water and other international human rights,” and called attention to the disproportionate impact of disconnections on African American communities.<sup>58</sup>

**c. Affordability:**

25. Over half of all American renters pay more than 30% of their income for housing.<sup>59</sup> For extremely low-income (ELI) households, the percentage paying more than half of their income in rent jumps to 76 percent.<sup>60</sup> This problem is in part caused by the lack of available, affordable housing for low-income renters. Average rents increased by an estimated 4.6 percent in 2013 across the nation, and are expected to increase by at least 4 percent per year through 2015.<sup>61</sup> On top of the existing gap in availability of affordable units, the supply of low-cost rental units has declined since 2007.<sup>62</sup> While ELI renter households may qualify for federal and local subsidy programs, demand for these programs far exceeds the supply: *there is only enough funding for one in four eligible renters to receive assistance.*<sup>63</sup> The remaining three-fourths of eligible ELI households desperately in need of housing find themselves on multi-year waiting lists, or find that waiting lists for affordable housing in their area are closed altogether.<sup>64</sup> While the affordable housing stock declines each year and more families and individuals are unstably housed, the rental market for higher-income households continues to grow, foreclosed homes stand vacant, and abandoned government-owned properties remain empty.<sup>65</sup>
26. Lack of affordable housing is a primary cause of homelessness, and the ongoing crisis has led to an increase in the numbers of homeless persons. While HUD’s point-in-time count of homeless persons living in shelters and public places has decreased over the past four years,<sup>66</sup> this number is almost certainly a significant undercount of homelessness.<sup>67</sup> It does not include people living doubled up with family or friends; this number increased by 9.4 percent, to 7.4 million people in 2011, and remained stable during 2012.<sup>68</sup> Moreover, in the 2011-12 school year, over 1.1 million school children were homeless — an increase of 75 percent since the beginning of the economic crisis in 2007.<sup>69</sup>
27. The Department of Housing and Urban Development (HUD) budget has decreased by more than 56% since its high point in 1978, leading to the loss of approximately 10,000 units of federally-subsidized low income housing each year.<sup>70</sup> The National Housing Trust Fund was designed to be a permanent, dedicated funding source to increase and preserve the supply of rental units and increase homeownership for the lowest income households, funded by contributions from government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. However, the Trust Fund lacks any resources; following the takeover of the GSEs by the Federal Housing Finance Administration in 2008, their contributions to the

Trust Fund were suspended (before they had even begun) and no new funding has been provided.<sup>71</sup> Proposals have been made to provide funding either through reform of the mortgage interest tax deduction or resuming payments from the once-again profitable GSEs, but despite a lawsuit seeking to force the latter, no government action has been taken.<sup>72</sup>

**d. Accessibility:**

28. HUD's overly restrictive definition of homelessness excludes persons living in doubled up situations or low-cost motels with no other place to go.<sup>73</sup> This eliminates the eligibility of many in need of resources to receive aid, despite other government agencies recognizing these populations as homeless (see para. 26).<sup>74</sup>
29. Both private landlords and public housing authorities frequently deny people with criminal convictions or even arrest records access to housing, leading 1 in 11 released prisoners into homelessness.<sup>75</sup> Following the 2010 UPR recommendations to increase affordable housing access, HUD issued a letter to public housing authorities encouraging them to reduce these restrictions,<sup>76</sup> but HUD has not taken significant further action to ensure that ex-offenders are housed; the agency has not even collected data to see if any authorities' policies improved.
30. Even where needy applicants are able to access affordable housing or obtain housing assistance, they face discrimination in the private housing market on the basis of race, disability, gender, source of income, or other status, despite some strong de jure protections. There were 27,352 complaints of discrimination registered in 2013 with fair housing agencies, an increase of 262 since 2011,<sup>77</sup> but HUD itself estimates this is only one percent of all housing discrimination cases that happen annually.<sup>78</sup> Because this number remains high, it is clear more work needs to be done to ensure equal access to housing resources.
31. Continued residential segregation and the history of excluding racial minorities from access to sustainable mortgage credit created model conditions for predatory lending to poor households in communities of color.<sup>79</sup> This has led to the loss of wealth built over generations in neighborhoods of color, representing over half of the total cost of the foreclosure crisis in the United States.<sup>80</sup> Government policies contributed to the decline of wealth in communities of color and are currently exacerbating the devastation of the crisis for racial minorities.
32. The GSEs, Fannie Mae and Freddie Mac, were created by Congress to improve the flow of mortgage credit by providing a stable source of funding for low-interest rate loans which banks and other lenders use to provide individuals with home loans. The GSE's have a duty to serve underserved borrowers, yet some of their policies have raised the cost of home loans, creating barriers to access to home loan credit for racial minorities.<sup>81</sup> Without quality and affordable access to credit, borrowers of color will remain devastated by the foreclosure crisis in the United States.

**e. Habitability:**

33. While much of the U.S. enjoys high quality housing stock, many poor families experience dangerous or unhealthy conditions. Between 2007 and 2012, the number of shared households increased by 13.2 percent, totaling 22.3 million households in 2012.<sup>82</sup> Doubled-up living situations are often unstable, overcrowded, and potentially unsafe if families or youth living on their own are forced to move into inadequate or abusive households to avoid living on the streets. Beyond doubling up, low-income housing units are often poorly maintained—in violation of housing codes that lack adequate enforcement mechanisms. Many violations go unpunished and un-remedied, leading to health problems for residents – particularly low-income youth, who experience double the rate of asthma of their moderate-income peers.<sup>83</sup> Most cities do not have universal access to shelter, meaning more people are forced to live on the streets or in unsafe places.<sup>84</sup>
34. Behavioral health needs of homeless persons for adequate housing are not being met. The expansion of healthcare access under the Affordable Care Act holds promise, but 24 states have not yet expanded Medicaid, the government subsidized healthcare program for low-income individuals, leaving 5 million Americans in a “coverage gap”.<sup>85</sup> This will mean that some states will be left behind in treating homeless and poor persons with mentally illness and addiction.
35. Federal banking regulators are failing to guard against the discriminatory treatment of minority communities in the aftermath of the housing crisis. Real Estate Owned (REO) properties are homes that have gone through foreclosure and are now owned by banks, investors, the GSEs, FHA, or the U.S. Department of Veterans Affairs. A nationwide investigation into the maintenance and marketing practices of REO properties found that major banks maintain and market REO homes in white communities significantly better than in communities with higher concentrations of racial minorities, where these properties are left to deteriorate.<sup>86</sup> Unmaintained properties undermine the viability of these communities by posing health risks to neighboring families, bringing down neighboring home values, and serving as a base for criminal activity, ultimately triggering a domino effect that spurs further foreclosure and homelessness. In the Greater Chicago area, for instance, there are an estimated 62,000 vacant and abandoned properties, many of them concentrated in Chicago’s overwhelmingly Black and Latino South and West sides - where four or five abandoned homes can often be found on one residential block.<sup>87</sup> These properties serve as a haven for criminal activity; three times as many crimes occurred in abandoned buildings in 2012 than in 2005, with an average of 7 crimes occurring in abandoned buildings or vacant lots per day in 2012.<sup>88</sup> No uniform regulatory structure exists for how banks must maintain and market REO properties, and the federal government has failed to conduct effective oversight of REO maintenance and marketing practices by financial institutions they regulate. All efforts to counteract REO discrimination have been taken by non-governmental agencies,<sup>89</sup> and investigations into property preservation practices have resulted in lawsuits against companies contracted to maintain REOs

owned by GSEs.

**f. Location:**

36. Adequate housing requires more than four walls and a roof; it also must be in a location that makes it possible to access necessary resources. For poor families, location can be a major disadvantage to education, employment, and access to services – for example, poor families who live in metro areas and take public transportation face, at minimum, 70 percent longer commutes to work than their neighbors with other transportation options.<sup>90</sup> Children who are homeless or whose housing is unstable face frequent disruptions in education, which can negatively impact cognitive development.<sup>91</sup> Although Title VII of the McKinney-Vento Homeless Assistance Act requires schools to keep homeless students enrolled in the last school where they were permanently housed, if that is in the child’s best interest, lack of available shelter or housing within the district often forces students to face long transit rides at high costs to the district, or even transfer to new schools – where educational progress can be interrupted.<sup>92</sup>
37. HUD historically has had a very limited enforcement program for ensuring state and local compliance with the Affirmatively Furthering Fair Housing (AFFH) obligation of the Fair Housing Act, which is intended to eliminate entrenched patterns of segregation by requiring recipients of federal housing and community development funding to administer them in an equitable manner and identify impediments to fair housing. Civil society and the Government Accountability Office (GAO) have both discovered failures in compliance with the AFFH mandate by federal funding recipients and enforcement of the AFFH requirements by HUD. HUD has increased its enforcement of the AFFH mandate, and proposed a regulation concerning AFFH compliance and enforcement in July 2013. Still, structural reforms are needed to sustain progress in desegregation, including the final release of HUD’s AFFH regulation with meaningful standards and oversight mechanisms.

**g. Cultural Adequacy:**

38. The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations – through overcrowding, lack of maintenance, and destruction of historical cultural connections to land and traditional settlement patterns – creating negative impacts on cultural and social practices. Despite an existing lack of adequate resources, Congress reduced funding for the Indian Housing Block Grant program by more than 10 percent (\$50 million) over the past few years.<sup>93</sup> HUD is developing a report, expected to be released in December 2014, on the housing needs of Native Americans, Alaska Natives, and Native Hawaiians, which could bring much-needed attention to this ongoing issue.<sup>94</sup>

## **IV. Recommendations**

39. The U.S. should improve security of tenure by:
  - a. Making permanent the Protecting Tenants at Foreclosure Act, with the

- addition of a private right of action to enable better enforcement of the law, and vesting authority in the Consumer Protection Financial Bureau to enforce compliance;
- b. Providing a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding to legal aid services to facilitate the implementation of this right;
  - c. Reducing criminalization of homelessness by providing federal funding incentives for constructive alternative approaches and decriminalization, and taking active steps to oppose local criminalization efforts including passing homeless bills of rights;
  - d. Requiring communities to provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments;
  - e. Passing the Violence Against the Homeless Accountability Act and encouraging states and municipalities to collect statistics on hate crimes against homeless persons;
  - f. Implementing the Violence Against Women Act's new housing protections through regulations and encouraging states and municipalities to expand the Act's protections to housing that has no federal subsidy.
40. The U.S. should increase the availability of services, materials, and infrastructure by:
- a. Increasing the number of useful vacant properties made available to homeless service providers under Title V of the McKinney-Vento Act and easing the application process;
  - b. Ensuring no person loses access to water or sanitation due to inability to pay.
41. The U.S. should improve housing affordability by:
- a. Increasing federal funding to homelessness prevention programs and expanding HUD's definition of homelessness to include doubled-up families and those in motels, as other federal agencies have done;
  - b. Ensuring that every person can afford adequate housing, through a combination of new construction of subsidized and affordable units, expanded funding for Section 8 and other subsidies, and the creation of a permanent, adequate funding source for the National Housing Trust Fund at a minimum of \$1 billion per year.
42. The U.S. should improve housing accessibility by:
- a. Increasing enforcement of existing fair lending laws;
  - b. Undertaking a comprehensive review through the Federal Housing Finance Agency of all actions planned by the GSEs, for their impact on the ability of minorities to access and maintain homeownership.
43. The U.S. should improve housing habitability by:
- a. Improving code enforcement;
  - b. Issuing guidance to assist government agencies and banks that own foreclosed properties to comply with their civil rights obligations to maintain and market

foreclosed homes in all communities equally. Such guidance must encourage community redevelopment, homeownership, and the creation of affordable rental housing.

44. The U.S. should improve housing location by:
- a. Enabling and encouraging schools to work with housing providers to house homeless families close to their children's schools of origin; and
  - b. Meaningfully implementing the affirmatively furthering fair housing obligation (including finalization of HUD's Affirmatively Furthering Fair Housing Rule) across all agencies administering housing programs, with strong oversight by HUD and additional enforcement resources.
45. The U.S. should improve the cultural adequacy of housing by:
- a. Adequately funding Native American housing programs; and
  - b. Respecting treaty rights, historical connections to land and the relationship of settlement patterns to cultural and social practices.

## V. References

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<sup>1</sup> Submitting and endorsing organizations and individuals jointly endorse this report as a statement of solidarity, but do not necessarily endorse every assertion or policy recommendation made herein.

<sup>2</sup> Individual endorsers' organizational affiliations included for identification purposes only.

<sup>3</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), Art. 25; International Convention on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, Art. 11(1); International Convention on Civil and Political Rights G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52; International Convention on the Elimination of all forms of Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, Art. 5; International Convention on Civil and Political Rights G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, Art. 12, 17.

<sup>4</sup> (Norway)(A/HRC/WG.6/9/L.9/92.113).

<sup>5</sup> (Morocco)(A/HRC/WG.6/9/L.9/92.198).

<sup>6</sup> (Morocco)(A/HRC/WG.6/9/L.9/92.197).

<sup>7</sup> (Democratic People's Republic of Korea)(A/HRC/WG.6/9/L.9/92.67).

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