

**DISASTER LAW
PROJECT** 



**NATIONAL LOW INCOME
HOUSING COALITION**

Climate Injustice & Disaster Response and Recovery in the United States

Suggested Themes Submitted to the Committee on the Elimination of Racial Discrimination for the United States Review, 2022

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The National Low Income Housing Coalition (NLIHC) is solely dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. NLIHC leads the Disaster Housing Recovery Coalition (DRHC) of more than 850 national, state, and local organizations, including many working directly with disaster-impacted communities and with firsthand experience recovering after disasters. The DRHC works to ensure that federal disaster recovery efforts reach all the lowest-income and most marginalized survivors.

The Disaster Law Project (DLP) is an independent research initiative that works to promote human rights and government accountability during disasters.

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I. UNITED STATES CERD REVIEW: SUGGESTED THEMES ON CLIMATE INJUSTICE & DISASTER RESPONSE AND RECOVERY

As we prepare to file this submission with the Committee, [Lake Mead](#), the largest water reservoir in the United States, is running dry. A punishing drought, years in the making, coupled with unprecedented development and increasing demand, depleted the Lake's reserves, triggering a first-of-its-kind emergency declaration and mandatory water cuts for 20 million people. Meanwhile, [wildfires](#) in New Mexico have already burned 360,000 acres of land - three times more than what burned during that state's entire fire season last year. Tens of thousands of people have been forced from their homes.

Black, Indigenous, and other people of color are not the only ones affected by the deepening water crisis at Lake Mead, raging wildfires in New Mexico, or any other climate disaster upending lives and livelihoods across the US. But comparative disadvantages related to poverty, housing discrimination, and flawed disaster management policies mean that people of color are more likely to experience disasters compared to whites, and they are less likely to fully recover when a disaster hits.

The US review provides an opportunity not only to address income inequality, racial discrimination, and disaster response failures as independent treaty violations, but to bring those factors together, highlight [their](#) interdependence, and center racial discrimination as a determining cause of climate vulnerability that warrants scrutiny under the International Convention on the Elimination of All Forms of Racial Discrimination [\[ICERD\]](#).

We propose the following Suggested Themes to guide the Committee's work:

- 1. The US role in creating climate vulnerability by failing to fully acknowledge and remedy the most extreme and obvious examples of racial injustice: race-based slavery, Native American "removal," and colonial exploitation of island territories.** Statements adopted by [Special Committee](#), and [testimony](#) provided to the General Assembly, recognize the link between historical injustice and present-day discrimination, including factors that contribute to disaster vulnerability. These statements provide the Committee with added support for holding the US accountable for climate injustice.
- 2. The US role in perpetuating climate vulnerability among households of color by failing to remedy ongoing income and housing disparities.** In 2021, the United Nations High Commissioner [called](#) on member states to remedy racial discrimination in "all areas of life," identifying housing and income inequality as persistent areas of concern. The US has yet to meet its treaty obligations on those issues.
- 3. The US role in deepening climate vulnerability by making it harder for households of color to recover from a disaster.** US response and recovery policies fail to provide equitable access to disaster warnings, evacuation assistance, and emergency shelter; neglect the needs of people experiencing homelessness; and impose arbitrary barriers to durable housing solutions. These disadvantages disproportionately affect Black, Indigenous, and other people of color,

including US citizen family members of undocumented immigrants. An official US advisory board [concluded](#) in 2020 that US disaster practices violated non-discrimination requirements under US law. That conclusion raises concerns about US compliance with more stringent treaty requirements under ICERD.

4. The US role in failing to protect the rule of law following a disaster. The US has failed to codify a right to civil legal representation or establish a process for accessing judicial review when applicants who apply for federal disaster benefits are wrongly denied. This Committee previously [recommended](#) that the US broaden access to legal representation in civil matters in order to meet the needs of low-income people of color who face substantial obstacles to justice. That recommendation remains unfulfilled, but it takes on special urgency given the scale of legal disputes that arise within the context of disaster.

II. **POVERTY AND RACE INTERSECT TO THE DETRIMENT OF PEOPLE OF COLOR IN THE EVENT OF A DISASTER**

Poverty and race are closely linked determinants of disaster exposure and adverse disaster outcomes. Consider these examples:

Nearly [half](#) of all people of color in the US are economically insecure, compared to 25% of whites. [Poverty rates](#) are highest among Black and Native American households, followed by Latino and Asian and Pacific Islander households. More than 20% of Blacks live among the poorest households in the country, while the same is true for just 6% of whites. These inequalities are reflected in segregated housing patterns that increase the risk of disaster-related displacement, property damage, physical injury, and death for people of color.

Homeless rates are highest among Native Americans. On one [Indian reservation](#), 50% of residents report “couch-surfing” or sharing space with relatives or friends because they lack a permanent place to live. Over-crowded conditions, and the substantial number of [households](#) without access to indoor water or electricity make it impossible to maintain an adequate standard of living through excessive heat spells and prolonged drought.

Black individuals are most likely to experience extreme [heat](#), or be displaced by sea-level rise and urban [flooding](#). While coming decades will bring increased flooding across the country - a confluence of warming temperature and crumbling infrastructure - the risk to Black neighborhoods will increase faster, and more severely, than the risk to white neighborhoods.

Twenty [million](#) Latino families live below poverty, reflecting a disproportionate share of the country’s overall Latino population. The rate is higher in [Puerto Rico](#), where poverty hovers over 43%. An inadequate humanitarian response complicated the recovery from Hurricanes Irma and Maria in 2017, prolonging the hardship created by pre-existing poverty.

III. CLIMATE VULNERABILITY IS A LEGACY OF RACIAL EXPLOITATION AND INJUSTICE

The Suggested Themes above recognize that climate vulnerability is rooted in historical examples of institutionalized racism that the US has a duty to remedy under ICERD. Last year, the UN High [Commissioner](#) characterized present-day racial inequality as the consequence of past practices - slavery, displacement, and colonial exploitation - that have been reinforced through generations of intentional discrimination and structural disadvantage. She called on member states to “stop denying and start dismantling racism” in all its forms - a mandate that carries special weight given the disruption caused by a warming planet.

Climate vulnerability shows that the US has yet to confront its own legacy of racial exploitation, or to meet its obligations to remedy laws and practices that have the “effect of creating or perpetuating racial discrimination.” Race-based slavery, though abolished more than a century ago, shaped the racial composition of southern States where today, a high [population](#) of Black residents live in poverty and in neighborhoods characterized by insecure housing and reduced income opportunities. It is in this region of the country where warming oceans pose the greatest threat, and coastlines lie in the path of intensifying hurricanes. When those storms hit, media outlets broadcast dramatic [images](#) of million-dollar beach homes crashing into the ocean. But hurricanes cause the most hardship in low-income, Black neighborhoods which are more likely to be located in areas [at risk](#) of natural disasters, and where many residents live in sub-standard housing that is prone to damage or destruction. It is especially difficult for residents of those neighborhoods to [evacuate](#) or fully recover when a disaster hits due to a lack of financial resources, transportation options, and job flexibility. When Hurricane [Florence](#) swept the South Carolina coast in 2018, Black residents struggled to evacuate, and faced long waits for federal disaster aid that was already being distributed in white communities.

Formal discrimination in more recent decades shaped the racial contours of urban and suburban communities, both within and outside of the South, via [housing discrimination](#), mortgage “red-lining,” and deed restrictions that prohibited white homeowners from selling property to non-whites. During that same period, federal financing programs worsened housing disparities by prioritizing development in white suburbs. Though progress has been made in ruling the most blatant forms of discrimination unlawful, government investments - including [investments](#) in disaster planning - still favor wealthier white communities. Consequently, patterns of residential segregation remain visible across the country, with the added disadvantage that Black households are now more [exposed](#) to extreme heat and urban flooding caused by a combination of climate change and crumbling infrastructure. If these conditions are not remedied, scientists predict that by mid-century, flooding will [accelerate](#) in Black urban communities at twice the rate of white suburbs.

For Native Americans, climate vulnerability is the consequences of land dispossession and ongoing treaty violations with federally recognized Indian tribes. The federal government’s “[Indian removal](#)” policy set future climate consequences in motion when indigenous land and property was confiscated to make room for white settlers. Today, Indian Reservations experience more extreme [heat](#) and significantly less rainfall than land once occupied by indigenous people in other parts of the country.

Native Americans are also [six times](#) more likely than whites to experience a wildfire, having been forcibly relocated to areas surrounded by highly flammable grasslands and overgrown forests, and significantly less likely to recover due to high rates of poverty and unemployment.

Those fires are becoming more intense and harder to fight as climate-induced droughts evaporate water resources and parch the land. A 20-year [drought](#) in Navajo territory - the nation's largest Indian Reservation - has killed crops, decimated livestock, and left entire communities without access to clean water to drink or bathe. Up to 40% of Navajo homes lack indoor plumbing, while Native Americans overall are nearly [20 times](#) more likely than whites to live without running water, making it especially difficult for people to stay healthy through persistent droughts and water shortages.

For Latino populations, racial discrimination coupled with legacies of colonialism play a prominent factor in creating climate vulnerability, including in Puerto Rico - a territory where residents are considered US citizens, but have no right to vote in federal elections. [Poverty](#) affects close to half of the population of Puerto Rico, and a \$70 billion debt load forced the local government into [bankruptcy](#) in 2017.

That same year, two major cyclones - Hurricanes Irma and Maria - swept Puerto Rico, leaving an estimated \$100 [billion](#) in damage. Hurricane [Maria](#) alone killed 3,000 people, displaced hundreds of thousands, and destroyed the local power grid, plunging the island into darkness for months, and creating life-or-death scenarios for hospitals without electricity and homebound patients who relied on powered medical equipment to stay alive. The island was still recovering in [2020](#) when a series of earthquakes destroyed 8,000 more homes and triggered a cascade of landslides - events that coincided with the onset of COVID-19. In 2021, UN human rights [experts](#) condemned the US for failing to decolonize Puerto Rico, linking the island's lack of federal representation and "status of political subordination" to underlying social conditions that aggravated the impacts of these disasters.

IV. US DISASTER RESPONSE AND RECOVERY DISCRIMINATES AGAINST BLACK, INDIGENOUS, AND OTHER PEOPLE OF COLOR

As demonstrated above, climate vulnerability is linked to patterns of income inequality, residential segregation, and housing insecurity that violate US obligations under ICERD. Climate vulnerability is also reinforced by disaster response and recovery programs that fail to meet the needs of households of color, and arbitrarily deny these households access to shelter, humanitarian aid, and durable housing solutions.

A. Inadequate Disaster Warnings and Evacuation Assistance

Emergency response practices fail to protect, respect, and fulfill the right to non-discrimination as required by ICERD. Households of color in low-income communities have a significant need for government assistance and humanitarian aid in the immediate aftermath of a disaster, but they are often denied sufficient access to life-saving information, transportation, shelter, and other support that is necessary to protect both people and property.

The same failures that marked the discriminatory response to Hurricane Katrina in 2005 emerged again in 2017, when survivors in Puerto Rico were stranded without sufficient food, water, or electricity for months after Hurricane Maria. A coalition of Special Rapporteurs assailed the US for giving "[dissimilar urgency](#) and priority" to the conditions facing Latino survivors in Puerto Rico, compared to states on the US mainland that experienced hurricanes during the same period.

Three years later, households of color across the US Gulf Coast faced life-threatening obstacles in the run-up and recovery to [Hurricane Laura](#). In Texas, a mandatory evacuation notice was issued, but not communicated to a low-income apartment complex that housed mostly non-white residents. Nor was official assistance provided to residents with transportation needs or mobility impairments seeking to access an off-site evacuation facility. In Louisiana, elderly residents in a majority-Black apartment complex waited days to receive humanitarian aid, while relief was distributed to households in majority-white neighborhoods. Language access is also poorly prioritized in US disaster response. A family of seven from Guatemala [died](#) in a flash-flood following tornadoes in Oklahoma after warnings were delivered only in English. In [Utah](#), fire warnings issued in English failed to communicate critical evacuation information to Spanish-speaking residents, forcing them to rely on translations from social-media posts.

Disaster response protocols also reinforce discrimination towards people experiencing [homelessness](#), implicating US compliance with ICERD given high rates of homelessness among Black, Indigenous, and other people of color. There is no national standard mandating government support to entities that assist communities burdened by homelessness. Therefore, when a disaster disrupts existing support systems, people experiencing homelessness lose access to sources of reliable information, and they may go days without a safe place to sleep, or enough to eat or drink.

B. Discriminatory Shelter Protocols

People of color, including individuals experiencing homelessness, can find it especially difficult to access a disaster shelter in the event of an emergency evacuation. During [Hurricane Irma](#), individuals experiencing homelessness were arbitrarily turned away from disaster shelters without explanation, segregated from the general shelter population, or forced to wear stigmatizing arm-bands. Advocates reported that homeless individuals were denied food and cots to sleep on, deprived of medical care, and otherwise treated as “guilty criminals” by emergency officials and staff. Discriminatory shelter protocols that impact persons who are homeless will have a disproportionate impact on Black, Indigenous, and other people of color who are over-represented among homeless populations.

People of color have also been denied access to emergency shelter on account of racist policing practices and immigration enforcement activity. Again during Hurricane Irma, a sheriff in the state of Florida ran [background](#) checks at a local shelter, threatening to jail anyone named in an open arrest warrant. The announcement drew criticism for potentially withholding emergency shelter from people of color whose involvement with the criminal justice system resulted from racist policing.

For undocumented immigrants, the act of seeking shelter can come at the risk of deportation and family separation where immigration check points are located on an evacuation route or near a disaster shelter. Although ICERD does not address discrimination based on citizenship, US citizens in mixed-status families - the parents, children, and siblings of undocumented immigrants - are often themselves people of color who face a dangerous double-bind en route to safety: evacuate and risk being separated from loved ones at an immigration check point or stay behind as a family and hope to survive. These choices become more untenable when a mandatory evacuation order is issued.

When Hurricane Harvey threatened the US gulf coast in 2017, [conflicting messages](#) from immigration officials left families in limbo, [uncertain](#) whether the risk of deportation and family

separation outweighed the urgency to evacuate. The Biden Administration has since [announced](#) that it would not take enforcement action along emergency evacuation routes, or in areas where vital supplies are being distributed. But unless Congress codifies that statement into law - something it has so far refused to do - the policy can be repealed as a matter of executive discretion. Moreover, the Biden Administration continues to deport certain undocumented immigrants, including those with family ties to US citizens, at a greater [rate](#) than even the prior Administration, justifying the fear mixed-status families have about crossing paths with immigration authorities during a disaster.

C. Disaster Housing Assistance Is Out Of Reach For Many Low-Income Black, Indigenous, and Other People of Color

Disaster assistance programs administered by the Federal Emergency Management Agency (FEMA) disadvantage Black, Indigenous, and other people of color and their communities. Over the long term, federal intervention can increase the race-based wealth gap, by making white communities richer, but leaving communities of color poorer.

Federal legislation authorizes FEMA to provide temporary rental assistance and subsidized motel stays to qualified displaced renters. Those programs, however, are often inaccessible to the people who need them most - extremely low-income renters of color who face a high risk of displacement, eviction, and homelessness following a disaster.

First, temporary assistance is not guaranteed, even to the most vulnerable disaster survivors. FEMA has discretion to decide whether the program should be activated, and it reaches its decision under a confidential process that is not open to the public, nor subject to judicial review. Between 2018 and 2021, FEMA [denied](#) about 40% of state requests to activate temporary assistance. Second, even when temporary assistance is approved, landlords can be [reluctant](#) to lease their property to displaced survivors because FEMA only provides two months of rental assistance. Third, participating motels frequently require guests to present a credit card, leave a security deposit, or pay additional fees - requirements the lowest-income survivors simply cannot meet.

Finally, short-term assistance programs put survivors most in need at risk of housing insecurity and homelessness. For example, motel subsidies expire every 14 days, and notice of whether the federal government will grant an extension is often delayed until the last minute. Participants therefore live in a perpetual state of limbo, not knowing whether they will remain housed, receive a motel bill, or be evicted. Following Hurricane Maria, the Trump Administration abruptly ended the program for nearly 2,000 [individuals](#) displaced from Puerto Rico, giving them mere hours to decide whether to look for local alternative housing or return to uninhabitable homes on the island. In some cases, disaster survivors received [no notice](#) at all before being removed from the program. The [stress](#) and uncertainty built into the program - especially for families with children or special needs requirements - prompted some participants to voluntarily withdraw, despite a lack of decent housing options. There are numerous [reports](#) of people who cannot access the program sleeping in cars and tents, and requiring emergency medical care after returning to dilapidated, [mold-infested](#) homes.

Homeowner assistance programs also disadvantage Black, Indigenous, and other households of color. Compared to whites, homeowners in neighborhoods of color are three times more likely to be denied FEMA [assistance](#) to repair or rebuild a home, and often receive less money when assistance is approved, even for comparable amounts of property damage. At the county level,

majority white communities receive more public assistance than communities with high numbers of Black, Indigenous, or Latino residents. Moreover, racial disparities in home ownership mean that whites are more likely to qualify for low-interest loans and tax rebates that, combined with other forms of homeowner assistance, increase wealth in individual white households, and in white communities overall.

Certain climate mitigation programs produce similar race-based outcomes. Each year, the federal government spends millions of dollars purchasing damaged homes in high-risk areas, converting the land into climate-friendly green-space or making room for climate mitigation systems. When properly administered to voluntary participants, these [buy-outs](#) can restore natural habitats and build climate defenses, while providing disaster survivors with a fresh-start in a more resilient neighborhood. However, as happened in [Puerto Rico](#) following Hurricane Maria, communities of color are sometimes pressured into a buy-out sale, without being given a realistic opportunity to stay-put, rebuild damaged property, and shore-up local community resilience against future disasters. Indeed, low-income communities and communities of color can be attractive buy-out targets. Because homes are cheaper, limited public resources can purchase more with less money - a scenario that builds on underlying inequalities, while simultaneously reducing the tax base and value of homes in the remaining neighborhood. Without additional investments, buy-out communities can turn into even less desirable places to live, creating a cycle that reinforces racial segregation and substandard housing in the long-run.

D. Failing to Honor the Rule of Law In the Event of Disaster

During the last US review in 2014, the Committee [recommended](#) that the US broaden access to legal representation in civil proceedings to address the scale of administrative burdens and unfair disadvantages facing Black, Indigenous and other people of color. Though some states have adopted a limited right to counsel in specific contexts, the federal government has yet to codify a comprehensive, permanent right to civil legal representation, or to establish a right to judicial review when federal disaster benefits are wrongly denied.

Federal legislation does establish a process for funding disaster legal services following a declared disaster, but authorization for that program is a matter of government discretion. Throughout the coronavirus pandemic, former President Trump [refused](#) repeated requests to authorize legal services for low-income individuals, including people of color who were disproportionately impacted by illness, job losses, and evictions, related to the spread of COVID-19. Even when disaster legal services are authorized, however, funding is often inadequate, and income guidelines limit the number of people qualified to participate in the program.

Legal representation is nonetheless critical to an equitable disaster recovery. In [Puerto Rico](#), tens of thousands of households were wrongly denied housing repair assistance because FEMA refused to accept certain forms of proof to establish home ownership. Public interest lawyers in Puerto Rico, including DRHC members Ayuda Legal Huracan Maria, Fundación Fondo de Acceso a la Justicia, and Servicios Legales de Puerto Rico, took the lead in notifying survivors about their right to statutory assistance, negotiating with federal officials to resolve the issue, and obtaining critical policy changes to prevent a similar incident from happening in the future. Still, legal aid organizations are under-resourced, and their staffs are overworked, leading to shortages in the number of attorneys available to assist low-income disaster survivors of color after a disaster.

V. CONCLUSION

Racial disparities in climate vulnerability show that the United States has yet to meet its obligations to respect, protect, and fulfill the right to non-discrimination under ICERD. Though no one is fully immune to the devastating impacts of climate change, Black, Indigenous, and other people of color face comparatively worse outcomes when a disaster hits because of vulnerabilities linked to poverty, housing discrimination, and flawed disaster management policies. The CERD review is an opportunity to hold the US accountable for failing to remedy those vulnerabilities.