

CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



**Submission to the  
Universal Periodic Review  
Concerning the United States of America**

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**The Centre on Housing Rights and Evictions (COHRE)**

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## I. Introduction

1. The United States of America (U.S.) is home to millions of people who lack adequate housing. This lack of adequate housing is being exacerbated by a substantial increase in evictions from both private and public housing, particularly in the context of the financial crisis and in the context of the privatization of public housing.<sup>1</sup> The failure of the USA to ratify the relevant international human rights instruments on economic, social and cultural rights, among others, is a contributing factor to the violation of several rights, including the right to adequate housing.

2. Furthermore, racial discrimination impacts housing in the U.S. Indeed, in 2008 CERD expressed that it is “deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterized by sub-standard housing conditions.”<sup>2</sup>

3. Similarly, women face a disproportionate threat to their enjoyment of housing rights in the U.S., where domestic violence is a leading cause of homelessness nationally<sup>3</sup> and victims of domestic violence too often face major obstacles in obtaining and maintaining housing independent from their abusers.<sup>4</sup>

## II. Evictions

4. COHRE welcomes the recent mission to the U.S. by the Special Rapporteur on the right to adequate housing and supports her conclusions and recommendations. In particular, COHRE reiterates the Special Rapporteur’s recommendation that an immediate moratorium be established regarding the **demolition and disposition of public housing** until such a time as one-for-one replacement housing is secured.<sup>5</sup> COHRE’s own research has found that overburdened homeless shelters are all too often the only alternative for those evicted from public housing to make way from demolition. Additionally, residents of public housing should be guaranteed their right to fully participate in all decisions affecting their housing situation, including those dealing with alternative housing.

5. COHRE’s U.S.-based partners report a lack of one-for-one replacement as well as a lack of meaningful participation of public housing residents in the context of the demolition of the Cabrini Green community in Chicago, Illinois. Similarly, rather than facilitate the right to return of Hurricane Katrina IDPs to their housing as required by international law, the U.S. used their displacement to ease the way for demolition of public housing in New Orleans. Again, there was no meaningful participation of the Katrina IDPs in these decisions affecting their right to adequate housing.

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<sup>1</sup> See, e.g., Center on Budget and Policy Priorities, Number of Homeless Families Climbing Due To Recession, 8 January 2009.

<sup>2</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations: United States of America, para. 16, UN Doc. CERD/C/USA/CO/6 (8 May 2008).

<sup>3</sup> The National Law Center on Homelessness and Poverty (NLCHP), “Program: Domestic Violence.” <http://www.nlchp.org/program.cfm?prog=3> (last accessed February 24, 2010).

<sup>4</sup> Legal Momentum, “Understanding the Effects of Domestic Violence, Sexual Assault and Stalking on Housing and the Workplace,” 2009.

<sup>5</sup> See Raquel Rolnik, ‘*Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Addendum: Mission to the United States*,’ UN Doc. A/HRC/13/20/Add 4, 12 February 2010.

6. The **foreclosure crisis** in the U.S. continues to disproportionately impact marginalized communities, including the poor and racial minorities.<sup>6</sup> Rights guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), including “economic, social and cultural rights, in particular ... the right to housing,”<sup>7</sup> are routinely being violated.<sup>8</sup>

7. Because foreclosure and eviction in the U.S. disproportionately affect racial minorities, the racially discriminatory effect or impact of foreclosures and evictions rises to a systemic violation of the prohibition on racial discrimination enshrined in the ICERD. Additionally, evictions in the foreclosure crisis generally violate the right to adequate housing, as enshrined in Article 25 of the Universal Declaration of Human Rights, particularly as they are a disproportionate response to a creditor-debtor issue.

8. Within the context of the economic downturn in the U.S., research shows that **women** – particularly low-income African American women and Latinas – are also disproportionately suffering from evictions from rental housing. For example, a recent study found that one of every 25 renter-occupied households in the city of Milwaukee is evicted each year. In Black neighbourhoods, however, the rate jumps to one in 14. Women from largely Black neighbourhoods in Milwaukee make up about 13 percent of that city’s population, but they are disproportionately evicted.<sup>9</sup> In fact, they constitute 40 percent of those evicted, and other cities around the U.S. are facing similar statistics.<sup>10</sup>

9. For women evicted from their homes, the result is very often deepening poverty. Women struggle to find affordable housing solutions for themselves and their children, and too often end up homeless after an eviction, in clear contravention of international human rights standards.

## **Recommendations**

10. In order to address this increasing problem, the U.S. government should prioritise expanding the availability of affordable housing programmes for low-income groups, with special attention to the needs of low income women, and ensure that women facing eviction are able to access adequate housing alternatives and legal aid.

11. Additionally, COHRE recommends a moratorium on evictions to ensure that persons are not evicted from their homes in the context of the foreclosure crisis. Rather, it is recommended that other remedies for creditors be explored that do not result in a violation of the right to adequate housing.

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<sup>6</sup> See e.g., Kirwan Institute for the Study of Race and Ethnicity (Ohio State University), Subprime Lending, Foreclosure and Race: Structural Challenges and a Systems Response, 18 March 2008; see also, New York Times, A Sight All Too Familiar in Poor Neighborhoods (18 February 2010) (discussing disproportionate impact of foreclosures on women of color).

<sup>7</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(e)(iii), 660 U.N.T.S 195, entered into force 4 January 1969, ratified by the United States 20 November 1994.

<sup>8</sup> As a State Party to the ICERD, the U.S. is obliged to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms...”<sup>8</sup> The U.S. is also obliged to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”<sup>8</sup> The U.S. is also obliged to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”<sup>8</sup>

<sup>9</sup> Erick Eckholm, “A Sight All Too Familiar in Poor Neighborhoods,” New York Times, 19 February 2010.

<sup>10</sup> *Id.*

12. Finally, it is also recommended that the U.S. government make permanent the protections under Sections 702 and 703 of the Protecting Tenants at Foreclosure Act (Title VII), which provide security of tenure to renters in the event that their home has been foreclosed.

### III. Violence against Women and Housing Rights

13. In the U.S., domestic violence is a leading cause of homelessness<sup>11</sup> and victims of domestic violence too often face major obstacles in obtaining and maintaining housing independent from their abusers.<sup>12</sup> In the U.S. more than two-thirds of domestic violence service providers identify “discriminatory practices by landlords” as a barrier that survivors face in their effort to obtain housing, and nearly half of the 24 cities surveyed in 2005 by the U.S. Conference of Mayors identified domestic violence as a “primary cause” of homelessness.<sup>13</sup>

14. Four jurisdictions -- North Carolina, Rhode Island, Washington and the District of Columbia -- are frequently cited as having made substantial efforts to protect victims of domestic violence. However, Rhode Island is the only jurisdiction that has actually named “victims of domestic violence” as a protected category in its fair housing statutes. North Carolina, Washington and the District of Columbia have added protection against discrimination based on victim status in landlord-tenant statutes.<sup>14</sup> The national Fair Housing Act, however, does not include victims of domestic violence as a ‘protected class’; and therefore does not explicitly prohibit discrimination against victims of domestic violence in the sale or rental of housing.

15. The 2005 Violence Against Women Act (VAWA), a piece of federal legislation, protects victims of domestic violence and their children from being evicted or cut off from housing voucher assistance based on incidents of actual or threatened domestic violence.<sup>15</sup> VAWA extended housing rights protections to victims of domestic violence and established a grant program to fund collaborative local efforts to create long term housing stability for victims of domestic violence who are homeless or at risk for becoming homeless. However, the law only offers eviction protection to victims of domestic violence living in federally-funded public housing, in project-based Section 8 housing or who receive federal housing assistance in the form of Section 8 (public subsidies for private rental market) vouchers. Sexual assault victims similarly are not covered by most of VAWA’s housing protections. In addition, VAWA does not guarantee victims of domestic violence living in public housing the ‘right to transfer’; namely the right to transfer as a public housing or Section 8 tenant to a different unit in order to reduce the level of risk to oneself and one’s family.

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<sup>11</sup> The National Law Center on Homelessness and Poverty (NLCHP), “Program: Domestic Violence.” <http://www.nlchp.org/program.cfm?prog=3> (last accessed February 24, 2010).

<sup>12</sup> Legal Momentum, “Understanding the Effects of Domestic Violence, Sexual Assault and Stalking on Housing and the Workplace,” 2009.

<sup>13</sup> *Id.*

<sup>14</sup> Study Committee Report to the Vermont Legislature, “Housing Discrimination Against Victims Of Domestic and Sexual Violence,” January 2009. See also Legal Momentum, “State Law Guide: Housing Protections for Victims of Domestic Violence and Sexual Violence and Stalking,” January 2010; See also The National Law Center on Homelessness and Poverty (NLCHP), “State Laws and Legislation to Ensure Housing Rights for Survivors of Domestic and Sexual Violence,” January 2008.

<sup>15</sup> Legal Momentum, “Know Your Rights: Housing Rights for Survivors of Domestic Violence Living in Public Housing of Using Vouchers,” 2006. The law says that incidents of such violence can not be counted as a “serious or repeated violation of the lease” or “good cause” for evicting the victim or ending voucher assistance. Also, criminal activity “directly relating” to such violence cannot be the basis of an eviction; this is an exception to the “one-strike” rule generally applicable in public housing.

16. Recent studies have shown that current U.S. federal law, through VAWA, provides protection only to a small segment of victims who happen to live in housing with particular federal subsidies.<sup>16</sup> This situation demonstrates a need to expand protections to victims of domestic violence living in privately held housing.

17. Immigrant women face specific housing rights challenges in the U.S. due to domestic violence. In the U.S., immigrant victims of domestic violence who are not married to their abuser, or who have been abused by spouses who are not U.S. citizens or lawful permanent residents, may be eligible for 'U-Visa' status. However, U-Visa holders are not eligible for public benefits, including provision of public housing. Women who are abused by spouses who *are* U.S. citizens or lawful permanent residents are able to petition for legal immigration status under VAWA. However, the United States' Citizenship and Immigration Services (a bureau of the United States Department of Homeland Security) is reportedly pushing for a narrower reading of the VAWA, which would have potentially disastrous consequences for immigrant women abused by husbands who are citizens or lawful permanent residents of the United States, as insecure immigration status is often a key reason why victims are unable to break free of a violent relationship.

18. In order to close this gap and ensure that victims of domestic violence are able to enjoy their housing rights, regardless of whether or not they live in private or social housing or access housing through the use of social voucher programmes, the U.S. should be encouraged to expand housing rights protections for victims of domestic violence by enacting legislation, including during the reauthorisation of VAWA in 2011 and through other appropriate means. The U.S. should therefore:

### **Recommendations**

- a. Ensure that victims of domestic violence and/or sexual assault are afforded protective status against housing discrimination in the national Fair Housing Act.
- b. Ensure that victims of domestic violence have a general defence against any eviction actions brought due to alleged lease violations that are related to the domestic violence, regardless of whether the victim lives in public or privately-held housing.
- c. Ensure that victims of domestic violence have a general defence from any eviction action brought due to alleged criminal or other dangerous behaviour, where domestic violence is documented,<sup>17</sup> and someone else committed the crime, regardless of whether the victim lives in public or privately-held housing.
- d. Ensure that victims of domestic violence and/or sexual assault living in public housing have a 'right to transfer' as a public housing or Section 8 tenant to a different unit in order to reduce the level of risk to oneself and one's family.
- e. Ensure that in cases where the victim and the perpetrator are both listed on the lease agreement as household members, property owners/landlords are empowered to bifurcate the

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<sup>16</sup> For instance, the Legislature of the State of Vermont established a study committee to study the issue of housing discrimination against victims of domestic and sexual violence and report its findings, which includes an analysis of policies adopted by other states and recommendations. The Study Committee Report was issued in January 2009 and concluded that VAWA protections need to apply to all tenure situations.

<sup>17</sup> Documentation can include an order of protection, police report, a statement by a qualified third party such as a health professional, domestic violence counsellor, attorney, and/or police officer.

lease, thereby making the victim the head of household and evicting the perpetrator of the violence.

f. Ensure that victims of domestic violence and/or sexual assault have the option of terminating a lease agreement with a decreased period of notice, and are able to leave during the lease term without further penalty if moving is necessary to protect the safety of the victim or the safety of immediate family members, including any children in the home.

g. Ensure that victims of domestic violence who are U-Visa holders are able to access public benefits, including access to public housing, and that victims of domestic violence seeking immigration relief under VAWA are able to access federally assisted housing.

h. Ensure that victims of domestic violence and/or sexual assault are legally able to have the locks changed and prevent the perpetrator from getting the new keys, even if the perpetrator is also a tenant.

#### **IV. Extra-Territorial Obligations and Housing Rights**

19. The U.S. is home to many corporations that undertake activities abroad. At times, such activities have human rights implications, including violations of the right to adequate housing through, *inter alia*, direct or constructive forced eviction, as well as creating harmful effects to the environment on or near to where people reside.

20. For example, U.S. corporations such as Cargill have been linked to the forced eviction and displacement of indigenous peoples in Indonesia to make way for palm oil plantations<sup>18</sup> as well as the eviction of some 100,000 small-scale farmers in Paraguay to make way for soy production.<sup>19</sup>

21. Consequently, COHRE **recommends** that the U.S. require by law that corporations headquartered, incorporated or otherwise domiciled in the U.S. undertake human rights due diligence measures in respect of all their overseas operations and ensure that people whose human rights are harmed by these companies can access effective remedy in U.S.

#### **V. International Human Rights Framework**

22. In order to better respect, protect and fulfill the rights mentioned in this report, COHRE **recommends** that the U.S. government ratify international human rights instruments to which the U.S. is not a party, including the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the 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; the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities; the American Convention on Human Rights; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

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<sup>18</sup> UN Permanent Forum on Indigenous Issues Sixth session, New York (14-25 May 2007), statement of Forum Chair.

<sup>19</sup> Rainforest Action Network, Cargill Summary