Investing in Housing, and Racism
affecting people of African descent

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The subject of this paper lies at the intersection of the human rights to adequate housing and to freedom from discrimination. From each human right arise obligations on the State, the legal personality assuming the role of duty holder. This specific intersectionality is not a new phenomenon. For it is embodied in the major human rights treaties dating back to the mid-1960s. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) enshrines the human right to adequate housing and the specific prohibition against discrimination in that sphere (Article 5 [e] [iii]):

...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) Economic, social and cultural rights, in particular:...(iii) The right to housing...

The International Covenant on Economic, Social and Cultural Rights (1966) also enshrines the general principle of nondiscrimination as a State obligation under its Article 2 to “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Preceding this principle in the text of the Covenant is the Article 1.2 injunction that “In no case may a people be deprived of its own means of subsistence” (e.g., land). Article 11 of the Covenant recognizes that, among these enunciated rights is “the right of everyone to an adequate standard of living for himself and his family, including adequate...housing, and to the continuous improvement of living conditions.”

Within this construct, we refer to the obligatory application of both a negative right (i.e., the right not to be subject to discrimination) and a positive right (i.e., the right to adequate housing and the continuous improvement of living conditions). According to human rights treaty law, the realization of the positive right to adequate housing should be subject to “progressive realization.” While all human rights are interdependent, the State bears the obligation to ensure nondiscrimination without delay. The State and its international-cooperation partners ensure to apply “the maximum of its available resources” to realize economic/social/cultural rights (Article 2.1). That means that the obligation may be to improve conditions gradually, but always progressively, posing a high burden of proof to justify any retrogression in the “constant
improvement of living conditions.” Nondiscrimination in the housing sphere is an immediate obligation.

As with any legal principle, the devil in realizing the rights lies in the details of local implementation. What follows is an analysis that flows from the theoretical to the practical. It is constructed from a basis of State obligations under the legal specificity of the UN treaty system. As in most countries, this basis remains theoretical, awaiting implementation. It is followed by a series of practical examples of public policy affecting relevant housing budgets and investment patterns discriminating against people of African descent in their diaspora. In the necessarily limited scope of this presentation, it will focus on the two countries containing the most-numerous communities of people of African descent in the diaspora. The values of any human right, as such, become most clear in the light of its violation, of which the experiences of Brazil and the United States provide rich examples.

Human rights analysis

For States obliged by international treaty, implementing the human rights to adequate housing (and land) is guided by local conditions and international jurisprudence. Both provided the necessary specificity for States to implement their obligations to respect, defend, promote and fulfil the human right to adequate housing without discrimination.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations. For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation. TO harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States’.

The guidance provided to implement State obligations at the intersection of rights to adequate housing and nondiscrimination is grounded in the historic and contemporary practice of States and codified in treaty law. Through their comparative perspective in monitoring State implementation of the relevant treaties, the UN treaty bodies have issued General Comments and General Recommendations to clarify what the law requires and much of that legal guidance is applicable for the pursuit of the human right to adequate housing, especially for minorities, indigenous peoples and all subject to discrimination.

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3 Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.
The Committee on Economic, Social and Cultural Rights (CESCR) has issued its General Comment No. 4 on the human right to adequate housing. That guidance provides that “adequate housing” is comprised of the following elements:

(a) **Legal security of tenure**, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) **Availability of services, materials, facilities and infrastructure**, containing certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. Therefore, this element of the right comprises both public goods and services as well as environmental goods and services;

(c) **Affordability**, such that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. States parties should take steps to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) **Habitability** means that adequate housing must provide inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well, thus forming an intersection with the human right to health; whereas, inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) **Accessibility**, in the physical sense, is the criterion that requires adequate housing to be accessible to those entitled to it, especially disadvantaged groups’ full and sustainable access to adequate housing resources. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) **Location** as an element of housing adequacy must be situated such that it allows access to employment options, health-care services, schools, childcare centres and other social facilities in both urban and rural settings. This element arises from the recognition that temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) **Cultural adequacy** relates to the way in which housing is constructed, such that the building materials used and the policies supporting these must enable the expression of cultural identity and diversity of housing. Activities geared toward development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, **inter alia**, modern technological facilities, as appropriate are also ensured.

The right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants, ICERD and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of
nondiscrimination. Moreover, the full enjoyment of other rights, such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making, are indispensable if the right to adequate housing is to be realized and maintained by all actors in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing. Therefore, the criteria of adequacy of housing as a human right also embodies these criteria, summaries in the following elements:

- Information, education and capacity building
- Participation
- Resettlement, return, restitution, rehabilitation
- Security and privacy (VAW)

**Information, education, capacity and capacity building:** Individuals and communities must have access to appropriate data, documents and intellectual resources that impact upon their right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the right. The state has the obligation to ensure that laws and policies facilitate such access and ward against denial of the right to adequate housing. Unimpeded opportunity and reasonable means for public debate and expression with respect of the process of government, administration and finance procedures, market mechanisms and the activities of the private sector and others engaged in the housing sphere are presupposed in a democratic society.  

Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realise their economic, cultural and social rights and development potential. The State, for its part, should endeavour to ensure that all citizens are sufficiently aware of procedures available for defending and realizing their human right to adequate housing.

**Participation & Self-expression:** Effective participation in decision making is essential to the fulfillment of all other rights, as well as the elements of the right to housing. At all levels of the decision-making process in respect of the provision of and right to adequate housing, individuals and communities must be able to express and share their views, they must be consulted and be able to contribute substantively to such processes. The state must ensure people’s unfettered access to decision-making centres and effectively combat fraudulent and corrupt practices.

In respect of the right to adequate housing, the right to self-expression includes the right effectively and substantively to participate in decisions that affect housing, including, inter alia, location, spatial dimensions, links to community, social capital and livelihood, housing configuration and other practical features. The state must ensure that building and housing laws and policies to not preclude free expression, including cultural and religious diversity. Moreover, the right to self-expression must be respected, protected, promoted and fulfilled to ensure harmonious and effective design, implementation and maintenance of the community,

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4 UDHR (1948), Article 19; ICESCR (1966), Articles 13.1, 15.1a, 15.1b; ICCPR (1966), Article 19.2.
5 This concept is sometimes also referred to as "empowerment," which is defined as "a process that enhances the ability of disadvantaged (‘powerless’) individuals or groups to challenge and change (in their favour) existing power relationships that place them in subordinate economic, social and political positions." Bina Agarwal, *A Field of One’s Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 39.
for which necessarily addressing the interests of multiple parties is only possible through cooperation in consideration of their views.\(^8\)

11. **Resettlement, restitution, compensation, nonrefoulement and return:** Resettlement may be essential to survival in the case of natural or human-made disaster. Therefore, the congruent right to freedom of movement can essential to the fulfillment of all other rights. Any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs. It must provide sufficient access to the sources of livelihood, productive land, infrastructure, social services and civic amenities. Moreover, there must also be fair and adequate restitution and/or compensation for losses, particularly when human-caused.\(^9\)

12. **Security (physical) and Privacy:** Every man, woman, youth and child has the right to live and conduct her/his private life in a secure place and be protected from threats or acts that compromise their mental and/or physical well-being or integrity. The state must address the security needs of the community once determined, in particular the needs of women, the elderly, children and other vulnerable individuals and groups. The State must then ensure physical security to the extent possible, refraining from threat to, or interference in personal and private activity in the home that does not infringe upon the corresponding rights of others. However, domestic violence must be treated as a violent crime.\(^10\)

**Over-riding Principles of Application**

Common articles in the international human rights treaties and jurisprudence confirm standard principles of justice arising from the major legal systems of the world. These include principles of immediate implementation, such as the inalienable rights to self-determination, gender equality, nondiscrimination in general and the rule of law with access to justice and domestic application of the human rights principles. In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the principle source of these rights in treaty form, clarifies that the State Party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and obligations contained in these over-riding legal principles. The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation, including these over-riding principles common to the principal human rights treaties:

- Self-determination
- Nondiscrimination

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\(^8\) UDHR (1948), Article 18; ICCPR (1966), Article 19.1, 19.2.

\(^9\) UDHR (1948), Article 8 (compensation); Article 13 (freedom of movement); CEDCR GC 2 (compensation), Annex III, 6; CEDCR, GC 4, 17. (compensation); CEDCR, GC 7, 13. (compensation); 16. (resettlement); 17. (compensation); 18. (resettlement); ICCPR (1966), Article 2.3a (compensation); CEDCR, Article 6. (reparation); BPGRRR, E/CN.4/SUB.2/1996/17, 7. (reparation); 12–15. (forms of reparation); GAR 194, Article 11 (return, compensation); SC 827, Article 7 (compensation); ICC, Article 75 (reparation); ILO 169, Article 16 (return, restitution); ECOSOC resolution 1989/57 (1989), “Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”; ECOSOC resolution 1990/22 (1990), “Victims of crime and abuse of power”; UNSC 827 (1993) (Adopting the Statute of the International Criminal Tribunal for the Former Yugoslavia); RefCon, Article 10.1, 10.2 (residency); Article 33.1 (nonrefoulment); G-4, Article 132 (return), Article 135 (return); StCon, Article 10 (residency); WCAR (2001) (return, resettlement).

\(^10\) UDHR (1948), Article 12; CEDCR, GC 4, para. 9; ICCPR (1966), Article 17.1; CRC, Article 16.1, 16.2; American Convention on Human Rights, Article 11; European Convention on Human Rights, Article 8.
• Gender equality
• Rule of law
• International cooperation
• Nonregressivity/nonretrogression.

Within the principle of nondiscrimination reside a variety of practical remedies consistent with the human rights entitlement to compensation and restitution for victims. In addition to such cash remedy for individual or class victims is the option of corrective measures to institutionalize redress for past discrimination (variously termed "positive discrimination" or "affirmative action").

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law: nondiscrimination et al. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.11

**Discrimination in Housing**

Implementing the human right to adequate housing in light of the over-riding principle of nondiscrimination is an essential subject of relevant public policy and distribution of public resources. All seek the common objective of human well-being, and the test of that public-policy thesis lies in its consistency with the State’s foregoing human rights treaty obligations. In its review of States parties to the major UN human rights treaties, the treaty-monitoring bodies routinely query States on their application of covenanted obligations and the treaty system’s jurisprudential guidance in the formulation of public policy and allotment of public resources. Government policy should coordinate efforts not only to ensure the provision of adequate housing (whether by public, private or social production), but also to remedy the causes and effects of discrimination in this vital dimension of human rights and well-being.

**Patterns of racism in housing**

The underlying causes of racial discrimination in housing may resemble those affecting employment. However, the patterns may appear more complex and have deeper social consequences, affecting entire communities, as we shall see in the case of people of African descent in the Americas.

In the housing market, some sellers may exercise their racism through the choice not to sell to members of certain other groups. Sellers who engage real estate agents to sell their housing or land units may attempt to persuade or dissuade potential buyers toward, or away from particular localities. Such practice can either create or exacerbate patterns of residential segregation.

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11 "As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating “self-help” by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with Articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.” General Comment No. 4, para. 10.
Buyers also may exercise a bundle of preferences based on criteria of location, habitability, cultural appropriateness and other material or nonmaterial convenience. Although these preferences may be variously motivated, the racially discriminatory criteria also reinforce patterns of segregation.

Those involved in lending also play a role as gatekeepers in the process of acquiring or retaining housing and land. Racism and racial discrimination is commonly practiced at any of several stages in the process of borrowing, denying applicants’ eligibility for loans for purchase or improvement.

The factors of risk and profit for private investors may coincide with racially motivated choices when selling or letting housing or land. Such choices may prioritize financial gain above or below skin colour. However, the profit motive—whether long-term or short-term—always will seek maximum return. Nonetheless, some traders would feel more content with less gain in order to deal with someone of their own group. Sometimes an owner planning to transfer tenure to an outsider risks negative social consequences from those inhabitants wishing to retain the current demographic character of the neighborhood or community. In these ways a new form of apartheid may be created, as in many cities. Once such a pattern is established, it can become self-perpetuating.

Such entrenched discrimination can give rise to a social base for political leaders to develop in interest in its maintenance. These wider consequences of housing segregation naturally extend to segregation in schools and public services, alienating children and the general population from contact and a sense of coexistence. When these differentiated residential patterns coincide with differentiated public services, competition and resentment can build and lead to social disharmony at a local, regional or national level. The Habitat II Agenda (1996), calls upon States to avoid discrimination in settlement patterns.

Explicitly, all of these underlying causes and factors, among others, suffice to ensure the transmission of racism and inequality from one generation to the next. For many people of African descent in the Americas, this has been the pattern into which they were born. In many Western Hemisphere countries historically receiving African slaves, insufficient attention is paid to these patterns. Where the discrimination is obvious and civil society presses public institutions to implement greater justice, some public policies and budgets seek to even the standing and living conditions of people of African descent and others. However, many countervailing factors have slowed—or even reversed—progress.

**Public Policy, Budget and Investment**

On the subject of housing investment affecting people of African descent, I have chosen to address public investment issues. This is primarily due to the fact that there are no reliable examples in which private market initiatives have met impoverished citizens’ demand for low-cost housing, including for people of African descent. Additionally, the human rights framework—with its corresponding State obligations—remain needed to relate the political commitments made at
Durban with the already existing international public law system. It is argued that regulating private trade and investment remain within the duties and authorities of treaty-bound States, despite ideological shifts asserting that the private actors, acting freely, would reconcile the disparities discussed in this paper.

United States of America

According to the country's 2000 census, 34,658,190 African-Americans inhabit the United States. Of the 35 million people that claimed Hispanic heritage in the 2000 U.S. census, at least one-third are likely to have African ancestry. About 0.6% of all people living in United States (1,781,877) identified themselves as sub-Saharan Africans, and a significant proportion of U.S. inhabitants of Caribbean origin hail from African roots. Conservatively, in the United States alone, at least 50 million individuals have some degree of African ancestry.¹⁵

The United States has submitted its instrument of ratification of ICERD on 21 October 1994, however with a gratuitous reservation against its obligations to regulate incitement and propaganda under the Convention's articles 4 and 7.¹⁶ Upon its review as a State party in 2001, CERD experts underlined that people of African descent (inter alia) are subjected to racial discrimination in the field of housing. Their Concluding Observations cited "the socioeconomic marginalization of a significant part of the African-American, Hispanic and Arab populations," and further recommended that the State party ensure that the high incarceration rate is not a result of the economically, socially and educationally disadvantaged position of these groups."¹⁷

Despite its ratification of ICERD, the United States notoriously has assailed economic/social/cultural rights and, in particular, the human right to adequate housing, in international forums. That is despite the fact that half of the federal states' constitutions embody that right. The United States is already the only developed country in the world that has failed to ratify the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child, which enshrine the human right to adequate housing.

Despite the numerous U.S. laws, institutions and measures designed to eradicate racial discrimination and affecting the equal enjoyment of economic, social and cultural rights, the Committee remained concerned about persistent disparities in the enjoyment of, in particular, the right to adequate housing in the United States.¹⁸ In addition, the Committee found "the persistence of the discriminatory effects of the legacy of slavery, segregation, and destructive policies with regard to Native Americans."¹⁹ Several experts concluded that affirmative action was essential in promoting racial equality in the United States, and they underlined that the U.S. Government should continue to implement such measures.²⁰

¹⁶ However, Executive Order 13107 of 10 December 1998 on the Implementation of Human Rights Treaties, which provides that "it shall be the policy and practice of the Government of the United States fully to respect and implement its obligations under the international human rights treaties to which it is a party", including the Convention.
¹⁸ Ibid., para. 19.
¹⁹ Ibid., para. 5.
However, the intended “Section 8” cuts in housing subsidies and the unrepentant dispossession of African Americans would violate the affected people’s entitlements to legal security of tenure; affordability, which is the core reason for homelessness in the United States; accessibility; capacity building; and a physical security. All are elements of the human right to adequate housing recognised in international law, which States are to ensure under the overriding principles of rule of law and nonregressivity, but also gender equality and nondiscrimination.

Declining assistance, burgeoning homelessness

Encouraging investment in affordable housing in the United States is the objective of the Low-income Housing Tax Credit (LIHTC), which the Tax Reform Act created in 1986 to provide a dollar-for-dollar reduction in federal tax liability for investors in affordable housing developments. The more money a person invests in affordable housing, the less dividend taxes that investor pays. This program effectively excludes community-based organizations from benefitting, since they usually do not have sufficient tax liability to benefit from the tax credits. Rather, through LIHTC, the government sells the credits to large corporations. Developers then use the cash from the corporations to finance about 50% to 60% affordable housing project. The LIHTC program has generated $6 billion in housing investment each year and resulted in the development of more than 115,000 affordable homes. However, poor location and segregation characterize most of the resulting project: 54% are in inner cities, 26% are in suburbs and only 20% are in rural areas. Of the urban cases, 50% are in areas that are minority-designated and 20% of rural projects are in areas of high poverty concentration, according to census figures.

LIHTC is the federal government’s largest program for stimulating private-sector development of low-cost housing, however it is currently under threat. The Bush Administration’s proposed tax exclusion for corporate dividends would reduce incentives for investors to participate in the LIHTC program. This proposed policy would reduce by 40,000 the annual number of housing units that the program could produce, thus assigning 88,000 more people to deeper impoverishment each year, the majority of whom are African Americans.

The public investment schemes instituted under the current U.S. administration are ideologically grounded and, typical of housing programs in many countries; they do not address the needs of the poorest and most vulnerable. For instance, the U.S. president’s “American Dream Down-payment Fund” will provide $200 million in grants to help first-time purchasers with down payment and closing costs. This is expected to assist 40,000 minority families per year. More than $8 billion has been invested in rural housing by the current administration.

Historically, the Department of Housing and Urban Development (HUD), the agency specialized for public investment in housing that aids the country’s impoverished people, has been rocked by a corruption scandal that led to the imprisonment of its secretary in the 1980s, and was earmarked for elimination in the government downsizing wave of the 1990s. In 1992, Congress initiated the Hope VI program, which sought to transform insolubrious public housing

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projects into mixed-income communities with funds such as the Low Income Housing Tax Credit program and other subsidies. This program was largely in response to litigation seeking to combat persistent segregation policies.\footnote{The consent decree in \textit{Gautreaux v. Chicago Public Housing Authority}.}

Neither of these much-publicized (American Dream and Hope VI) programs was targeted to the specific plight of African Americans, or any group subject to historic discrimination. The “Hope VI” program demolished 115,000 units of distressed housing, but only replaced 66,000 of them, increasing both needs and costs for the target population.\footnote{Turetsky, op. cit., p. 2–3.} Rather than repair the flawed policies and programs in order to meet their announced purposes, the present Bush administration has proposed to eliminate the Hope VI program altogether.

Added to this scenario of declining public investment is the Housing Assistance for Needy Families (HANF) program that the Republican Congress initiated in 2003. It seeks to replace Section 8 vouchers with block grants to states, effectively divesting the central government from its responsibility for administering the national program. That does not mean that the federal government has ceased promoting minority homeownership and closing the demographic homeownership gap (with 74.8\% owners among whites, 47.5\% among blacks and 49.5\% for Hispanics). Current goals of the Federal Housing Authority include increasing minority home ownership by 5.5 million units by 2010.\footnote{Blueprint for the American Dream (Washington: U.S. Department of Housing and Urban Development, 2002)} However, this process does not address the very poor, the most needy, or those currently undergoing dispossession of their homes and land.

\textit{Section 8 Cuts and Homelessness}

The major cause of homelessness in the United States is the 4.7 million-unit shortage of affordable housing for low-income renters. Already, according to a January 2004 report of the National Law Center on Homelessness and Poverty (NLCHP), at least 840,000 people are homeless at any given day across the United States. More than 3.5 million Americans will experience homelessness in a given year; 1.35 million of these will be children. Almost half of the American homeless work full-time or part-time, while no one person working full-time at the minimum wage anywhere in the United States could afford to pay for adequate housing. Almost one in seven households is at risk, with 14.3 million of them spending more than 50\% of their incomes just for housing.\footnote{Homelessness in the United States and the Human Right to Housing (Washington: NLCHP, January 2004), available on http://www.nlchp.org/} Homeless Americans are 50\% African-American, 40\% families with children and 66\% single-parent families, while 44\% work and still have no roof.\footnote{U.S. Conference of Mayors}

Adding to the deprivation and suffering under which these people live, they are civilly penalized by the potential loss of their voting rights. This threat affects 2.1 impoverished citizens—60\% of homeless Americans are of voting age—who face obstacles fulfilling the residency and documentation requirements that many states impose by law to register and cast their ballots. Homelessness in the United States carries the double discrimination against millions of Americans, vitiating their human right to adequate housing and living conditions, while expanding the category of disenfranchised voters.

This year, the George W. Bush Administration’s intends to cut the so-called Section 8 voucher program in the current and forthcoming U.S. federal budgets, doing disproportionate harm to citizens of African descent. Retreating from support of that housing subsidy program will

\begin{thebibliography}{9}
\bibitem{Gautreaux} The consent decree in \textit{Gautreaux v. Chicago Public Housing Authority}.
\bibitem{Turetsky} Turetsky, op. cit., p. 2–3.
\bibitem{Blueprint} Blueprint for the American Dream (Washington: U.S. Department of Housing and Urban Development, 2002)
\bibitem{U.S.} U.S. Conference of Mayors
\end{thebibliography}
deepen the shortage of affordable housing in the United States, particularly at a time when homelessness across the country is spreading in a worrisome pattern.

Section 8 vouchers protect impoverished Americans from paying more than 30% of their income in rent. The Bush-proposed housing budget, if adopted, would mark the first cut in the 30-year history of Section 8 voucher program. To deal with the proposed withholding of support, the housing agencies that provide the poor families with vouchers will have to disqualify 250,000 families from the program next year, or force them to paid about $850 more in rent per family in 2005, and $2,000 more by 2009.

The Section 8 program makes housing possible for two million needy people undergoing multidimensional discrimination. Over 30% of these people are elderly or disabled, and 46% are families of “working poor.” The Bush Administration calls for reducing by more than $1.6 billion (or 30%) the 2005 budget of Section 8 assistance, with the target of a $4.6 billion cut by 2009.

Such a social policy is especially shocking in the light of other policy preferences. Homeland Security notwithstanding, U.S. defense spending has never been higher than now. The Bush Administration has raised the base budget of the Department of Defense from $296.8 billion, in 2000, to $401.7 billion, in the 2005 budget. This represented a 35% increase under the Bush presidency, also not including the yet-undisclosed 2005 costs anticipated for US operations in Iraq and Afghanistan.30

The proposed Section 8 cuts are indicative of a misplaced social priorities and augur further deprivation for the neediest Americans in general. The Bush Administration’s $4 billion in 2001 tax cuts for the highest 1% income earners in the United States would largely cover the cost of the entire Section 8 services for the American poor next year. If the proposed tax cuts for those same rich Americans were to proceed as planned through 2009 (equaling a $85 billion savings), that single loss to the U.S> treasury would be equivalent to nearly 20 times the amount needed to restore the Section 8 cuts you seek for that year.31

The Bush Administration regressive budget proposal is not rationalized by decreasing need, foregoing success at eradicating poverty, or problems with the program. Most troubling is the present administration’s attempt to undermine the Section 8 program, despite its full funding and continued support by the US Congress. In addition, the Bush team also has instituted administrative changes aimed at penalizing housing authorities that have done a good job in the past by making unjustified, retroactive budget cuts; inexplicable reductions in Section 8 Fair Market Rents in many markets; and punitive, unconstitutional raids on alleged program violators designed to discredit the program and “criminalize” the poor.

Black Landlessness32

30 White House budget director Joshua Bolten estimated that another $50 billion would be needed to cover war costs next year, but that the Bush Administration expects to seek those supplemental funds after the 2004 general elections. Dean Brown, “Defense budget doesn't include funds for Iraq, Afghanistan,” Knight Ridder Newspapers (2 February 2004), http://www.realcities.com/ml/d/krwashington/7858468.htm.


Despite some institutional steps forward, public policy and official behaviour have conspired to deny African Americans their economic, social and cultural rights. Since the Reconstruction entitlement was instituted in the 1870s, subsequent U.S. Governments, by omission and commission, further eroded African-American tenure over land, as an essential element of housing, habitat and livelihood.

As the American Civil War drew to a close, the United States Government created the Freedmen's Bureau to provide assistance to former slaves. The government promised to sell or lease to farmers parcels of unoccupied land and land that had been confiscated by the Union during the war, and it promised the loan of a federal government mule to plow that land. The promise to provide for African American freedmen “40 acres and a mule” served, in part, as compensation and, partly, as affirmative action so that people of African descent could pursue their self-determined livelihood. During Reconstruction, however, President Andrew Johnson vetoed a bill to enlarge the powers and activities of the Freedmen's Bureau, and he reversed many of the policies of the Bureau. Of the 850,000 acres of land at its disposal, in 1865, the Freedmen’s Bureau returned nearly half of these assets to their original owners. Andrew Jackson had pardoned the white Confederates, absolving them of the intended redistribution of their lands.

The 1862 Homestead Act, offering lands conquered from the indigenous peoples of the continent, excluded African descendants. Its 1866 successor allowed African-Americans to benefit, but the widespread discrimination at the bureaucratic level foreclosed this option for most. Some African Americans took advantage of these programs and either bought or leased parcels of land. By 1910, they had acquired approximately 16 million acres of farmland. By 1920, there were 925,000 African American farms in the United States.

Vindictive racists also dispossessed many Black farmers and their families by acts of violence. For example, in 1908, 50 hooded White men circled the home of David Walker, a Black farmer in Hickman KY, in an attempt to force him outside for a whipping. Walker refused and the men set fire to the house, forcing Walker, his wife and five children to run outside. The riders shot them all, leaving three of the children wounded and all the others dead. No one was charged in the killings. The land was taken from the surviving children. Records show that Walker's 212 -acre farm was folded into his White neighbor’s property. The neighbor sold it to another man, whose daughter owns the land today.33

Following the emancipating Supreme Court decision in Brown v. Board of Education, Federal Housing Administration and President Dwight Eisenhower's Advisory Committee on Housing sought to evade compliance with the Brown ruling by manipulating locations of federally subsidized housing, further disadvantaging African-Americans’ housing conditions. Recently published research has revealed that it was not just local policies and leaderships that were responsible for housing segregation, but that federal policies significantly impacted housing disparities and discrimination.34

Internal investigations and independent studies have documented the patterns of discrimination, but succeeding U.S. administrations and Congresses were reluctant to take corrective action. In 1982, the Reagan Administration closed the Civil Rights Bureau in the U.S. Department of Agriculture, the principle government department responsible for practicing discrimination against farmers of African descent.

That pattern of racial discrimination was the subject of a class action suit in Pigford, Brewington v Glickman and the U.S. Department of Agriculture (1999). The resulting Consent Decree (settlement) recognized the plaintiffs’ claim of systematic discrimination in loans and other entitlements; however, it did not provide sufficient material relief for the injured, restored no lost land, and did not have any impact on the mechanism of USDA loan distribution. The authority—and discretion—still rest with problematic local commissioners.

The trend is remarkably clear. The considerable levels of farmland acquisition by people of African descent in the United States have been replaced by steady, involuntary land loss since 1920. Today, African-descended farm owner/operators live on little more than 2 million acres of land in the country. The land loss in rural African American communities far exceeds farmland lost by white farmers under general economic trends, and even indigenous peoples in the United States have fared better.

The trend in African-American land ownership can be expressed succinctly in the following statistics:

- In 1920, one in every seven farmers was African American, but, in 1982, one in every 67 farmers was African American;
- In 1910, African-American farmers owned 15.6 million acres of farm land nationally; by 1982, they owned 3.1 million acres of farm land nationally;
- In 1950, African American farmers in North Carolina owned 1/2 million acres; in 1982, African American farmers in North Carolina owned only 40,000 acres;
- In 1920, African Americans operated 926,000 farms in the United States; in 1982, the total number of African American farms had dropped to 33,000 and is steadily declining;
- Almost half of all African-American-operated farms today are smaller than 50 acres;
- In 1984–85, the USDA lent $1.3 billion to almost 16,000 farmers nationwide to buy land; only 209 (1.3%) were African Americans;
- In the late 1980s, less than 200 African-American farmers in the United States were under the age of 25; in 1997, only 745 African American farmers (4% of total) were under 35, and the largest age group was those over 70 (24%);

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36 Pigford v. Glickman, 185 F.R.D. 82, 110 (D.D.C 1999). A consent decree (or consent judgment) is an agreement between two parties that concludes a lawsuit instead of resolving the case through a hearing and/or trial. Since the parties worked out the details of the agreement, it is final and cannot be appealed unless the judge’ order was based upon one of the party's fraud, mutual mistake or lack of jurisdiction. Consent decrees are often granted when the government has sued to have a corporation or person comply with the law, and/or the government does not pursue criminal penalties in return for a defendant agreement to a consent decree.

• Today, African Americans own only 1.1 million acres of farmland and are part owners of another 1.07 million acres;
• Between 1920 and 1992 the number of Black farmers in the United States declined from 925,710 to 18,816, or by 98%);
• In 1982, African-Americans received only 1% of all farm ownership loans, only 2.5% of all farm operating loans, and only 1% of all soil and water conservation loans;
• In 1996, 0.5 percent of 1.31 million farmers were Black. During the same period the percentages of females and Hispanic farmers increased;
• To implement the 92 recommendations in the Pigford judgment, including diversifying the USDA's staff and setting up a commission, will cost $1.2 billion over five years. However for 1999, only $250 million was budgeted to cover also increased funding for loans and the transfer of new technology to small farmers.  

Several specific factors have contributed to the mounting loss of African-American-owned land. Among them are:

• Farmers Home Administration and other public-lending institutions have failed to provide farmers with proper and adequate assistance as required;
• African-American landowners generally have not left wills that would secure inherited land for future generations;
• Land tenancy in common has led to widespread dispossession by foreclosure, adverse possession and eminent domain;
• Random and organized cases of violence (including unprosecuted and unresolved cases) have dispossessed African-American farmers;
• Court-ordered partition sales of African-Americans’ land in cases of dispute over land held in common;
• Opportunistic lawyers and land speculators have exploited legal rules in order to force sales of African-American-owned land;
• Discriminatory practices by both public and private lending institutions toward African-American land owners, leading to decline of operation, production and competitiveness;
• Inadequate technical, marketing and research assistance from the U.S. Department of Agriculture;
• Lack of knowledge of, and capacity in legal rights as landowners.

The discriminatory policies and official practices form a typically pattern of conditions bringing about land loss, affecting and entire community. In some cases, these dispossession pressures decimate entire communities. Land stands as one of the resources essential to realize the human right to adequate housing. Land ownership has been shown to be an essential ingredient in sustainable development, democratic participation and community building. A territorial base is also vital to the preservation of a group’s culture. Therefore, the effects of systematic land loss on the part of people of African descent in the United States transcends personal or mere economic aspects, but has a debilitating effect on a collective scale.

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40 Mitchell, op cit., 27–41.
These two scenarios portray the distortion in public investment in housing and land, leading to dispossession, homelessness and landlessness of people of African descent. Public policy in the United States under the prevailing political ideology punishes the poor of all origins. However, the particular nature and circumstances of the phenomenon has left African-descended people in the United States bearing, once again, disproportionate burden and further impoverishment. Affirmative action programs have been neither on a sufficient scale nor faithfully monitored so as to ensure the desired net effect. Measures still required include:

- Restoration and commensurate increase of Section 8 housing voucher programs for low-income people in the United States, including by reversal of recent tax cuts for the wealthiest U.S. taxpayers;
- Preservation of the Hope VI program with necessary correctives to ensure an annual net increase in low-cost housing;
- Expand the LIHTC program and preserve tax incentives to investors;
- Support alternative tenure arrangements, such as "limited equity cooperatives",41
- Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis, within the Farmers Home Administration and other public lending institutions;
- Legislate state and federal safeguards so that African-American landowners without wills avoid leaving properties intestate and secure inherited land for future generations;
- Expand public-private initiatives to undertake integrated development with low-cost housing on public and donated lands;
- Reforming state laws of intestacy to narrow the class of heirs to whom property may pass in order to prevent fractionation of the ownership interest in the first instance;
- Programs for public-interest lawyers and community services to provide capacity-building assistance for landowners to know about the importance of estate planning, in order to reduce unstable “in-common” tenancy with the goal of family land retention;
- Law reform to promote land acquisition and retention in African-American communities consistent with international commitments to promote just patterns of land distribution;
- Cease practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives;
- Establish land consolidation courts to restore and preserve land titles, on an affirmative-action basis, to disposessed African-descended farmers and their families;
- Establish and maintain an effective African-American Land Trust to support and expand land ownership by people of African descent on an affirmative-action basis;
- Cease court-ordered partition sales of African-Americans’ land in cases of dispute over land held in common;
- Reverse and prosecute discriminatory practices toward African-American land owners by both public and private lending institutions;
- U.S. Department of Agriculture and/or other public agencies to provide adequate technical, marketing and research assistance to African-American farmers on an affirmative-action basis.

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41 The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, “The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society,” 46 Howard Law Journal 85–125, 85 (Fall 2002).
Brazil

In his inaugural address, in 2003, President Luiz Inacio Lula da Silva had set out his priorities to promote sustainable development, to encourage employment and to promote democracy and human rights. In the speech President Lula recognized that racial inequality was a cruel and inhumane act and noted that slavery had left deep imprints on Brazilian society.

A nation of great natural wealth and human resources, Brazil shares the dubious honor—with Mexico—of having the greatest disparity between rich and poor in the Western Hemisphere. In Brazil race and poverty were directly interrelated and extreme poverty was considerably higher in blacks than in whites as well as a gender bias; for example, black women suffered from extreme poverty more than any others in Brazilian society. If one were to take the numbers arising from the 1980 census categorization, Brazil’s African population would be the world’s third largest; however, when one looks at the government bureaucracy, the military hierarchy and the directors of corporations, one never sees a Black person.

Despite the many difficulties of classification, the 1980 census of Brazil showed that 45% of the population had African roots. Those identifying themselves as mixed white and black were 38%. According to the 1999 census, black Brazilians (of African descent) constitute 6% of the country’s 171,853,126 total population, or some 10.3 million.

Increasing concentration of wealth—and especially agricultural land—continually forces migration to urban areas. Now, more than 70% of Brazil’s population live in the cities, swelling the working class shanty towns known as favelas, typically lacking basic services such as water and electricity. Even workers with full-time jobs often earn subminimum wages and cannot afford daily transportation from home to work. Thousands of these workers live as homeless people on the streets of major cities, only to return to their families on the weekends.

In the case of Brazil, so-called substandard settlements appear in the 2000 population census to be 1.7 million households, or 6.6 million people. In addition to poor rural living conditions, nearly 40.5% of the total urban households (or 15 million families) in Brazil would be classified as substandard.

Historically, the Brazilian left has been hesitant to deal with racial inequality. Some analysts attribute this to the official ideology of racial democracy in Brazil, the Brazilian left’s Eurocentrism and its exclusive reliance on class origins to explain social contradictions. The current da Silva government is challenged on many sides, but particularly to address domestic inequity as more than only a class problem.

In addition to a long legacy of slavery and economic disadvantage, people of African descent in Brazil have found themselves in a double bind, ensuring their impoverishment. After decades of military rule, the benefits of democratization after 1988 largely have depended on one’s relative position within the country’s socioeconomic and racial matrix. In the past decade, South America’s largest country has become one of the most avid subjects of neoliberalism, both through the adherence of successive Brazilian government and as a focus of “liberalizing” pressure from extraterritorial interests and international financial institutions (IFIs).

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42 Methodological changes in enumerating the population have shifted toward self-identification, which were seen as more democratic and effective at obtaining accurate population statistics. The categories for the demographics referred to the following groups: white, black, brown, yellow and indigenous.

Although sufficient resources exist in the country, external debt of Brazil, conditionality attached to loans from the World Bank, the International Monetary Fund and the Inter-American Development Bank, and the country’s own self-imposed conservative financial policies, create obstacles to using public funds to benefit those most in need, weaken local authorities and strengthen the power of large corporations, especially through their privatization of public goods and services, including land and water. The decentralization model of an “effective and competitive city in the globalized markets” has resulted in a perverse struggle for taxes among towns, which has made it impossible to implement regional projects and cooperation structures.

Poor Brazilians face the challenge to create ways of cooperation and social responsibility in order to improve living conditions, especially in cities, where the majority of poor Afro-Brazilians live. The 1990s saw real progress in governance arising from social movements mobilizing for change. This has brought about the Unified Healthcare System, the Social Welfare Act and, especially, the Statute of the Cities (2001), which defines the democratic management as an essential element within urban development. The current government’s new Ministry of Cities has resolved not to accept loans from international financial institutions that restrict subsidies and other measures aimed at benefiting the low-income or no-income families. The current government aims to reduce the budget surplus target of 4.5% to 3.25%, thereby releasing funds to meet human rights, including the right to housing, for the very poor.44

The current Federal Government has increased significantly the financial resources allocated to housing, with 5.1 billion Brazilian reais invested over 2003 for the benefit of 314,000 households, and an investment of 8.8 billion Brazilian reais in 2004 for the benefit of 543,000 households. The government has taken steps to allocate resources to those households with an income equal to up to five minimum wages, which make up 92% of the housing deficit. In this development, the resources of the Housing Funding Program went from 261,000 reais, in 2003, to 325,000 reais in 2004, for the exclusive benefit of 62,000 households with an income of US$ 260. Another significant measure has been the creation of the housing credit program to develop projects jointly with cooperatives and popular organizations, with 542 million reais for 2004. The current government also has taken measures to expand the real estate market, and the House of Representatives has passed the bill creating the National Fund for Housing in the National Interest, which had been held up in the Congress for 12 years.

The Program for the Urbanization, Regularization and Integration of Slum Settlements (Regularização Fundiária) is based on the integration of urbanization initiatives for the areas of environmental sanitation, risk prevention, housing upgrading and tenure regularization.45 In slum settlements, the Federal Government has implemented a new program to support sustainable land-tenure regulation in urban areas, known as Papel Passado, which is aimed at ensuring secure tenure and full recognition of “the right to the city” of millions of Brazilians. This program, which supports the tenure regulation initiatives implemented in towns and

44 See also the preliminary observations of UN Special Rapporteur on adequate housing, Miloon Kothari, as of 16 June 2004 in light of his mission to Brazil (30 May–12 June 2004), revised version, following press conference at Brasilia, 11 June 2004.

states, already has assisted over 250,000 families to regularize their tenure, and has delivered title to over 10,000 households.

At the centre of the popular movements for restorative justice are communities originally founded by former slaves calling for public investment in their productivity and now are demanding titles to their land. These include communities formed as hideouts for runaway slaves, or *quilombos*, which number more than 1,000 across Brazil.46

**CERD**

In March 2004, the Committee on the Elimination of Racial Discrimination has reviewed the fourteenth to seventeenth periodic reports of Brazil on how that country implements the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). During that review, the delegation testified that Brazil had accepted ICERD as the main tool in Brazil to combat racial discrimination, and that WCaR marked the beginning of a new cycle for public policy in Brazil. The Government of Brazil acknowledged that there was a need to step up public policies to restore the dignity of the population in Brazil as a whole, and particularly Afro-Brazilians, indigenous groups and women. Ensuring quality for all men and women in Brazil was a great challenge but the Government was committed to making that a reality as part of its fight against racial discrimination, she added.47

Committee Experts advanced a series of questions and comments, including on the disparities between the rich and poor...illiteracy and education programmes for minorities; runaway slaves (*quilombos*), and the Afro-Brazilian population and indigenous communities in general. The delegation spokesperson said that for the first time, there were opportunities to advance and guarantee the rights of all people in Brazil, with a particular emphasis on the Afro-Brazilian population and other groups subjected to discrimination. She added that, over the next three years, Brazil intended to establish reference points to support democratic participation and social and political progress in order to improve the situation in the country.

The periodic reports of Brazil outline the efforts that Brazil has made to adapt to the legal framework established by ICERD.48 Among other things, the reports mention that the 1988 Federal Constitution elevated racism from a misdemeanor to a felony and Brazil's steps to promote actions intended to assure that equality of individuals favors the safeguarding, promotion, and protection of groups disadvantaged and subject to discrimination.

CERD welcomed the 2002 adoption of the National Affirmative Action Programme, as an important mechanism to implement the Durban Declaration and Programme of Action, as well as the second National Human Rights Programme.49 However, The Committee remained concerned about *de facto* racial segregation faced by some black, mestizo and indigenous peoples in rural and urban areas in the form of *favelas* (shantytowns), in particular, *quilombos*.50

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48 The fourteenth to seventeenth periodic reports of Brazil are contained in CERD/C/431/Add.8.

49 Concluding observations of the Committee on the Elimination of Racial Discrimination: Brazil, 12 March 2004, CERD/C/64/CO/2 (Concluding Observations/Comments), para. 4.

50 Ibid., para. 13.
Public Policy, Budget and Investment

Among post-Vienna measures by the Brazilian government was the 1995 creation of the Interministerial Group for the Promotion of the Black Population in order to develop more-effective antidiscrimination policy and efforts to combat racism as a government priority. This emphasis also is reflected in Brazil’s National Human Rights Plan and its National Affirmative Action Programme.

Nonetheless, in preparation for Brazil’s participation in the WCaR (2001), a study by the Institute for Applied Economic Research (IPEA) analyzed the evolution and impact of racism on social indicators in Brazil and revealed that the gap between whites and blacks had not been reduced. Of those Brazilians statistically failing within extreme poverty, 69% are black; i.e., over ten times the official proportion of the national population.

Another measure adopted by the Brazilian Government involves the implementation of a National Affirmative Action Programme that intends to achieve percentage-based participation in federal public administration and services by government agencies for all segments of society, including Afro-descendants, women and the disabled. The National Human Rights Programme, instituted on 13 May 2002, is composed of a series of actions intended to overcome, inter alia, racist and exclusionary practices and to promote equality and the full integration of Afro-descendants.

Another recently initiated program to combat racial inequality is the “Zero Hunger” project, which President Lula da Silva initiated, and which now involves several government ministries and representatives of various social groups, including quilombos and indigenous peoples. The overall aim of the project was to eliminate hunger in Brazil and register every citizen. (Every year, some 600,000 children are born in Brazil without being registered, and approximately 20 million persons are illiterate in Brazil, with Afro-Brazilians disproportionately represented in both categories.) The interdependence of rights is apparent here also in the fact that illiterate citizens, who are found especially among the indigenous, Afro-Brazilian and mestizo groups, do not have the right to be elected to public office.

Quilombo Land

Since 1988, Brazil had recognized the land rights of the quilombos and, in 2003, promulgated a law to ensure the further rights of these groups and institute further agrarian reforms to enhance the right to ownership of land. A national committee has developed public policies to respond to the needs of quilombo communities in the area of health, education and other areas; however, only 29 quilombo areas have been officially recognized with titles. Nevertheless, the quilombo communities persist at attaining their housing and land rights through social mobilization.

For example, the remaining 153 quilombo communities traditionally occupying the Alcântara region have pursued an arduous struggle to guarantee the implementation of their housing and land rights and to prevent violations of their community self-determination. Since the implementation of the Brazilian space program’s launch site, Centro de Lançamentos de Alcântara (CLA) in 1984, the Alcântara Municipality has relocated 312 families belonging to 32

52 “Regularization of quilombo lands is theme of national campaign,” Noticias Socialambiental 31 August 2004), http://www.socioambiental.org/e/nsa/detalhe?id=1818. The CERD Committee recommended that the State party accelerate the process of identification of quilombo communities and lands and distribution of the respective title deeds to all such communities. Ibid., para. 16.
traditional communities to alternative housing known as agrovilas. These sites are inadequate to meet basic needs of their populations due to infertility of the alternative land and locations distant from the sea; whereas fishing has been a traditional mainstay of their livelihood.

Removed from quilombo to agrovila, these communities also lack adequate access to drinking water and are compelled to buy drinking water that previously was available for free. At neither location have the inhabitants held land titles. At the new agrovila locations, they must obtain permits from CLA for any extensions or alterations to their houses. The community’s social integrity had been based on a system of family inter-relationships, community solidarity and common land tenure and use of natural resources. These relations had formed social and material capital upon which each member relied. With relocation, the communities now are facing social problems and disintegration of all kinds, which a 6 June 2004 Public Hearing in Alcântara recognized as stemming from the relocation and subsequent conditions. Nonetheless, further dislocations are planned to allow expansion of the CLA that today occupies almost 55% of the municipality.

As of August 2004, a national campaign by quilombo communities and civil society has started with a program of capacity-building for the leaders of the Coordenação Nacional das Comunidades de Quilombos [National Coordination of the Quilombo Communities] (CONAQ). The next phases will involve regional capacity-building, scheduled initially for the States of Rio de Janeiro and Rio Grande do Sul, and the city of Alcântara, in the State of Maranhão, and juridical actions and activities that will be carried out during the World Social Forum, in January 2005 at Porto Alegre.

In order to avoid further harm to affected communities and to prevent more such dislocations, central, state and local authorities bear the duty to undertake the following essential steps:

- Address the compensation and restitution claims of the communities already relocated, especially those arising from the need for adequate housing and land suitable for residence, work, family and community life, access to public goods and services (including education, public transport, drinking water and sanitation, energy, etc.);
- Cease all new relocations of quilombo communities without full consultation and consent of the affected people;
- Ensure that, for any development project, public purpose, or any other pretext, those threatened with dislocation be consulted fully, and that all dislocations be suspended until adequate and consensual solutions are found that ensure the fulfillment of all elements of the human right to adequate housing;
- Immediate, diligent and effective delivery of essential services to individuals and communities affected by the quilombo relocations;
- Accelerate the process of regularizing land and housing tenure for quilombo inhabitants;
- Reforming state laws of intestacy to narrow the class of heirs to whom property may pass could prevent fractionation of the ownership interest in the first instance;
- Public and civil society programs with public-interest lawyers and community services to provide capacity-building assistance for quilombo communities to ensure secure land tenure and full defense of housing rights;

54 Partners in the campaign include Instituto Polis, Center on Housing Rights and Eviction (COHRE), CONAQ, and the Associação das Comunidades Negras Rurais Quilombolas do Maranhão [Association of the Quilombola Black Rural Communities of Maranhão] (Aconeruq), with the support of the Servicio Latinoamericano y Asiatico de Vivienda Popular [Latin American and Asian Service for Popular Housing] (SELAVIP) and Ford Foundation in Brazil.
• Reforming laws to promote land acquisition and retention in Afro-Brazilian communities consistent with international commitments (e.g., Habitat II, WSSD, etc.) to promote just land distribution.
• Legislate safeguards to ensure that Afro-Brazilian tenure holders and landowners without wills to avoid leaving properties intestate and secure inherited land for future generations;
• Prohibit in law and policy the confiscation of Afro-Brazilians’ land and housing by foreclosure, adverse possession and public purposes without a proper hearing and consultation, due process, compensation and rehabilitation;
• Reverse and prosecute discriminatory practices by both public and private lending institutions toward Afro-Brazilians.

Government Culpability, Government Solutions

The purpose of this inquiry is not to draw a judgment about the relative living conditions of African-descended communities of the United States and Brazil. Such a comparison is beyond the scope of the present paper and would not necessarily provide a meaningful guide to direct policy. However, exploring these two cases of Afro-descended people in context does reveal a comparative view of current trends between the two political cultures and their resulting policies. Each case points to complexity and variety of approaches, including some important domestic contradictions between official and unofficial practice in each country. Meanwhile, at the comparative level, Brazil and the United States embody rather divergent trends in their treatment of their citizens of African descent, especially those most vulnerable.

A State’s behaviour consistent with its duty to ensure nondiscrimination in public policy and investment requires the application of covenanted obligations and jurisprudential guidance to respect, defend, promote and fulfill the human rights to adequate housing and land. Remedies for residential segregation affecting people of African descent, as with others, must relate to the ways in which housing markets operate. Remedies to dispossession, in many cases, must relate critically to development and investment processes and their corresponding assumptions, including those sponsored or condoned by the State, as well as private enterprises. Individuals and groups who experience discrimination must have access to recourse measures. As seen in the foregoing examples of multiple discrimination on the basis of race and class, affected persons frequently need professional support, especially if they allege discrimination on the part of a public body like a municipality or government department.

In the United States of America an elaborate system for the supervision of commercial mortgage lending has been designed to prevent any aggregate differentials in lending to persons of different racial background. In light of prodigious efforts at many levels to implement equitable standards of nondiscrimination and equity in housing for people of African descent in the United States, significant areas of public policy, and public budget and investment remain inconsistent with the goal. In the case of federal assistance to low-income renters and lending for African-descended farmers, the State has emerged as the most-notorious violator.

55 The Fair Housing Act, 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, familial status, or disability. http://www.usdoj.gov/crt/housing/housing_coverage.htm
In Brazil, a long legacy of repressive governments has given way to a set of policy initiatives that treat redressing racial disparity as a priority. Nonetheless, certain corners of national government and municipal level authorities can be slow at adjusting to new measures toward distributive justice, as seen in the dispossession and relocation of the quilombo community in Alcântara.

Institutionalized discrimination systematically treats individuals unequally, and oppresses people as members of a group. The goal of racial liberation is to eliminate discrimination, both its present manifestations and its historical effects. Restorative or restitutive justice seeks to deliver the historically affected group members to the position they would have been in, had they been treated under the same legal and social regime as the majority.

Some of the most stubborn obstacles to restitutive justice for people of African descent remain ideological also in ways distinct from the distortions of racism. This involves the dominant community’s dedication to liberal notions of upward social mobility, meritocracy; preference for rules over standards; devotion only to legally enforceable, justiciable rights; the perception of professionalism; and an intense distrust of collectivism and mobilization. Therefore, efforts at either grand-scale reparations or restitutive justice in individual cases must also address these ideological hurdles as well.

While a broad-brush approach to reparations contains its own conceptual and practical implementation dilemmas, the cases of historic and unresolved injustice discussed in this paper are of a more-manageable scale. Where such opportunities present themselves so clearly, the demands of restorative justice call for urgent, good-faith and effective public policy, budgetary and investment measures as those proposed above. So far, policy makers and local authorities have squandered opportunities to implement the official antiracism goals articulated at the national level.

The core problem with implementing reparations on these terms is the objectionable assumption that race is a group phenomenon, or rather that there is collective responsibility to make reparations for whites’ oppression of blacks. Collective guilt is an ideological premise rejected in international standards of fairness. However, the dominant community’s own internal ideology has imposed collective and arbitrary status to African descendants in the sphere of housing and land. That ideology assumes as just and fair: (1) a property, title and contract regime that favors private and individual ownership and (2) limited government intervention through tax and payment transfer to the abject poor. While these assumptions also have affected poor whites, there has never been the suggestion that poor whites in Brazil or the United States have legitimate reparation claims analogous to those of African-descended people as a group.

Some have cautioned that levelling the inter-racial playing field with a combination of antidiscrimination, affirmative action, and reparations today might well accentuate the current divisions within the African-descended community in a given country. Facing such a


57 Theoreticians in the United States differ; for example, John O. Calmore emphasizes that putting resources into dispersal through fair housing law mainly will benefit the upwardly mobile individuals at the expense of the more disadvantaged, and that it will diffuse collective political power, dispersing elites, transferring them outside the community and reducing the capacity of remaining inhabitants to mobilize and protect their group (or individual) interests. This debate takes on added urgency from William Julius Wilson’s analysis of the “concentration effects” produced by the African-descended middle class migration from the ghetto beginning in the 1960’s. According to Wilson, the class-segregated communities of the “truly disadvantaged” who remain reproduce a variety of “pathologies,” in part, because of the dearth of community-based role models and local middle-class contacts.
dilemma, therefore, requires that any reparations model be applied self-consciously to develop housing and land-development programs that would help communities in ways that reconcile rather than deepen internal differences and economic inequalities. This may mean support for communities of African descent to take collective action, rather than merely obtain individual entitlements.

The human right to adequate housing (HRAH) approach and decommodification are the two most familiar ideas when considering public policy, budget and investment alternatives. The right to housing usually means an entitlement—guaranteed by the State—to a minimum standard of shelter, regardless of status and regardless of one's ability to pay. It is not a utopian idea, except in the sense that we are a long way from realizing it. HRAH establishes a minimum, rather than a housing ideal, and without implying that the State actually provide housing directly. Part of this minimum is formed of the States “negative” obligations to refrain for certain policy or fiscal practices that degrade living conditions. Refraining from such harm as forced evictions or discrimination in services is often cost free and avoids deepening poverty and related pathologies.

Decommodification, on the other hand, is a utopian idea. It assumes that, in a decent society, the collective (of various descriptions) would design, plan, construct, and maintain its own housing stock, and allocate it on the basis of need. Models of “social production of habitat,” perhaps most explicitly articulated in Latin America, do achieve a level of decommodification. However, these cannot succeed in a context of racial discrimination or repression of collectivism affecting the local initiators. Such alternatives can take place with the State as a partner, or in the absence of the State.

The justice required, in the Brazil and the U.S. cases, includes both compensation for slavery, and reparations for the economic benefit that whites as a group have derived at the expense of blacks from a legal, economic and social system operating according to racist criteria. However, beyond theoretical abstract notions of antidiscrimination and apart from the controversy of remedies invoking collective guilt, the specific remedies considered here are affirmative action in economic activity, including employment, education and housing opportunities, and material means to provide issue-oriented, meaningful restitution. This is the essential vestige of justice that the judge and the Consent Decree evaded in the *Pigford v. Glickman* case, despite the opportunity to apply principles of meaningful restitution.

It has already been established that, in the selective cases presented here, the State and its agents can be the principle violator in a system that perpetuates the legacy of discrimination against people of African descent. The HRAH approach, however, not only imposes the moral and legal duty on the State, but also provides it with the needed guidance to implementing restitutive justice. Through this framework as a tool of analysis, the elements of States’ obligations under treaty form an authoritative, nonutopian and nonideological basis for the remedial measures proposed here.