



## Asamblea General

Distr. general  
12 de febrero de 2010  
Español  
Original: inglés

### Consejo de Derechos Humanos

#### 13º Período de sesiones

Tema 3 de la agenda

Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

### **Informe de la Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado, y sobre el derecho de no discriminación a este respecto, Raquel Rolnik\***

Adición

### **Misión a los Estados Unidos de América\*\***

#### *Resumen*

La Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado, y sobre el derecho a la no discriminación a este respecto, realizó una visita oficial a los Estados Unidos de América del 22 octubre al 8 noviembre de 2009 para examinar la realización del derecho a una vivienda adecuada, en particular en relación con los programas de vivienda subvencionada, la situación de personas sin hogar y la crisis provocada por las ejecuciones de hipotecas.

En la primera parte del informe se presenta una breve reseña de la evolución de las políticas de vivienda, centrándose en los programas públicos de vivienda subvencionada. Se refiere al contexto de la actual crisis de vivienda asequible, en el que una proporción creciente de personas que viven en los Estados Unidos enfrenta graves problemas para acceder a vivienda asequible.

\* Documento presentado con retraso.

\*\* El resumen del presente informe de misión se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo al resumen y se distribuye únicamente en el idioma en que se presentó.

La segunda parte del informe analiza la realización del derecho a una vivienda adecuada, en particular la asequibilidad, la discriminación y la participación. El informe destaca las implicaciones de los importantes recortes de fondos federales para viviendas destinadas a personas de bajos ingresos, los efectos persistentes de la discriminación en materia de vivienda, y las condiciones deficientes de algunas viviendas, como el hacinamiento y los riesgos sanitarios, así como las consecuencias de la crisis de ejecuciones hipotecarias. También se centra en la participación y subraya la importancia de informar adecuadamente al público sobre las oportunidades en materia de vivienda y lograr su participación en la planificación, la toma de decisiones y ejecución de programas y políticas que afectan directamente a sus vidas.

La Relatora Especial examina y acoge con satisfacción las nuevas medidas adoptadas para hacer frente a la actual crisis de la vivienda, y concluye su informe con una serie de recomendaciones dirigidas a mejorar dichas iniciativas.

## Anexo

### **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, Raquel Rolnik, on her mission to the United States of America (22 October–8 November 2009)**

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## I. Introduction

1. At the invitation of the Government, 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, undertook an official visit to the United States of America from 22 October to 8 November 2009. The main purpose of the mission was to examine the realization of the right to adequate housing in the country and the achievements and difficulties encountered in its fulfilment, in particular in relation to the existing subsidized housing programmes, the homeless situation and the foreclosure crisis. Given the size of the country, the nature of the federal system and the limited duration of the mission, the Special Rapporteur focused on specific themes and concentrated particularly on federal policies and programmes, and their impact at the local level.

2. The Special Rapporteur visited Washington D.C., New York, Chicago, New Orleans, Pine Ridge Reservation, Los Angeles and Pacoima (California). During her visit, the Special Rapporteur met with high-ranking officials and representatives of the federal, state and local governments. The Special Rapporteur also held meetings with members of Congress, people affected by housing issues, members of civil society and non-governmental organizations.

3. She warmly expresses her gratitude to the Government of the United States of America for the invitation, the constructive dialogue and openness, and support throughout and after the visit, and welcomes the engagement of the present administration to progress the implementation of the right to adequate housing as a policy goal for all.

## II. Institutional and legal framework

4. Modern housing policy in the United States began during the Depression, with the National Housing Act of 1934, which created the Federal Housing Administration (FHA) to underwrite and insure mortgages and provide security to lenders in case of default. The Government also created the Federal National Mortgage Association (Fannie Mae) to buy mortgages from lenders, enabling them to increase their liquidity and thus offer more loans to buyers.

5. Federal oversight of public housing was introduced in 1937 by the Wagner-Steagall Housing Act, allowing the Government to fund, construct, and own homes to rent for poor people. It was said to be created to improve living conditions, and create construction related jobs.<sup>1</sup>

6. The housing acts of 1934 and 1937 marked the beginning of a two-tier system of housing policy: public rental housing and subsidies for poor people and subsidized credit to promote homeownership for middle-income families. It also changed the urban landscape, with most of the public housing located in the cities, while most of the FHA-insured homes are in the suburbs.

7. The face of public housing changed rapidly. Initially racial minorities represented 26 to 39 per cent of all tenants in public housing but had reached over 60 per cent by 1978.<sup>2</sup>

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<sup>1</sup> Larry Bennett, Janet L. Smith, and Patricia A. Wright, eds., *Where are Poor People to Live? Transforming Public Housing Communities* (New York, M.E. Sharpe Inc., 2006).

<sup>2</sup> Today the percentage of public housing residents who belong to racial minorities is 69 per cent: 46 per cent African American and 20 per cent Latino. *Residential Segregation and Housing Discrimination in the United States. Violations of the International Convention on the Elimination of*

Concurrently, the median income of tenants fell from 64 per cent to 37 per cent of the national median from 1950 to 1970.<sup>3</sup> From the 1950s through the 1970s, large tracts of predominantly high-density public housing were built, whose residents were mainly African American.<sup>4</sup>

8. Simultaneously, homeownership for the (predominantly white) middle class was greatly facilitated through federal financing of more than half of all suburban homes during the 1950s and 1960s. This led to an increase in the home-ownership rate from 30 per cent in 1930 to over 60 per cent by 1960. Due to a variety of discriminatory laws and practices, the vast majority of loans were not accessible to African Americans, and whites received 98 per cent of federally approved loans between 1934 and 1968.<sup>5</sup>

9. Public housing was established by the Federal Government with the aim of providing decent and safe rental housing for eligible low-income families, older persons, and persons with disabilities. However, over the years, the model of high-density public housing “projects” was increasingly questioned as they became more and more stigmatized as centres of extreme poverty, crime and segregation. Reasons for the perceived decline in the quality of public housing include physical deterioration related to the ageing of the public housing stock and poor maintenance, while little was done to deal with the larger systemic issue of racial and economic segregation in some cities.<sup>6</sup>

10. In 1974 the Housing and Community Development Act effectively ended most new construction of public housing. It also initiated the Housing Choice Voucher Program (commonly referred to as Section 8), consisting of both project-based and tenant-based rent subsidies. In the former instance, its use is limited to a specific housing development; in the latter case beneficiaries are free to choose a housing unit on the private market from a landlord who accepts the vouchers. Tenants pay a proportion of the rent (based on income, and generally not more than 30 per cent of total household income), while the rest is paid from federal funds. The Section 8 programme marked an important change in public housing policy as it shifted funds from public housing authorities to the private sector. It was created to avoid concentrations of low-income people, as public housing developments tended to do. However, it faced resistance from tenants and buildings in middle-income neighbourhoods and in some cities “the concentration of [Section 8] buildings and tenants has been blamed, just like public housing, for community decline”.<sup>7</sup>

11. A decade later, in 1986, the low-income housing tax credit (LIHTC) was established by the Tax Reform Act as a new mechanism for generating capital to develop affordable housing development. It has created approximately 2 million affordable rental units.<sup>8</sup> Tax

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*All Forms of Racial Discrimination*, report submitted by U.S. Housing Scholars and Research Advocacy Organizations. (Washington D.C., the Poverty and Race Research Action Council and the National Fair Housing Alliance, January 2008).

<sup>3</sup> John Atlas and Peter Dreier, “Public housing: what went wrong?” *National Housing Institute Shelter Force Issue*, No. 74 (September/October 1994).

<sup>4</sup> *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*, December 2008, p. 9.

<sup>5</sup> *Ibid.*, p. 8.

<sup>6</sup> Janet L. Smith, “Public Housing Transformation. Evolving National Policy” in Larry Bennett, Janet L. Smith, and Patricia A. Wright, eds., *Where are the Poor People to Live? Transforming Public Housing Communities* (New York, M.E. Sharpe Inc, 2006), p. 30.

<sup>7</sup> *Ibid.*, p. 31.

<sup>8</sup> See “Communities of opportunity. A framework for a more equitable and sustainable future for all”, Kirwan Institute for the Study of Race and Ethnicity, January 2007, available at: [http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/Comm\\_of\\_Opportunity\\_Jan\\_2007.pdf](http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/Comm_of_Opportunity_Jan_2007.pdf); and Bree Jones, “The low-income housing tax credit: subsidizing affordable housing or

credits are awarded to developers of qualified projects to increase the local supply of affordable housing. Developers are allowed to sell tax credits to investors to raise capital, thus reducing the loan required by the developer, which translates into lower rents.

12. In 1989 Congress appointed the National Commission on Severely Distressed Public Housing to evaluate the state of public housing in the United States. The Commission concluded that while the majority of the 1.4 million units of public housing were well maintained and managed, a small proportion of units — 86,000 or about 6 per cent — were in “the most distressed and notorious urban developments in the nation, where crime, poverty, unemployment, and dependency were solidly entrenched”.<sup>9</sup> Based on the recommendation of the Commission, the HOPE VI (Housing Opportunities for People Everywhere) programme was created in 1992.

13. The objectives of HOPE VI included the revitalization of public housing, de-concentration of very low-income families, and creation of sustainable communities via demolition, rehabilitation, reconfiguration, or replacement of a large number of public housing units.<sup>10</sup> Lower density, mixed-income developments were built, which generally included a combination of public housing, affordable, and market-rate units. Under this model, responsibility for the provision of subsidized housing has increasingly been devolved from the Federal Government to local authorities and the private sector.

14. Federal housing policy has resulted, on the one hand, in the achievement of a high rate of homeownership – about 69 per cent. On the other hand, it has also resulted in the decreasing supply of public housing – currently 1.2 million units. This loss has been accompanied by the progressive withdrawal of Government from the housing sector. The policy has included the promotion of private homeownership for lower-income households, and the privatization of subsidized housing complexes, allowing private developers to promote mixed-income developments.

15. In 1977 the Community Reinvestment Act required banks to allocate prescribed portions of their mortgage portfolios to neighbourhoods where they accepted deposits. Banks had to modify their normal definitions of risk (which included neighbourhood conditions) and in some cases they made risky loans<sup>11</sup> and many homes were provided to families who could not afford them. As long as housing prices were increasing, the expectation was that those increases would be greater than the discrepancy between current expenditures and current incomes; however, as soon as prices stopped increasing, problems began to mount. Additionally, the curtailment of subsidies, in particular for public housing, created added pressure for lower-income households to seek homeownership as the only way of improving their housing conditions. The recent subprime mortgage crisis is the result of this policy and the commitment to homeownership, as an incarnation of the American Dream for the masses.

16. In the context of the current housing crisis, a greater proportion than previously of people living in the United States face serious challenges in accessing affordable housing. The subprime mortgage crisis has widened an already large gap between the supply of and

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developer profit?” Association for Public Policy Analysis and Management, 21 October 2009, available at: <https://www.appam.org/conferences/fall/dc2009/sessions/downloads/4501.1.pdf>.

<sup>9</sup> U.S. Department of Housing and Urban Development, *HOPE VI: Best Practices and Lessons Learned 1992–2002*, Washington DC, 14 June 2002.

<sup>10</sup> See Susan J. Popkin and others, *A Decade of HOPE VI: Research Findings and Policy Challenges*, The Urban Institute, 2004, available at: [http://www.urban.org/UploadedPDF/411002\\_HOPEVI.pdf](http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf).

<sup>11</sup> For a discussion on the extent to which they actually were forced to make “risky” loans, see Peter Marcuse, “The Deceptive consensus on redlining. Definitions do matter”, *Journal of the American Planning Association*, vol. 45, No. 4, October 1979.

demand for affordable housing. The economic crisis which followed has led to increased unemployment and an even greater need for affordable housing.

### III. Affordability

17. The Department of Housing and Urban Development (HUD) definition of affordable housing is that a household spend no more than 30 per cent of its income on housing. In 2007, about 22 per cent of the 36.9 million rental households in the United States were spending more than half their income on rental costs.<sup>12</sup> At the same time, about 8.8 million renter households with low incomes were spending more than half of their income for housing. The number of households facing serious affordability constraints increased by 33 per cent between 2000 and 2007, and the poorest and most vulnerable people face the heaviest burdens in terms of housing costs. Nearly two thirds of the low-income households that face severe housing-cost burdens have family members who are children, elderly, or persons with disabilities.<sup>13</sup> About 12.7 million children — more than one in six — in the United States live in households spending more than half their incomes on housing.<sup>14</sup>

#### A. Subsidized housing programmes

##### 1. Federal housing assistance programmes for low-income households

18. Federal housing assistance programmes play a very important role in covering the difference between the rents that low-income families are able to afford and the cost of rental housing. The main federal assistance programmes to help households access affordable housing are the Housing Choice Voucher Program (Section 8), project-based Section 8 rental assistance, and public housing.<sup>15</sup> All these programmes provide rental assistance to households, which reduces their housing costs to about 30 per cent of their income.

19. Today there are approximately 1.2 million households living in public housing units, managed by approximately 3,300 housing authorities, which include a variety of options from single-family houses to high-rise apartments. Almost two thirds of all public housing households include an older person or a person with disabilities. Public housing also represents a crucial support to more than 400,000 low-income families with children, the majority of them working families.<sup>16</sup> The majority of public housing residents are very poor, around 73 per cent having incomes of 30 per cent or less of the area median income (AMI) for their household size.

20. Eligibility for public housing is based on income (the lower income limit is set at 80 per cent and the very low income limit at 50 per cent of the AMI), family status, and citizenship/immigration status.<sup>17</sup> The AMI is used to determine the rates for market rate and low-income housing in poor areas. The Special Rapporteur is concerned about the problems

<sup>12</sup> Department of Housing and Urban Development (HUD), *FY 2010 Budget. Road Map for Transformation*, p. 9.

<sup>13</sup> Douglas Rice and Barbara Sard, "The effects of the federal budget squeeze on low-income housing assistance", Center on Budget and Policy Priorities, 1 February 2007, p. 2.

<sup>14</sup> Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2008", p. 28.

<sup>15</sup> For more detailed information on these programmes, see chapter II above.

<sup>16</sup> Barbara Sard and Will Fisher, "Preserving safe, high quality public housing should be a priority of federal housing policy", Center on Budget and Policy Priorities, October 2008, p. 1.

<sup>17</sup> See <http://www.hud.gov/offices/pih/programs/ph/index.cfm>.

generated by the use of this formula, when AMI is calculated including the incomes of very affluent areas to determine the rates for housing in poor areas. The Special Rapporteur welcomes the intention of HUD to revise this formula.

## **2. Cuts in low-income housing assistance programmes**

21. In past years there were significant cuts in low-income housing assistance programmes. Budget cuts in the 1980s resulted in the gradual erosion and poor maintenance of the public housing system. Further subsequent funding cuts have also significantly affected the preservation of public housing. By the early 1990s, hundreds of thousands of public housing units had become dilapidated. Over the past decade there has been a net loss of approximately 170,000 public housing units due to deterioration and decay, and much of the current public housing stock needs substantial repairs and rehabilitation. However, annual funding for public housing fell by 25 per cent between 1999 and 2006.

22. When federal funding is inadequate, housing agencies reduce their own expenses. Measures have included shifting units to tenants with higher incomes (who can be charged higher rents than lower-income households but typically have less need for assistance), or cutting back in areas such as security or maintenance.<sup>18</sup>

23. The Special Rapporteur wishes to emphasize that low-income housing assistance programmes should receive additional funding. The Federal Government provides much higher levels of subsidies to high-income homeowners via tax exemptions as compared to subsidies for low-income housing assistance. “Each year, the federal government spends more than three times as much on tax breaks for homeowners — with a large share of the resulting tax benefits going to upper-income households — as it spends on low-income housing assistance.”<sup>19</sup> The criteria for the distribution of federal housing assistance should be based on a real survey of housing needs and the distribution should be on a per capita basis, with priority for the low-income population.

24. The Special Rapporteur welcomes the recent commitment of additional budgetary resources to creating and preserving affordable housing. Additional funds for housing have been requested in the fiscal year 2010 budget, representing an increase of 10.8 per cent over the fiscal year 2009 budget.<sup>20</sup>

## **3. Mixed-income developments and demolition of public housing**

25. The cuts in federal funding for low-income housing have led to a decrease in the quality of subsidized housing. At the same time, a new housing policy based on mixed-income developments on public housing sites has been promoted, especially on those sites in prime locations within cities. HOPE VI gave local agencies funds to demolish distressed or obsolete public housing and replace it with mixed-income communities, usually with the collaboration of private developers. Over the past 15 years, the programme has invested \$6.1 billion of federal funding in 235 projects to demolish 96,200 public housing units and produce 107,800 new or renovated housing units, 56,800 of which will be affordable. In addition, 78,000 housing vouchers have been issued.<sup>21</sup> Besides the fact that some demolished units are replaced by market-rate housing, many “affordable” units are too costly for many public housing tenants.

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<sup>18</sup> Barbara Sard and Will Fisher, “Preserving safe, high quality public housing should be a priority of federal housing policy”, Center on Budget and Policy Priorities, October 2008, p. 12.

<sup>19</sup> Douglas Rice and Barbara Sard, “The effects of the federal budget squeeze on low-income housing assistance”, Center on Budget and Policy Priorities, 1 February 2007, p. 2.

<sup>20</sup> HUD, *FY 2010 Budget. Road Map for Transformation*, p. 2.

<sup>21</sup> *Ibid.*, p. 20.



26. While HOPE VI has improved the quality of the public housing stock, it has also reduced the number of affordable housing units for poor families and permanently displaced many residents of the demolished projects. In principle, units that were not rebuilt were replaced by housing vouchers, but this procedure was not consistently followed. In addition, this practice places the responsibility of finding housing in the private market on the user. The real choices available for vouchers are in many cases very limited, with no units available in certain neighbourhoods, or landlords unwilling to participate in this programme.

27. The policy goal of creating diverse and inclusive mixed neighbourhoods is a positive one. While this policy has benefited residents in different locations, its implementation has also drawn criticism. Units were demolished without sufficient mechanisms in place for tenants to find comparable housing in the interim. Displaced residents often had to move to other subsidized housing in neighbourhoods as distressed as their original one, or were discriminated against in their new neighbourhoods. The interim period of redevelopment has been much longer than forecast and insufficient efforts were made to keep track of tenants in order to offer them housing once redevelopments were complete. In fact, less than 12 per cent of former public housing residents make it back to live in the redeveloped communities. The number of units rebuilt has often not matched the number of units demolished, in fact far from it, and the number of new units of public housing has usually been far fewer than formerly.

28. An example is Cabrini Green in Chicago. Cabrini Green originally had 3,114 high-rise public housing units, of which 2,700 were demolished. Since the demolition, only 305 public housing units have been built in mixed-income developments. As a result many residents were displaced and are unable to return to the area.<sup>22</sup> The Housing Authority plans to demolish the remaining 414 high-rise units in September 2010.

29. On 15 June 2009 Massachusetts Congressman Barney Frank and California Congresswoman Maxine Waters sent a letter to HUD Secretary Shaun Donovan urging him to “impose a one-year moratorium on the approval of applications for the demolition or disposition of public housing units”. Mr. Frank and Ms. Waters had sent a similar letter in August 2008 expressing their concern about the loss of public housing units which had reached “epic proportions”. No moratorium has been imposed.

30. The Special Rapporteur deeply regrets the demolition of thousands of public housing units in New Orleans. Many residents and victims of Hurricane Katrina were prevented from returning to their homes (many of which according to residents sustained little storm damage) and had their homes demolished.<sup>23</sup> The current housing crisis in New Orleans reflects the disastrous impact of the demolition policy. In particular, the demolition of the “Big Four” housing complexes (B.W. Copper, C.J. Peete, Lafitte and St. Bernard) has displaced approximately 20,000 individuals. Only one public housing complex still remains, Iberville, which is in need of better maintenance. Residents of Iberville fear demolition of their homes. In addition, former public housing residents of New Orleans are facing grave housing challenges in other cities. One New Orleans resident told the Special Rapporteur that he had met Katrina survivors who are homeless or close to homeless in other cities, “the legacy of the demolition policy”.<sup>24</sup>

<sup>22</sup> Interview with the Executive Director of the Coalition to Protect Public Housing. The Special Rapporteur did not have access to the official data regarding the total number of units demolished and built under the Chicago Plan for Transformation.

<sup>23</sup> No report is publicly available on the state of New Orleans housing projects and the comparative cost of rehabilitation versus demolition.

<sup>24</sup> Interview with a member of MayDay New Orleans, a housing and human rights organization.

31. Rental housing assistance was offered by HUD to more than 33,000 New Orleans households, many of them living in other cities and states. This programme assisted residents for more than four years and continues to assist about 12,000 families in New Orleans.

32. The Special Rapporteur wishes to emphasize that many public housing units are in good physical condition and provide adequate homes; however, in some cases, even these units are under threat. During her visit to Los Angeles, the Special Rapporteur visited several public housing complexes which were in very good condition, such as Mar Vista Gardens. Located in a relatively wealthy community, Mar Vista Gardens achieves HUD's stated goal of mixing households with different levels of income and provides housing in a neighbourhood which offers opportunities to residents. However, the Los Angeles Housing Authority (HACLA) has announced a plan to remove it from the public housing stock. When public housing is disposed of, ownership is often transferred from the housing authority to a private entity — most often for-profit developers, although sometimes non-profit owners — putting its future as affordable housing at great risk. Tenants thus live in fear that the long-term affordability and stability of their housing is threatened and that they might be displaced in the future.

33. The Special Rapporteur welcomes the Choice Neighbourhood Initiative, which aims to revitalize communities and to transform very poor neighbourhoods, where public and assisted housing is concentrated, by challenging “public, private and non-profit partners to extend neighborhood transformation efforts beyond public housing and link housing interventions more closely with school reform and early childhood innovation”.<sup>25</sup> However, the Special Rapporteur is concerned about the lack of safeguards to ensure that poor communities will be able to stay in their neighbourhoods once development takes place.

#### 4. Expiring long-term rental assistance contracts and Section 8 vouchers

34. Options for low-income families and individuals are further reduced due to other pressures on the stock of affordable housing including “expiring use”. In the 1960s, the Federal Government partnered with private developers to provide affordable housing. In exchange for subsidies in the form of tax benefits or subsidized mortgages, developers providing affordable units signed contracts with the Federal Government for leases of 20 to 40 years. Depending on the type of subsidy, landlords had the option of repaying their mortgage after 20 years, converting the units to market rate and/or opting out of renewing contracts once they expired.<sup>26</sup> Many of these contracts are now ending, with landlords opting out of renewal. Thousands of units have already been lost, and a report estimates that an additional 300,000 units will see contracts expire within the next five years.<sup>27</sup> Incentives are needed to encourage owners to remain in the Section 8 programmes, thus preserving housing for low-income families.

35. Congress is currently debating a preservation bill which aims to protect the current stock of project-based Section 8 buildings. The Special Rapporteur is dismayed that an important provision of the bill, the right to first purchase (RFP), has been withdrawn. This provision would require that a landlord wishing to sell a project-based Section 8 building give the right of first purchase to either the city or the tenants themselves, before being allowed to list the building for sale on the open market.

<sup>25</sup> HUD, *FY 2010 Budget. Road Map for Transformation*, p. 20.

<sup>26</sup> See <http://www.policylink.info/EDTK/ExpiringUse/>.

<sup>27</sup> Douglas Rice and Barbara Sard, “The effects of the federal budget squeeze on low-income housing assistance”, Center on Budget and Policy Priorities, 1 February 2007, p. 5.

36. Rental housing vouchers have become the nation's largest low-income housing assistance programme, serving over 2 million households with extremely low incomes. Nevertheless, most cities have long waiting lists for assistance, typically of five years. Under existing funding levels, federal programmes can assist only about one quarter of the low-income families eligible for assistance.<sup>28</sup> Funding cuts have also contributed to the additional loss of over 150,000 vouchers between 2005 and 2007. According to a study conducted by the United States Conference of Mayors in 2008, many cities had closed their waiting lists for Section 8/Housing Choice Vouchers and public housing because of excess demand.<sup>29</sup>

## 5. Habitability, availability and location

37. The link between housing and health was stressed to the Special Rapporteur throughout her visit. Poor housing conditions expose residents — especially children — to a number of diseases. Most residents of public housing with whom the Special Rapporteur spoke complained of asthma, attributed to mould from poor maintenance of units. A resident in Los Angeles described living in slum housing conditions with rats, cockroaches, bedbugs, deteriorated piping and lead-based paint, and as a result developing chronic asthma.<sup>30</sup>

38. In several cities, many of the subsidized residents with whom the Special Rapporteur spoke complained of bedbugs. In Section 8 housing, the insect infestation problem is compounded by the fact that some residents do not complain about poor maintenance because they fear that they will be forced to move if their unit does not meet Section 8 standards, while alternative low-income options are extremely scarce.

39. During the mission, the Special Rapporteur observed many families living in subsidized housing units in conditions of severe overcrowding. This was particularly the case amongst immigrant families in Los Angeles, and most strikingly on Pine Ridge Native American Reservation, where it was described as commonplace to have three to four families living in a three-bedroom house. The conditions in the houses on the Reservation were the worst seen by the Special Rapporteur during her mission, evidence of the urgent and severe need for additional subsidized housing units there.

40. The Special Rapporteur also heard numerous complaints of lack of services on many public housing sites, including the public housing complex Atgeld Gardens outside Chicago, where most local businesses have closed down, reportedly due to lack of sufficient residents to maintain profitability, as many apartments are vacant due to extended renovations.

41. Severe limitations in access to services such as public transportation and fresh food were observed by the Special Rapporteur during her visit to Pine Ridge Reservation. Problems have been compounded due to budget constraints and in her meetings with HUD the Special Rapporteur was told that the budget for Indian housing has essentially been flat for the past decade.

42. The Special Rapporteur is also concerned about the effects of gentrification on the poorest. As middle- and upper-income families choose to move to or to stay in the cities, inner-city subsidized housing developments face increasing pressure as developers vie for prime land. Gentrification pushes out the poorest to areas with reduced services and

<sup>28</sup> Ibid., p. 10.

<sup>29</sup> The United States Conference of Mayors, *Hunger and Homelessness Survey: a Status Report on Hunger and Homelessness in America's Cities*, 2008, p. 23.

<sup>30</sup> Meeting with "Comunidad Presente", Los Angeles.

employment opportunities. Legislation is needed to safeguard affordable housing in prime locations.

43. At the other end of the spectrum, the Special Rapporteur visited at least one subsidized housing development located next to polluted areas. Altgeld Gardens outside of Chicago is located near landfills, numerous industrial manufacturing plants and waste dumps. One resident stated that “environmental conditions in our community/city are appalling. We have polluted air and water and a lot of contaminants in our environment because our next door neighbours are big industries”.<sup>31</sup>

## 6. Predatory equity

44. One tool utilized by certain districts in the United States to provide affordable housing is through the use of rent regulation legislation. This legislation was introduced at the federal level during the Second World War, when President Franklin D. Roosevelt signed into law the Emergency Price Control Act (EPCA) in 1942. Subsequently various states and local jurisdictions instituted rent control measures and many still exist today.<sup>32</sup> This rental stock is facing growing pressure from real estate markets, and more recently from the threat of “predatory equity”.

45. Predatory equity appeared during the recent real estate bubble, described as an investor purchasing a rent-stabilized building, with a mortgage which is securitized and sold repeatedly over a short period of time for ever-increasing sums. The resulting mortgage payments increase with each sale, with existing rent rolls insufficient to cover the cost. As a result, new owners engage in aggressive tactics to evict residents in order to raise rents to subsequent residents, and eventually remove the building from the rent stabilization scheme. Given the downturn in the real estate market, there exists a high risk that such mortgages will default, and the Special Rapporteur heard reports of investors simply walking away, leaving the building to the bank, and tenants with uncertain futures. The Special Rapporteur also noticed that while the impacts of predatory equity are being felt across the country, they have been most acute in New York, where the full effect of foreclosures has yet to be felt. In New York alone, one civil society organization has identified over 90,000 rent-stabilized units subject to predatory equity.<sup>33</sup>

46. In addition to the long-standing challenges of affordability, more and more households are losing their homes to foreclosure, putting even more pressure on already stressed housing markets.

## B. Foreclosure

47. As stated by HUD, “the extent of the housing and economic crisis is now painfully apparent. (...) approximately 3.7 million borrowers began the foreclosure process in 2007 and 2008”.<sup>34</sup> RealtyTrac reported a 32 per cent increase in foreclosure filings from April 2008 to April 2009.<sup>35</sup> A growing number of owners are losing their properties due to foreclosure and are displaced into the rental housing market. Families who were previously

<sup>31</sup> Testimony from resident of Altgeld Gardens.

<sup>32</sup> See <http://www.tenant.net/Oversight/50yrRentReg/history.html>.

<sup>33</sup> Pratt Center for Community Development, *Confronting the Housing Squeeze: Challenges Facing Immigrant Tenants, and What New York Can Do*, October 2008, p. 16.

<sup>34</sup> HUD, *FY 2010 Budget. Road Map for Transformation*, p. 5.

<sup>35</sup> The National Coalition for the Homeless and others, *Foreclosure to Homelessness: the Forgotten Victims of the Subprime Crisis*, 2009, p. 2. As reported by Los Angeles County, there was a significant increase in foreclosures in recent years, from 12,469 in 2007 to 35,058 in 2008.

owners are now seeking to rent. Although housing markets vary widely in the United States, in some areas this increased demand for rental units has contributed to a rise in rents while real estate prices are falling.

48. Existing renters are another sector of the population affected by foreclosures. “At least 20 per cent of foreclosed properties are not owner-occupied, and in many parts of the country (such as New England, New York City, and Minneapolis), half or more of households living in foreclosed buildings are renters.”<sup>36</sup> When creditors experience foreclosure on rental properties, tenants can frequently be evicted, even if they were regularly paying their rent. To address this situation, on 20 May 2009, President Obama signed into law the Helping Families Save Their Homes Act (P.L. 111-22): Protecting Tenants at Foreclosure Act (Title VII).<sup>37</sup> Section 702 states that tenants must be given at least 90 days notice to vacate once the property has been foreclosed upon, and have the right “under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence”. In addition, under Section 703, the law states that when a unit receiving Section 8 assistance is foreclosed upon, tenants may not be evicted during the term of their lease in order for the new owner to sell the property. The renter protection provisions took effect immediately and expire at the end of 2012.

49. In spring 2009, the Federal Government also announced the Making Home Affordable programme. It seeks, inter alia, to prevent foreclosures by working with private industry to offer affordable loan refinancing and loan modifications. From the inception of this programme there have been questions as to whether it could diminish the wave of foreclosures. Criticism relates to the low number of banks and investment funds which are adhering to the programme and the modest number of homeowners who are actually benefiting. In addition, a large number of loans modified through the programme remain in a trial stage lasting up to five months, and only a small percentage have been made permanent. Some discussion is taking place within the Senate on new legislation that would create a national foreclosure prevention programme.<sup>38</sup>

### C. Homelessness

50. The economic crisis and significantly increasing numbers of foreclosures are increasing the risk of homelessness in communities across the country. Many families — renters and homeowners — have been caught in the foreclosure crisis and become homeless, moving in with relatives or friends, going to emergency shelters or living on the streets. According to the 2008 study conducted by the United States Conference of Mayors, of the 25 cities with data available, 12 reported an increase in homelessness because of the foreclosure crisis.<sup>39</sup>

51. It is estimated that over 800,000 people are homeless on any given night in the United States, and as many as 3.5 million people experience homelessness annually, living

<sup>36</sup> Danilo Pelletiere and Keith Wardrip, “Renters and the housing credit crisis”, *Poverty and Race*, vol. 17, No. 4 (July/August 2008), pp. 3–7.

<sup>37</sup> Available at <http://www.govtrack.us/congress/billtext.xpd?bill=s111-896>.

<sup>38</sup> Peter S. Goodman, “U.S. will push mortgage firms to reduce more loan payments”, *New York Times*, 28 November 2009, available at <http://www.nytimes.com/2009/11/29/business/economy/29modify.html>.

<sup>39</sup> See footnote 29, executive summary, p. 1.

in shelters, transitional housing, or public places. Including those who have lost their own homes and live with family or friends, the number reaches 4.5 million.<sup>40</sup>

52. The exact number of homeless people is difficult to determine, both due to the nature of homelessness and the definition used. The model used by HUD to record the homeless includes two surveys: one records the number of individuals and families that accessed emergency shelter or stayed in transitional housing during a one-year period while the other is a point-in-time analysis, which attempts to count the number of homeless, whether in a shelter or not, on a given night in January.<sup>41</sup> While this method may provide useful information about the number of people who use shelters and other services, or who are easy to locate on the street, it can underestimate the extent of homelessness. Many people do not find a place in the emergency shelters and transitional housing spaces and as a result are forced to live with relatives and friends in crowded, temporary arrangements. These people are less likely to be counted but are nonetheless experiencing homelessness.

53. According to an official study conducted in 2006, on average single men comprise 51 per cent of the homeless population, families with children account for 30 per cent, single women for 17 per cent and unaccompanied youth for 2 per cent. The homeless population is estimated to be 42 per cent African American, 39 per cent white, 13 per cent Hispanic, 4 per cent Native American and 2 per cent Asian.<sup>42</sup> An average of 22 per cent of homeless single people are considered mentally ill while 8 per cent of homeless individuals in a family with children were found to have mental illness. Thirty seven per cent of single homeless people are substance abusers while 10 per cent of homeless adults with children are substance abusers.

54. More than 1.5 million children in the United States experience homelessness each year. In many cases, there are no adequate shelter facilities where parents and children can stay together and children are often removed from their parents and placed in foster care.<sup>43</sup> The Family Unification Program (FUP), which aims to prevent this practice, urgently needs more funds. A positive step is the resolution introduced in June 2009 by Congresswoman Maxine Waters in the House of Representatives on the right of children to adequate housing (H. Res. 582). While not yet adopted by Congress, this resolution recognizes the right of children and youth to adequate housing and states that projects that provide services to parents and other caretakers to prevent possible homelessness of youth in crisis should be created and maintained.

55. The Special Rapporteur also expresses her concern about homeless youth and their access to homelessness services. Some youths between the ages of 18 and 25 are considered adults but psychosocially they are still youth. Therefore, national homeless programmes should consider the unique needs of this community.

56. Homeless people need access to affordable housing; the lack of it is the main cause of homelessness. Many cities that do not provide enough affordable housing and shelters

<sup>40</sup> National Law Center on Homelessness and Poverty, *An Ounce of Prevention: Programs to Prevent Homelessness in 25 States*, February 2009, executive summary.

<sup>41</sup> HUD, *The Third Annual Homeless Assessment Report to Congress*, July 2008, executive summary, available at <http://www.hudhre.info/documents/3rdHomelessAssessmentReport.pdf>.

<sup>42</sup> The United States Conference of Mayors, *Hunger and Homelessness Survey: a Status Report on Hunger and Homelessness in America's Cities*, 2006, p. 4.

<sup>43</sup> "Within a single year, nearly all (97%) homeless children have moved (...) About half of all school-age children experiencing homelessness have problems with anxiety and depression, and 20% of homeless preschoolers have emotional problems that require professional care. Their education is often disrupted and challenges in school are common." The National Center on Family Homelessness, *State Report Card on Child Homelessness. America's Youngest Outcasts*, 2009, p. 1.

are resorting to the criminal justice system to punish people living on the streets. Some of the measures adopted include prohibition of sleeping, camping, eating, sitting, and/or begging in public spaces and include criminal penalties for violation of these laws.<sup>44</sup> The Helping Families Save Their Home Act of 2009, recently signed into law, requires the federal Interagency Council on Homelessness to create constructive alternatives to criminalization measures.

57. The main Federal Government programmes addressing homelessness are the Emergency Food and Shelter Program and Emergency Shelter Grant. The American Recovery and Reinvestment Act (the “stimulus package”) signed by President Obama includes an important increase for both programmes. While funding increases are very positive steps in preventing homelessness, further measures could be envisaged. In particular, HUD should ensure that households living with family or friends due to economic difficulties are eligible to receive assistance. This temporary situation often eventually results in people becoming homeless. Currently, the definition of homelessness used by HUD does not include these families.

58. Section 8 housing measures have proven important in preventing homelessness. According to a recently published paper, “The federally funded Voucher Family Study found that voucher assistance resulted in a 74 per cent decrease in the incidence of ‘official’ homelessness. That is, control group members — similarly poor families that did not receive housing vouchers — were four times more likely to have resided in a shelter or on the streets in the fourth year of the study than comparable families that were provided vouchers and rented housing with them.”<sup>45</sup> Increased funding for additional households (homeless or imminent homeless) to receive housing assistance is crucial to reducing the number of families experiencing homelessness.

#### IV. Discrimination

59. The United States has strong legislation against discrimination in housing on the basis of race, colour, religion, national origin or disability. On a federal level the most fundamental and overarching legislation is Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act), which gives HUD the responsibility to enforce the Act. It also requires HUD to act in an affirmative way to further fair housing.<sup>46</sup> The Fair Housing Act is generally thought to provide a robust legal framework, however there have been significant problems in its enforcement, and further strengthening is required. The Act governs both private and public housing stock. States and cities have additional legislative codes which bar discrimination on other grounds, for example source of income.<sup>47</sup>

60. HUD conducts activities to assist individuals who have experienced unlawful housing discrimination and educate housing professionals and the public on fair housing

<sup>44</sup> The National Law Center on Homelessness and Poverty and the National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, July 2009, pp. 9–10.

<sup>45</sup> Barbara Sard, “Number of homeless families climbing due to recession: recovery package should include new housing vouchers and other measures to prevent homelessness”, Center on Budget and Policy Priorities, January 2009, p. 10.

<sup>46</sup> In 1965, the Department of Housing and Urban Development (HUD) Act created HUD as a Cabinet-level agency. See [http://portal.hud.gov/portal/page/portal/HUD/about/hud\\_history](http://portal.hud.gov/portal/page/portal/HUD/about/hud_history).

<sup>47</sup> Cities which prohibit discrimination based on the source of income include Los Angeles, New York, Philadelphia, St. Louis and Washington D.C. States with such legislation include California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin.

laws. Such activities include enforcement, education and outreach, and investigation of complaints. HUD also has the ability to lodge complaints and start investigations on its own initiative.

61. HUD's authority to investigate housing discrimination complaints is shared with state and local government agencies that participate in the Fair Housing Assistance Program (FHAP). These agencies received 80 per cent of the housing discrimination complaints filed in HUD's jurisdiction in fiscal year 2008. The total number of housing discrimination complaints filed in 2008 was 10,552, the highest number on record.

#### **A. Persons with disabilities**

62. Adequate housing must be accessible to all. Thus, such disadvantaged groups as older persons, children, persons with disabilities, the terminally ill, HIV-positive individuals, persons with persistent medical problems, victims of natural disasters, people living in disaster-prone areas and other groups should be assured some degree of priority in housing law and policy.<sup>48</sup>

63. Almost half of all complaints received by HUD (44 per cent) under the Fair Housing Act are from persons with disabilities.<sup>49</sup> In 1988, the same year the Fair Housing Act was amended to include persons with disabilities, section 504 of the Rehabilitation Act was implemented, mandating that all programmes, services or activities receiving public funds must be accessible to persons with disabilities. Section 504 also mandates that all buildings of five or more units must have a certain percentage of similarly accessible units, and that landlords must pay for "reasonable accommodation" or modifications requested by the tenant. However, while strong legislation exists to prevent discrimination against persons with disabilities, the implementation and enforcement of this legislation could be improved. The Special Rapporteur has received complaints that many new housing developments do not meet Fair Housing Act requirements.

#### **B. Racial and related discrimination**

64. Evidence shows that subprime loans were five times more likely to be made in neighbourhoods of African American people as compared to neighbourhoods of whites. Such loans were found to have been particularly marketed to minorities, even in cases where individuals qualified for traditional loan products.<sup>50</sup> Minority women were particularly targeted. A report submitted to the Committee on the Elimination of Racial Discrimination recommended that the Department of Justice investigate and prosecute cases of lending discrimination, and that the United States Congress enact robust anti-predatory lending legislation.<sup>51</sup>

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<sup>48</sup> See Committee on Economic, Social and Cultural Rights general comment No. 4 (1991) on the right to adequate housing (art. 11 (1) of the Covenant).

<sup>49</sup> HUD, *The State of Fair Housing, FY 2008 Annual Report on Fair Housing*, p. 3, available at <http://www.hud.gov/content/releases/fy2008annual-rpt.pdf>.

<sup>50</sup> *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*, December 2008, p. 33.

<sup>51</sup> *Residential Segregation and Housing Discrimination in the United States. Violations of the International Convention on the Elimination of All Forms of Racial Discrimination*, report submitted by U.S. Housing Scholars and Research Advocacy Organizations. (Washington D.C., the Poverty & Race Research Action Council and the National Fair Housing Alliance, January 2008), p. 25.



65. The 2008 concluding observations of the Committee on the Elimination of Racial Discrimination on the report of the United States expressed deep concern that minority groups are disproportionately concentrated in poor areas characterized by substandard housing conditions.<sup>52</sup> The Committee's recommendations on this issue are firmly supported by the Special Rapporteur.<sup>53</sup> The Committee also stated its concern regarding the de facto racial segregation in United States public schools.<sup>54</sup> In many communities this issue is directly linked to housing, as some public school districts are funded by the property taxes of the local community, thus providing more resources to schools in wealthier neighbourhoods.

66. The Special Rapporteur welcomes the fact that in fiscal year 2010, Congress appropriated \$11 million for the Fair Housing Initiatives Program, aimed at assisting families most vulnerable to the current mortgage crisis.

### C. Indigenous peoples

67. Article 27 of the International Covenant on Civil and Political Rights prohibits States from denying the right of minorities to enjoy their own culture. Housing construction including building materials used and the relevant policies must appropriately enable the expression of cultural identity and diversity of housing. In its general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights found that development or modernization activities should not sacrifice such cultural dimensions of housing.

68. The issues facing Native Americans both off and on reservations are complex, and housing is but one aspect. The subsidized housing visited by the Special Rapporteur was built as "cluster housing", in a traditional suburban model of a cluster of several homes in close proximity. She heard complaints that such a model was not appropriate to Native Americans who favour houses which are much more spread out, a model which is closer to their traditional mode of living. The choice of cluster housing is partially due to resource constraints, however critics contend that this approach has deprived Native Americans of their cultural norms of housing and privacy and has thus led to the creation of destructive social environments.

69. The Special Rapporteur applauds the Government's historic gesture of engagement with Native Americans through the White House Tribal Nations Conference on 5 November 2009, and encourages continued collaboration and discussion in the future.

### D. Discrimination based on economic and other status

#### "One strike and you're out" zero tolerance policies

70. Subsidized housing applicants are subject to denial based on their criminal or drug record, and tenants are subject to eviction based on such records. Such policies were introduced with the 1988 Anti-Drug Abuse Act, part of the country's "war on drugs". The Anti-Drug Abuse Act required public housing authorities to adopt leases which required eviction of public housing tenants who engaged in criminal activity on or near public

<sup>52</sup> CERD/C/USA/CO/6, para. 16.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., para. 17.

housing premises.<sup>55</sup> It was later reinforced in 1990 by the Cranston-Gonzalez National Affordable Housing Act.<sup>56</sup>

71. In March 1996 President Clinton signed into law the Housing Opportunity Program Extension Act of 1996 creating a new HUD policy which gave additional authority to public housing authorities to screen tenants, enforce leases, and evict tenants. This Act authorized public housing authorities to evict tenants for criminal or drug-related activity which took place both “on or off” housing authority premises, whereas previous laws allowed for such evictions only if such activity occurred “on or near” housing authority premises. The Act also states that the “National Crime Information Center, police departments, and other law enforcement agencies shall upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction”. The Act stipulates that public housing agencies must provide the tenant with a copy of his/her criminal record, as well as an opportunity to dispute its accuracy and relevance. Thus, public housing authorities were given the mandate to establish their own standards to achieve these federal mandates.

72. Additional reforms were instituted with the 1998 Quality Housing and Work Responsibility Act (QHWRA), which gave public housing authorities the right to refuse to sign new contracts with landlords administering project-based Section 8 contracts if they refused to, or had a history of refusing to, implement zero tolerance policies.<sup>57</sup>

73. While the Special Rapporteur recognizes the duty of the State to protect its population, she is concerned by the discriminatory nature of these practices towards the residents of public housing, and their negative, fragmenting effects on families.<sup>58</sup>

74. These policies also negatively target victims of domestic abuse, as they do not take into account whether tenants who are subject to eviction are the victims or perpetrators of criminal activity.<sup>59</sup> Landlords have evicted women from their homes if they report abuse to police, even if their abuser does not live with them. This serves as an obvious disincentive for women to report abuse, encourages a dangerous cycle of secrecy around domestic abuse, and may force women to choose between abuse and homelessness. The Violence Against Women Act of 2005 (VAWA) prohibits such evictions by requiring public housing authorities to use leases which stipulate that domestic violence is not a cause for eviction of victims of such violence. It also prohibits public housing authorities from denying housing admission based on an applicant being the victim of domestic or dating violence, or stalking. Despite the presence of VAWA, the Special Rapporteur still received reports from civil society organizations that women victims of domestic violence continue to experience discrimination.

<sup>55</sup> Public Law No. 100-690, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR05210:@@:@D&summ2=m&>.

<sup>56</sup> Public Law No. 101-625, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:SN00566:@@:@D&summ2=m&>.

<sup>57</sup> Public Law No. 105-276, section 545. See also Human Rights Watch *No Second Chance. People with Criminal Records Denied Access to Public Housing*, November 2004, available at <http://www.hrw.org/en/node/11892/section/1>.

<sup>58</sup> “At current levels of incarceration a black male in the United States today has a greater than a 1 in 4 chance of going to prison during his lifetime, while a Hispanic male has a 1 in 6 chance, and a white male has a 1 in 23 chance of serving time.” Bureau of Justice Statistics special report, “Lifetime likelihood of going to state or federal prison”, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/Llgsfp.pdf>.

<sup>59</sup> “The rights of domestic violence survivors in public and subsidized housing”, American Civil Liberties Union Foundation, Women’s Rights Project.

75. The Special Rapporteur also welcomes HUD's initiative to examine the extent that lesbians, gay men, bisexual and transgender people experience discrimination when renting or owning their homes.

#### **Housing discrimination based on source of income**

76. Housing discrimination based on the source of income is prohibited only in certain districts. Such laws prevent anyone from refusing to sell, rent, or otherwise transfer housing based on the source of a person's income. The Special Rapporteur repeatedly heard reports that tenants with Section 8 vouchers had great difficulty finding landlords willing to accept these vouchers. This puts voucher holders at risk of losing their benefit, as they can lose the voucher if they do not obtain housing within 90 days and do not obtain an extension. Once a voucher is lost, beneficiaries may have to go back on a long waiting list, or lose their chance to benefit at all if the waiting list is closed. In addition, properties that do accept such vouchers tend to be in poorer neighbourhoods and in buildings with poor maintenance.

## **V. Participation**

77. The realization of the right to adequate housing requires that individuals and communities are consulted and able actively to participate in the decisions that affect their right to housing. In its general comment No. 25 (1996) on participation in public affairs and the right to vote, the Human Rights Committee recognizes the right of every citizen to take part in the conduct of public affairs. Unfortunately, government agencies too often make decisions without the necessary information on how they will affect the lives of the people involved. In adopting measures to achieve the full realization of the right to adequate housing, a genuine consultation with, and participation by, all those affected, including the homeless, the inadequately housed and their representatives, should be guaranteed. Efforts should be made to ensure that residents are involved from the beginning of any redevelopment or other projects, and continue to be engaged during the entire process.

78. The Special Rapporteur received a number of complaints about the lack of meaningful participation in decision-making on national housing policies, including HOPE VI. Residents at Argyll Gardens complained that they felt they have no voice or participation in key decisions which affect their lives.<sup>60</sup> Residents from La Villa Hermosa noted that tenants should be notified early when new companies take over contracts for Section 8 housing.<sup>61</sup>

## **VI. Conclusions and recommendations**

**79. The Special Rapporteur acknowledges the high quality of the majority of housing in the United States, as well as the availability and quality of utilities and services. However, she expresses her deep concern about the millions of people living in the United States today who face serious challenges in accessing affordable and adequate housing, issues long faced by the poorest people and today affecting a greater proportion of society. A new face of homelessness is appearing, with increasing numbers of working families and individuals finding themselves on the streets, or living in shelters or in transitional housing arrangements with friends and family. Federal funding for low-income housing has been cut over the past decades,**

<sup>60</sup> Testimony from People for Community Recovery, Chicago.

<sup>61</sup> Testimony from La Villa Hermosa, Los Angeles.

leading to a reduced stock and quality of subsidized housing. In addition, several cities have experienced a real estate boom which has led to increased housing prices. The subprime mortgage crisis has increased an already large gap between the supply and demand of affordable housing, and the economic crisis which followed has led to increased unemployment and an even greater need for affordable housing.

80. The Special Rapporteur noted throughout the visit that there is a long-standing commitment to provide adequate housing within their means for all Americans and an acknowledgement that the history of housing policy in the United States has been problematic. HUD Secretary Shaun Donovan has stated that in many cases neighbourhoods of concentrated poverty were the result of government policy.<sup>62</sup>

81. Housing is not simply about bricks and mortar, nor is it simply a financial asset. Housing includes a sense of community, trust and bonds built between neighbours over time; the schools which educate the children; and the businesses which support the local economy and provide needed goods and services. Government policy has sometimes resulted in tearing apart this important sense of community, removing a source of stability for subsidized housing residents, and engendering a sense of mistrust of Government regard for their interests.

82. The present Government is actively pursuing policy change to better meet the housing needs of its population. The Special Rapporteur strongly urges the Government to increase opportunities for dialogue with civil society and tenant organizations. The town hall format which was used during her visit was met with broad support from civil society organizations, and she recommends that it be explored for interaction between local public housing authorities and residents. Real participation of those affected by the housing crisis is essential for a successful outcome to current efforts to change and reform.

83. The Special Rapporteur welcomes the measures adopted by the new Administration to improve access to adequate housing, including committing significant resources to housing, addressing mortgage modification programmes, and neighbourhood enhancement and emergency recovery initiatives through the American Recovery and Reinvestment Act.

84. In a spirit of cooperation and dialogue, the Special Rapporteur makes several recommendations which echo the voices of the hundreds of individuals with whom she spoke during her visit. She hopes this report will serve as a tool for further dialogue between civil society organizations and residents, and the Government.

#### **Federal housing assistance programmes**

85. The Special Rapporteur welcomes the existing federal housing assistance programmes that play a very important role in providing affordable housing to low-income residents. Given their importance, the Special Rapporteur believes that they should receive more funding.

#### *Public housing*

86. Funding cuts in the past years have severely affected the maintenance of public housing. Some units have become dilapidated; many have been lost due to deterioration and decay. Additional funding is needed to properly maintain and

<sup>62</sup> "From despair to hope: two HUD Secretaries on urban revitalization and opportunity", Brookings Institution Metropolitan Policy Program discussion, National Press Club, Washington D.C., 14 July 2009.

restore the remaining public housing stock. The Government should also strengthen legislation on health standards for subsidized buildings, and ensure proper maintenance and pest control.

87. The Special Rapporteur considers that, given the crisis in affordable housing, an immediate moratorium is required on the demolition and disposition of public housing until such time as one-for-one replacement housing is secured, and the right to return is guaranteed to all residents. Housing should be made available for displaced residents before any unit is demolished.

88. The Special Rapporteur urges the Government to ensure that, in the context of the Choice Neighborhoods Initiative, poor communities will be able to stay in their neighbourhoods once development takes place.

89. In some cases the geographic area used to define the area median income should be re-examined, so that income threshold criteria actually lead to access to affordable housing.

#### *Section 8*

90. The Special Rapporteur calls on the Government to assign more resources to Section 8 vouchers. Legislative mechanisms should be established in order to encourage the extension of expiring Section 8 unit contracts, as well as other expiring affordable housing programmes involving private landlords.

91. The Special Rapporteur urges Congress to reinsert the provision on the right to first purchase in the draft preservation bill.

#### **Foreclosure crisis**

92. Tenant protection legislation should be further strengthened for renters of foreclosed properties. The Helping Families Save Their Home Act (P.L. 111-22): Protecting Tenants at Foreclosure Act (Title VII) should be extended beyond 2012 and become permanent protection.

93. Empty foreclosed properties should be made available using incentives for the sale of the property to non-profit organizations or community land trusts, in order to increase the stock of affordable housing.

94. The Making Home Affordable Program is a positive initiative addressing foreclosure prevention. Further measures are necessary to ensure that an increased number of homeowners are benefited by the programme. The Special Rapporteur encourages the Senate to continue its discussion on the adoption of new legislation on the creation of a national foreclosure prevention programme, and encourages the Government to develop a study on the impact of this programme and alternative measures to address the foreclosure crisis in the medium and long term.

#### **Homelessness**

95. The Interagency Council on Homelessness should develop constructive alternatives to the criminalization of homelessness in full consultation with members of civil society. When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.

96. The Administration and Congress should encourage the expansion of the definition of homelessness to include those living with family or friends due to economic hardship. The Department of Housing and Urban Development (HUD) should ensure that households living with others due to economic hardship are eligible

for rental and other assistance, including from the Emergency Shelter Grant programme.

97. Members of the House of Representatives should co-sponsor and pass resolution H.Res. 582 on the right of children to adequate housing. Congress should also increase funding for housing vouchers for homeless persons or persons at risk of homelessness and increase funding for the Family Unification Program.

98. Effective homelessness prevention strategies should include provisions that increase the stock of affordable housing available to low-income workers and for those at risk of becoming homeless.

#### **Discrimination**

99. The Special Rapporteur supports the housing-related recommendations of the Committee on the Elimination of Racial Discrimination in its concluding observations (CERD/C/USA/CO/6) in paragraph 16 on subsidized housing, paragraph 17 on segregation in schools, and paragraph 22 on indigent persons.

#### *Discrimination against persons with disabilities*

100. The Special Rapporteur urges the United States Government to strengthen its enforcement and implementation of the Fair Housing Act and to promote accessible universal design in its contracts for subsidized housing, and to promote equal opportunity and access to affordable housing for persons with disabilities. The Special Rapporteur welcomes HUD's plans to strengthen its enforcement of the Fair Housing Act.

#### *Discrimination and zero tolerance policies*

101. The Special Rapporteur acknowledges the Government's efforts to maintain a safe environment within subsidized housing developments. However, she suggests that zero tolerance policies are not an answer for achieving this aim, and suggests the Government commit resources to determine the real effects of such policies on families, particularly minority families, and reform these policies.

#### *Indigenous peoples*

102. The Special Rapporteur was dismayed to observe the dire housing situation faced by some Native American tribes. She encourages the Government to devote greater resources and attention to this urgent question and would welcome further information on any plans and developments in this respect. She also encourages tribal housing authorities to institutionalize mechanisms for real community participation and transparency.

#### *Housing discrimination based on source of income*

103. The Special Rapporteur commends those districts that prohibit housing discrimination on the basis of source of income, and recommends that the United States enact legislation to extend this to the national level. Such a policy would address a grave form of discrimination, as well as assist in the full utilization of the voucher programme, thus alleviating some of the difficulties in finding landlords who will accept vouchers.

*Discriminatory criteria for access to subsidized housing*

104. **The Special Rapporteur recommends that the United States federally prohibit the use of criteria such as drug tests and criminal records, for gaining access to subsidized housing.**

**Participation**

105. **Residents of public housing should have direct, active and effective participation in the planning and decision-making process affecting their access to housing. Residents should be seen as essential partners working alongside the Government in transforming public housing.**

106. **The Government should create mechanisms to improve the participation of affected tenants in planning and decision-making processes. Residents' councils should be directly elected by residents and not appointed by housing agencies.**

107. **Public-private partnerships undertaking housing developments should include residents at all stages of planning, implementation, and decision-making.**

**Ratification of international treaties**

108. **The Special Rapporteur strongly encourages the United States Government to ratify the International Covenant on Economic, Social and Cultural Rights.**

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