



Climate Injustice & Disaster Response and Recovery in the United States

Recommended Action 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 (DHRC) 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 DHRC 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: RECOMMENDED ACTION RELATED TO 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 [\[ICERD\]](#).

Consistent with the Committee's List of Themes, set forth below are a series of recommended actions that the United States should take to remedy structural racial inequality in matters related to climate injustice, and disaster response and recovery. Each recommendation is described more fully in the body of this report:

- 1. Ensure that disaster resources, including evacuation information, emergency shelter, and means of transportation, are available to individuals in low-income minority communities, and accessible to non-English speakers.**
- 2. Ensure that appropriate emergency shelter is provided on a non-discriminatory basis to individuals who are homeless, and those involved in the criminal justice system.**
- 3. Adopt legislation that would automatically suspend immigration enforcement during a declared emergency of disaster.**
- 4. Prioritize equity in disaster response and recovery programs to protect the right of renters and people who are homeless, and to ensure that minority households are not disadvantaged compared to wealthier, white homeowners.**
- 5. Codify a positive right to housing, including a property interest in continuing post-disaster housing assistance, under appropriate disaster recovery statutes and regulations.**
- 6. Clarify that both direct and indirect racial discrimination is prohibited under relevant provisions of the Stafford Act, and agency implementing regulations.**
- 7. Require a "one-for-one" replacement of federally subsidized rental units that are damaged or destroyed by a disaster, and**

codify the Disaster Housing Assistance Program (DHAP) to provide comprehensive housing assistance and case-management to displaced disaster survivors.

- 8. Establish a positive right to legal representation following a disaster, while expanding access to pro-bono assistance and adequately funding disaster legal services programs.**
- 9. Require transparency by directing FEMA to collect and disclose disaggregated data on disaster benefit applications and appeals, and to make available demographic data on the impact of disasters and federal recovery efforts. Processes should be created to allow access to response and recovery data for research purposes.**

II. POVERTY, RACE AND LEGACIES OF INJUSTICE: DETERMINANTS OF DISASTER EXPOSURE AND OBSTACLES TO RECOVERY

Poverty and race are closely linked determinants of disaster exposure and adverse disaster outcomes that reflect historical legacies of racial injustice and exploitation. Despite progress in outlawing the most blatant forms of racial discrimination, these disparities persist along racial lines in matters related to disaster resilience and recovery capacity, implicating US compliance with central ICERD obligations.

A. Poverty and Race Intersect to the Detriment of People of Color in the Event of a Disaster

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.

Homelessness and housing poverty 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, representing 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.

B. Climate Vulnerability is a Legacy of Racial Exploitation and Injustice

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.

III. RECOMMENDED ACTION TO ADDRESS DISCRIMINATION AGAINST BLACK, INDIGENOUS, AND OTHER PEOPLE OF COLOR IN US DISASTER RESPONSE AND RECOVERY PROGRAMS

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.

Emergency response and sheltering activities are typically undertaken by state, local, or territorial governments assisted by volunteer organizations. While the Federal Emergency Management Agency (FEMA) does publish and set recommendations and guidance for states and localities responding to disasters, there is little emphasis on equitable access to emergency assistance or the protection of civil rights for non-white populations, and none regarding individuals experiencing homelessness. As a result, the initial response to a disaster often magnifies existing inequities.

Both short and long-term disaster recovery is typically defined by heavy involvement by both FEMA and the US Department of Housing and Urban Development (HUD) in partnership with state-level agencies. Despite this well-defined relationship, inequities continue to multiply throughout the recovery process.

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. In Puerto Rico, notices written in English were sent to survivors of Hurricane Maria who applied for disaster benefits. And in 2017, a government oversight [report](#) revealed significant delays in the ability of disaster survivors to apply for assistance due to a lack of translators and translated information.

Recommended Action:

- **Undertake a thorough review of disaster coordinating mechanisms to ensure that low-income minority households, including non-English speakers, can access evacuation information, alternative shelter, and means of transportation.**
- **Ensure that “[After-Action](#)” reports issued by FEMA include a review of language accessibility, including whether disaster response and recovery activity complies with FEMA’s [Language Access Plan](#). Though federal civil rights laws require agencies and their implementing partners to make programs available to non-English speakers, FEMA is not required by statute to review language accessibility in its After-Action reports to identify deficiencies or the need for remedial action.**
- **Ensure that FEMA updates the National Response and Preparedness Framework and related guidelines to emphasize the importance of upholding civil rights requirements, increasing access to services by low-income minority households,**

and eradicating racial bias in hazard and emergency management at all levels of planning and response.

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. In many areas, massive distrust exists between these communities and police departments – fostered by generations of discrimination, over-policing, and a biased criminal justice system. Because of the presence of police or immigration enforcement, many survivors may reasonably hesitate, or otherwise not be able to access shelters. 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.

Recommended Action:

- **Federal authorities must ensure that emergency shelter is provided on a non-discriminatory basis to individuals who are homeless, and those involved in the**

criminal justice system, while at the same time providing a safe shelter experience. Agency officials should review the [National Mass Care Strategy](#) and [Shelter Field Guide](#), and work with state, local and private experts to develop technical shelter guidance to avoid discrimination.

- Where FEMA is authorized under the [Stafford Act](#) to reimburse providers for the cost of operating a disaster shelter, funding should be conditioned on compliance with non-discriminatory best practices.
- Adopt legislation that would permanently suspend immigration enforcement during the period of a presidentially declared emergency or major disaster, in order to protect access to life-saving resources for undocumented immigrants and their families. [Proposals](#) have been introduced in prior legislative sessions, and should be re-introduced and enacted into law in order to demonstrate compliance with ICERD.

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

Disaster assistance programs administered by FEMA disadvantage Black, Indigenous, and other people of color and their communities. In the short term, disaster survivors who otherwise might qualify for federal assistance are excluded from the program because they can't meet the "costs" of participating. Over the long term, federal support programs can increase the race-based wealth gap, by making white communities richer, but leaving communities of color poorer.

For example, although federal legislation authorizes FEMA to provide temporary rental assistance and subsidized motel stays to qualified displaced renters, those programs 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. 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 initially 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 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.

Despite these problematic consequences, a federal district court [refused](#) to issue a preliminary injunction preventing FEMA from prematurely ending its Transitional Shelter Assistance program for Hurricane Maria survivors - finding that the applicable statute did not create a right to housing, or a property interest in disaster housing assistance. As a result, the decision to terminate housing assistance was a matter of discretion for federal officials, that is not reviewable in a judicial proceeding.

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.

Recommended Action:

- **Congress should enact legislation to prioritize equity in disaster response and recovery to protect the rights of renters and people who are homeless. Existing legislation can be amended to ensure that access to disaster benefits does not depend on one's pre-disaster housing status. Moreover, because a significant portion of disaster financing is allocated to the States through federal grant programs, Congress should direct that State grant recipients disburse disaster recovery resources [proportionally](#) among homeowners, renters, and people who are homeless. Absent such a requirement, States have underfunded programs**

that assist low-income renters and people who are homeless, while allocating funding for disaster recovery programs that benefit higher-income homeowners.

- Congress should codify a property interest in continuing post-disaster housing assistance, under the Stafford Act and related disaster recovery statutes. Such benefits should “automatically renew” until a determination is made that durable housing solutions are available for displaced survivors, and should terminate only after displaced survivors have a realistic opportunity to access affordable, alternative housing. Ancillary costs, such as motel fees and other related charges that pose obstacles to transitional housing, should qualify as a federal subsidy.
- Congress should require that FEMA ensure all disaster survivors receive the assistance they need to fully recover, including by using Broad Based Categorical Eligibility and low-barrier programs. Congress should also [codify and expand](#) upon the list of approved documentation and self-declarative forms disaster survivors can use to show they own or occupy a disaster damaged home.
- Congress should clarify that the Stafford Act’s [non-discrimination](#) provision and implementing [regulations](#) prohibit de-facto discrimination, even in the absence of discriminatory intent, and that this interpretation applies to all agency decisions, including but not limited to decisions to terminate disaster housing benefits, approvals for homeowner assistance, and investments in climate mitigation. Congress should ensure that FEMA’s interpretation of its non-discrimination requirement does not prohibit the agency from taking action to address the unique challenges faced by marginalized populations. Congress should ensure that the prohibition on discrimination is judicially enforceable, and that it creates positive authority for federal officials to take steps to remedy past injustices that compound present-day housing disparities when a disaster hits.

D. The Special Case of Subsidized Housing

Federally assisted rental properties represent roughly five million homes and account for more than 10% of the nation’s rental stock. They provide housing stability to some of our nation’s most marginalized people with the fewest resources, who are often least able to prepare for a disaster and face significant hurdles during recovery. Despite their importance, nearly one-third of the federally assisted housing stock is in areas with very [high or relatively high risk](#) of negative impacts from natural hazards compared to one-quarter of all renter occupied homes and 14% of owner occupied homes. Federally assisted households are less likely than their low-income unassisted peers to have the supplies and resources needed to adequately to evacuate or prepare to weather a natural hazard. Households of color in HUD-assisted housing are more likely than white HUD-assisted households to live in areas with greater risk.

Disasters that damage or destroy subsidized rental units take a significant toll on low-income survivors, putting them at risk of homelessness, and worsening a pre-existing affordable housing crisis that disproportionately impacts households of color. By definition, people who live in subsidized housing are economically vulnerable – a condition that is magnified by the fallout from a catastrophic disaster. It is therefore imperative that the government recognize and protect the right to adequate housing on a non-discriminatory basis in the event federally assisted housing is affected by a disaster.

Following Hurricane Sandy, coastal communities in New York and New Jersey lost a significant number of affordable rental housing, placing an additional burden on low-income renters in an already tight housing market. Not only were affordable units destroyed, damaged properties were [redeveloped](#) into more expensive homes, reducing the stock of low-cost housing and putting safe and secure housing further out of reach for low-income households and households of color.

The destruction of federally assisted housing also compounded the housing crisis in the US Virgin Islands after Hurricanes Maria and Ida swept through in 2017. In some cases, the only alternative housing units available to displaced survivors were unfit for habitation – one survivor [reported](#) moving into a unit without a secure door lock, and a kitchen without cabinets or a sink. Many disaster survivors were forced to [relocate](#) to neighborhoods far from established jobs, schools, health facilities, and social networks, including to the US mainland.

FEMA's [Disaster Housing Assistance Program](#) (DHAP) had been used to serve residents of federally-assisted housing and other extremely low-income renters. Despite support from both Democratic and Republican administrations, the program has not been utilized by FEMA since 2017. DHAP provides comprehensive housing support to help displaced disaster survivors get back on their feet. Participants receive direct rental assistance, beyond what FEMA currently provides in rental support or motel subsidies, along with “wrap-around” case management assistance to help survivors secure employment, enroll in school, access health care, and connect to public benefits. Under current law, FEMA has discretion on whether to activate DHAP, yet has refused to do so in response to recent disasters, despite requests from Governors, advocates, and disaster survivors. A system that automatically activates DHAP following a major disaster is better suited to meeting the needs of displaced disaster survivors and removes the risk that a discretionary decision not to activate DHAP would reflect racial bias or result in de facto racial discrimination.

Recommended Action:

- **Congress should require a “one-for-one” replacement of federally assisted rental units that are damaged or destroyed by a disaster. Funding for such an initiative can be realized through the national [Housing Trust Fund](#), a federal-state partnership designed to increase and preserve the supply of rental housing for extremely low-income families. Congress has allocated funding to the Trust Fund since 2016, though in insufficient amounts to preserve low-income housing in the event of a disaster. Legislation should be adopted to ensure long-term adequate funding to meet a “one-for-one” replacement ratio.**
- **Congress should codify DHAP into law, making it a permanent part of the US disaster response and recovery management system and activating it after every disaster.**

E. 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 law establishes a pathway for providing disaster legal services following a declared disaster, but authorization for legal services 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 who are able to participate in the program.

Legal representation is nonetheless critical to an equitable disaster recovery, and makes a tangible difference in the lives of low-income people. 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 at FEMA to guard against future rights violations.

In North Carolina, legal assistance helped thousands of residents recover from a cascade of disasters between 2016 and 2018, including three hurricanes that took an especially hard [toll](#) on low-income, segregated Black communities. A large part of disaster legal assistance, in North Carolina and elsewhere, is coordinated through the “[Disaster Legal Services Program](#),” a joint initiative undertaken by FEMA, the American Bar Association, and legal aid organizations to expand pro bono services to low-income disaster survivors. This program connects clients with a volunteer attorney through a disaster “hotline,” while partnering with law clinics, disaster resources centers and organizations like [Legal Aid of North Carolina](#) to help disaster survivors navigate federal benefits, obtain lost documents, negotiate repair contracts, and fight evictions. This program, however, is not automatically implemented following a disaster, but requires approval from FEMA after each declared event.

Moreover, despite a growing need, the cascading impact of repeat disasters in the US strains the ability of lawyers and pro-bono organization to provide assistance outside of the ABA program. Legal aid organizations are already under-resourced, and their staffs are overworked even before a disaster hits, leading to a critical shortages in the number of attorneys available to assist low-income survivors after a catastrophic event.

Recommended Action:

- **Congress must establish a positive right to legal representation in civil proceedings, and a corresponding governmental obligation to provide low-income individuals with legal representation following a disaster.**
- **Congress should require that FEMA create due process standards regarding appeals of FEMA denials of assistance – including when repayment is at issue. These standards should allow comprehensive discovery and provide survivors recourse to a court of competent jurisdiction.**

- **Congress should adopt legislation implementing a permanent change to the process FEMA uses to establish “home-ownership,” as a condition to benefits eligibility. To date, FEMA has adopted positive changes as a matter of discretionary policy, leaving future disaster survivors subject to policy changes that may adversely impact their ability to access benefits they are lawfully entitled to.**
- **Congress should amend existing laws and regulations so that legal services are automatically available following a declared disaster, and relax qualification criteria to increase the number of people who can obtain assistance. Congress must also routinely monitor the ongoing need for legal assistance following a disaster in order to provide funding that is necessary to support the full scope of representation that disaster survivors need.**

F. Lack of Transparency Prevents Additional Research Into the Impact of Racial Discrimination on Disaster Recovery

The intersection between race, climate vulnerability, and the country’s disaster response system – and the resulting negative impacts on survivors of color – is likely even more harmful than the current research suggests. The lack of access to detailed FEMA application data is needed to further evaluate racial disparities, however, FEMA has consistently denied access to such data by community-based organizations, advocates, and academic and research institutions.

What data that FEMA does collect on its programs are often difficult to access. Ill-defined terms like “unmet need” and unclear methodology means that the data collected are often misleading or not useful. Currently, organizations seeking information from FEMA are forced to utilize the Freedom of Information Act (FOIA) process. FOIA requests to FEMA often go months or years without being answered. In recent years, some progress has been made with the release of data after major disasters through FEMA’s OpenFEMA portal. The changes at OpenFEMA, while a welcome development, are not guaranteed to continue. FEMA also works to prevent accurate reviews from being made public. In 2019, the Department of Homeland Security Office of the Inspector General was found to have commonly redacted reviews that were critical of FEMA’s performance. Although the head of that office resigned after the changes were made public, it underscores the need for researchers and the general public to have access to reliable data to ensure that recovery plans are followed, and programs are fully and equitably administered. The lack of data transparency prevents meaningful input from external stakeholders that could drive the creation and dissemination of best practices throughout the agency and the emergency management field writ large, and it allows the agency to operate without accountability.

This lack of transparency also creates issues beyond simply evaluating FEMA programs. Because HUD-funded long-term recovery efforts rely on FEMA data, failing to adequately identify racial disparities in FEMA programs can lead to discriminatory outcomes that exist well beyond the immediate impact of a disaster.

Recommended Actions:

- **Congress should direct FEMA to collect and report publicly in an electronically searchable form on a monthly/quarterly basis on application completion rates and the length and success rates of FEMA eligibility appeals. The report should**

contain the status of the tracking application numbers for all applications. The agency should not be permitted to delete any applications or tracking numbers for any reason – including for denial or withdrawal – and must include well-defined categories for case status. This data must be disaggregated by race, disability, income, housing type and status, and be made publicly available. Such data with corresponding personally identifiable information should be made available for research purposes. In addition, FEMA should release the block and census tract of residences or other structures for which assistance is being sought.

- Congress should direct FEMA to collect and make publicly available on OpenFEMA comprehensive demographic data on the impact of the disaster and federal recovery efforts. Data should be collected on all protected classes covered by the Stafford Act, the Americans with Disabilities Act, Fair Housing Act, Title VI, and other civil rights protections, including, but not limited to race/ethnicity, income and economic status, age, disability, and gender, and the housing tenure of the individual and location by census block group to enable meaningful analysis, while protecting personally identifiable information. In addition, all information that FEMA releases in the monthly/quarterly IA application reports must appear on OpenFEMA in an electronically searchable format.
- Direct FEMA to create an open process for research, academic, and other organizations to use disaster response and recovery data possessed by FEMA for the purpose of conducting research. FEMA should allow these institutions to access personally identifiable information if important policy-relevant research questions can only be answered by using this data and if the receiving organization can offer adequate measures for the confidentiality of the data, as required by other federal agencies. FEMA should provide to the public, researchers, and academic institutions data collected by its programs for analysis to the greatest extent possible under federal privacy laws.
- Congress should direct FEMA to partner with academic institutions to better understand racial disparities in disaster recovery and to create recommendations for improvements to ensure all survivors benefit from a complete and equitable recovery.

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.