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Statement of Jeanne M. Woods and Hope Lewis prepared for the Hearings of the United Nations Special Rapporteur on Extreme Poverty, Dr. Arjun Sengupta on the aftermath of Hurricane Katrina

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STATEMENT OF

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PREPARED FOR THE

**HEARINGS OF THE UNITED NATIONS SPECIAL RAPPORTEUR
ON EXTREME POVERTY**

DR. ARJUN SENGUPTA

ON THE AFTERMATH OF HURRICANE KATRINA

NEW ORLEANS, LOUISIANA

OCTOBER 27, 2005

We are writing to express our concern, as human rights advocates and scholars, about the extensive and alarming human rights implications of United States federal, state and local government policy and activities before, during, and after Hurricane Katrina. The inadequate response of government officials at all levels reflects the impact of “globalization in miniature” on the poor and other vulnerable and subordinated groups. The panoply of human rights implicated in the aftermath of this disaster includes classic civil and political rights, as well as so-called “second generation” rights (e.g. the rights to food, housing and education, the right to work for a decent wage, and the right to enjoy the unique cultural legacy of the region.)

The United States of America, as a member of the United Nations; a state party to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and as a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has a legal and moral obligation to address and correct the numerous human rights violations occurring in the Gulf Coast region and elsewhere in the country. In addition, the international community has elaborated the Pinheiro Principles on the Treatment of Internally-Displaced Persons, which should be a guide to the rights of the millions displaced by the hurricane.

The situation in the Gulf Coast of the United States is a telling illustration of the indivisibility and interdependence of economic, social, and cultural rights and civil and political rights. Poor people in the United States, as in other parts of the world, do not experience human rights violations in neatly divided categories. Their experience of poverty and the denial of other economic, social, and cultural rights is intimately related to race, class, age, and disability discrimination and other civil and political rights violations.

Violations of the Right to Life: Failures of Disaster Planning and Response

Pre-disaster Planning

The federal government’s pre-planning and post-disaster response was characterized by appalling indifference and incompetence, resulting in the deaths, injury, and misery of thousands of poor, working and middle class, and elderly in the region. According to one source, there was only one Federal Emergency Management Agency (FEMA) official in New Orleans on the day before the storm, Marty J. Bahamonde.¹ However, according to the testimony of disgraced former director of FEMA, Michael D. Brown, there were a dozen agency employees in New Orleans in addition to an emergency response team.² According to Bahahomde, senior FEMA officials told him that a FEMA medical team, 360,000 ready-to-eat meals, and fifteen water trucks, were all being sent before the storm hit.³ Instead, he found that the medical team did not arrive until the day after the storm,

¹ Eric Lipton, “Storm and Crisis: The Emergency Agency,” New York Times, Oct. 21, 2005, at 20.

² *Id.*

³ *Id.*

there were only 40,000 meals, and only five water trucks.⁴ Bahahomde also testified to Congress that he e-mailed FEMA headquarters about the failure of New Orleans levees on August 29th as the situation worsened, but U.S. Homeland Security Secretary Michael Chertoff claimed that he did not learn of the break until August 30th.⁵ On August 31, Bahamonde e-mailed Brown directly, stating: “I know you know, the situation is past critical . . . [h]otels are kicking people out, thousands gathering in the streets with no food or water.” He received a response from Brown’s aide hours later stating Brown needed to find a restaurant because “[i]t is very important that time is allowed for Mr. Brown to eat dinner.”⁶

Levee Security

A basic duty of government is the protection of life. Yet there is no commitment to fund the construction of a levee system that will fully protect the city of New Orleans. Budget cuts that deprived the U.S. Army Corps of Engineers of scientific expertise, likely contributed to the levee failure.⁷ Further, the push to privatize government functions has exacerbated the problem. Among other things, duties previously handled by the Corps of Engineers (i.e. soil boring and testing) are now conducted by private contractors.⁸

International oversight is needed to ensure that the United States government meets its obligation to provide a safe and secure environment for the people of the region.

Discrimination Based on Race and Class

Hurricane Katrina exposed the dirty little secret of poverty amidst plenty in America. The United States has the largest gap between rich and poor in the industrialized world, and that gap is growing. Media attention to the catastrophe also re-asserted the continuing legacy of slavery and racial discrimination in the United States, which is integrally linked with poverty.

Reports from poor and middle-class people who were trapped in overcrowded shelters, in their homes, nursing homes, or hospitals during the disaster, revealed extensive and pervasive incidents of racial and class discrimination. Many of those left behind were poor, African-American, elderly, or disabled. Little or no provision was made for the many people in the area who did not own cars. Many were herded into overcrowded “shelters” with no or inadequate provision for food, water, sanitation, security or medical assistance. Those who tried to obtain basic needs such as food or water from nearby stores were often identified as “looters” if they were Black, but as “victims” or “survivors” if they were not. Police and other security officials were accused of arbitrarily arresting persons of color.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ John Schwartz, “Storm and Crisis: The Levees,” *New York Times*, Oct. 19, 2005, at A18.

⁸ *Id.*

We urge the United Nations to monitor closely the racial dynamics of the repopulation of the area. Before Katrina, New Orleans, Louisiana, for example, had a population of 475,000 that was approximately two-thirds African American.⁹ Current estimates indicate that the city will soon consist only of about 350,000 residents, only 35% to 40% of whom will be African American.¹⁰ A large segment of the Black population in New Orleans was living in neighborhoods that, according to U.S. Housing and Urban Development Secretary Alphonso Jackson, “should not be rebuilt,” while there is no proposal to abandon predominantly white neighborhoods that were similarly inundated. Prominent U.S. civil rights advocate Rev. Jesse Jackson responded by arguing that “displaced persons have a right to return home” and accused the housing secretary of promoting the gentrification of one of America's historic cities, rather than rebuilding appropriate low-cost housing.¹¹ Some local officials publicly celebrated the displacement poor Blacks from public housing and schools.

Discrimination Based on Age and Disability

The aftermath of Katrina also revealed significant and continuing discrimination against the elderly and disabled. Federal, state, and local officials made little or no provision for the special needs of this population. Elderly and sick individuals, especially those in hospitals or nursing homes serving poor communities, were literally abandoned for days with no food, water, or the electric power necessary to keep respirators, surgical equipment, or dialysis machines running. Many of those unable to get out of their homes perished.

The Louisiana Department of Health and Hospitals reported that exacerbated medical conditions (i.e., heart problems, diabetes, kidney disease, etc.) accounted for many deaths or contributed to the number of drownings.¹² In addition, the report highlighted that age was a key factor in the demographic attributes of those who died. Those who were elderly were often unable to travel without assistance and suffered from medical problems that increased the risk of drowning, suffocation, or heat exhaustion. About 60% of the identified deceased persons were sixty-one years of age or older.¹³ In St. Bernard Parish, Louisiana, for example, the age and impaired health of the victims, rather than their location, was more pertinent to their inability to survive.¹⁴

⁹ Joel Havemann, “A Shattered Gulf Coast: New Orleans' Racial Future Hotly Argued, The U.S. housing chief expresses doubts about rebuilding, and draws anger and concern,” Los Angeles Times, Oct. 1, 2005, at A14.

¹⁰ *Id.*

¹¹ *Id.*

¹² Coleman Warner and Robert Travis Scott, “Where They Died: When it came to choosing its victims, Hurricane Katrina spared few neighborhoods. In fact, Gentilly and the lakefront may have suffered as many deaths as the Lower 9th,” Times-Picayune, Oct. 23, 2005, at 1.

¹³ *Id.*

¹⁴ *Id.*

Lack of Democratic Accountability/Rights of Internally-Displaced Persons:

The right to choose governmental representatives and to participate in important official decisions affecting human lives are well-recognized in the Universal Declaration of Human Rights, the ICCPR, the ICESCR and CEDAW.

The enormous population shifts created by the aftermath of Katrina threatens to disenfranchise tens of thousands of evacuees, many of whom lack the resources to return. Commissions of private citizens have been set up by local and state officials and tasked to develop plans for the future of the region, with no accountability to the electorate. Thus, the debate over such vital issues as the size of the city, whether to rebuild in certain areas, and how to spend federal funds, is largely confined to business elites.

Although elections throughout Louisiana have been postponed, consensus has not been reached on how to conduct them without disenfranchising residents—especially the poor. There are more than 299,000 registered voters in Orleans Parish alone who have been displaced by Katrina.¹⁵

Efforts to hold citywide elections in New Orleans were hindered when state officials were denied access to federal records that disclosed where displaced voters now live.¹⁶ While FEMA claims that the records are protected by federal privacy laws,¹⁷ the government has an obligation to guarantee the right political participation.

In addition, international monitoring is needed of any *de jure* or *de facto* changes in voting rights resulting from Hurricane Katrina. Under the 1965 Voting Rights Act, Orleans Parish is required to submit any voting changes in election laws to a pre-clearance review of any changes to ensure that they do not diminish minority voting representation.¹⁸

Democratic accountability has also been undermined by the suspension of federal contracting rules for the clean-up and rebuilding of areas damaged by Hurricane Katrina, an effort that will cost well over \$100 billion. A no-bid contracting process that comprises millions of dollars is ripe for abuse, cronyism, and corruption also undermines the right to work for a decent wage and other rights of access to economic justice.

¹⁵ *Id.* (finding that there are approximately another 100,000 registered voters who fled the state).

¹⁶ See Ed Anderson, “Feds’ ruling jeopardizes February elections; Displaced voters’ records off-limits,” Times-Picayune, Oct. 19, 2005, at 3.

¹⁷ *Id.*

¹⁸ ACLU, *ACLU Memo to Interested Persons Regarding Hurricane Katrina Relief Policies and Proposed Legislative Action*, Oct. 17, 2005, at 7-8, available at <http://www.aclu.org/Files/OpenFile.cfm?id=19261> [hereinafter *ACLU memo*]; Frank Donze and Ed Anderson, “February elections planned amid immense challenges,” Times-Picayune, Oct. 11, 2005, at A1.

Impact of Privatization of Public Resources on Education

There is a danger that this disaster will be used to further undermine the right to free public education in Louisiana. Approximately 372,000 children were displaced by Hurricane Katrina.¹⁹ One method now being promoted to address the educational needs of displaced school-aged children is the use of vouchers for religious and private schools.²⁰ Such voucher systems threaten to divert badly needed public funds from school systems already in crisis, relegating many poor children, particularly children of color, to a dying system.

The Bush administration proposed spending \$488 million on religious and private school vouchers.²¹ Under this program, public schools would be ineligible to receive the proposed voucher funds. A key concern is that such a program would allow federal dollars to go to schools that are not accountable under prohibitions on discrimination in hiring and other civil rights laws.²²

Violations of the Rights of Workers: Waivers of Labor Laws

Days after the disaster, U.S. President Bush issued a Proclamation suspending the 1931 Davis-Bacon Act in the areas affected by Hurricane Katrina. The Act sets a minimum pay scale for workers on federal contracts, requiring employers to pay the prevailing or average wage in the region.²³ Bush argued that suspending employer pay requirements would give businesses greater flexibility to rebuild and recover following the hurricane.²⁴ However, this action was rescinded after provoking outrage from advocates of workers' rights. International monitoring of labor standards is necessary to protect the rights of workers to a living wage and safe working conditions as rebuilding efforts continue.

Rights against racial, gender, and disability discrimination against workers are also in jeopardy. The U.S. Department of Labor has waived the requirement that a company hired by the government with more than fifty employees for a contract greater than \$50,000 must develop an affirmative action plan.²⁵ A memorandum detailing of this

¹⁹ Daniel Golden, *Separate but Equal? Schooling of Evacuees Provokes Debate*, Wall Street Journal, Sept. 14, 2005, at B1.

²⁰ Another means of enrolling one's child into school is through the McKinney-Vento Act. The law was passed in 1987 and strengthened through the No Child Left Behind Act in 2002. The McKinney-Vento Act explains that if students show up at a school claiming to be homeless, regardless of paperwork, the school should admit them and provide them transportation if they fall outside of the district. *See* Avi Salzman, "The Disaster Forces Some Districts To Take a Refresher Course on the Law," New York Times, Sept. 18, 2005, at 1.

²¹ *ACLU Memo*, supra note 7, at 4.

²² *Id.*

²³ *ACLU Memo*, supra note 7, at 5.

²⁴ Bruce Alpert and Bill Walsh, "On the Hill: News from the Louisiana delegation in the nation's capital," Times-Picayune, Oct. 23, 2005, at 4.

²⁵ *Id.* at 6 (citing Memorandum from Charles E. James, Sr., Deputy Assistant Secretary, U.S. Department of Labor. Re: *Contracts for Hurricane Katrina Relief Efforts* (Sept. 8, 2005), available at

plan was issued on September 9th. All new federal contractors would no longer be obligated to create a plan to hire minorities, women, Vietnam veterans, and disabled people on Katrina-related projects.²⁶ The suspension would last for three months with the possibility of extension. The DOL website states that the goal of the wavier is to “reduce the burden of paperwork on government contractors and so encourage more companies to jump into assisting with rebuilding from the storm damage.”²⁷

Violations of the Right to Housing/Shelter

Hurricanes Katrina and Rita displaced 1.5 million residents of the Gulf Coast region²⁸ and destroyed hundreds of thousands of housing units.²⁹ Yet the federal response has been slow, confused, and inadequate. There is a real danger that the people housed in shelters will join the already growing homeless population. There is increasing concern about mismanagement, cronyism and corruption preventing evacuees from being adequately housed. One report indicated that more than 9,000 mobile homes and campers that are meant for persons displaced by Hurricane Katrina are parked and unused at government staging areas.³⁰ In addition, while many mobile homes go unused, others are being used to house persons other than evacuees.³¹

Louisiana has a “gouging” statute that prevents retailers from drastically increasing prices during a state of emergency. However, according to the Attorney General’s office, the statute does not address rents and home sales. Reports now indicate that astronomical prices are now being charged for homes and rental apartments in areas relatively less affected by the flooding, thereby pricing poor, working-class, and even middle-class returning residents out of the market. On Thursday, Oct. 20, Gov. Blanco of Louisiana lifted an emergency ban on property owners’ ability to evict tenants who have been unable to return to their homes.³²

Although displaced families were promised stipends from FEMA to cover three months of rental expenses, these stipends were often inadequate to cover high rental and utility costs. This problem is further exacerbated by the fact that many evacuees no longer have jobs.³³

<http://www.dol.gov/esa/ofccp/pdf/Katrina1.pdf>; Tyler Lewis, *Decision to Suspend Affirmative Action Requirements Sharply Criticized*, Sept. 21, 2005,

http://www.civilrights.org/tools/printer_friendly.cfm?id=35883&print=true.

²⁶ Jonathan Glater, “Contractors Get Affirmative Action Exemption,” *New York Times*, Sept. 20, 2005, at 26.

²⁷ *Id.*

²⁸ Edwin Chen, “Seeking a Bridge to Somewhere: Officials are trying to get hundreds of thousands of Katrina evacuees out of hotels into more stable housing. But the obstacles are many,” *Los Angeles Times*, Oct. 14, 2005, at A19.

²⁹ *Id.*

³⁰ *The Houston Chronicle*, Oct. 13, 2005, “Katrina’s Aftermath: In Brief,” at A5.

³¹ Eric Lipton and Leslie Eaton, “Storm and Crisis: Federal Assistance,” *New York Times*, Sept. 30, 2005, at A1.

³² Greg Thomas, “Landlords said it delayed repairs,” *Times-Picayune*, Oct. 21, 2005.

³³ *See id.*

Treatment of Undocumented and Migrant Workers

The Department of Homeland Security (DHS) estimates that 24,000 lawful permanent residents, 72,000 legal temporary residents, and an estimated 20,000 to 35,000 undocumented immigrants have been affected by Katrina. Beyond facing the problems as victims of disaster, these immigrants must deal with issues relating to loss of identification, immigration papers, and barriers that render many non-citizens ineligible for federal assistance.³⁴ Undocumented immigrants are not barred from receiving short-term, in-kind disaster assistance and in the aftermath of Katrina, both White House officials and President Fox of Mexico urged victims to seek assistance regardless of immigration status, with the assurance that they would not be subjected to pressure or persecution.

Despite such assurances, the DHS announced that immigrants have no immunity from deportation when trying to receive federal aid³⁵ and some disaster victims have been placed in deportation proceedings as a result.³⁶

At the same time, undocumented workers are being employed in the hazardous clean-up effort, while many former city residents complain that they are being excluded. This has created tension between African-Americans and Latinos.³⁷

International monitoring is necessary to protect the rights of both migrant and native-born residents of the region in order to avoid pitting groups seeking to survive -- under the pressures of globalization -- against one another.

Criminal Justice: Maltreatment of Prisoners

There are numerous allegations of abuse of inmates evacuated from flooded prisons in the wake Katrina. According to the New York Times, "complaints include accusations that some guards left prisoners locked in their cells while floodwaters rose to their necks, and that others engaged in regular beatings and other abuse."³⁸

³⁴ *ACLU Memo*, supra note 7, at 11 (citing Ruth E. Wasem, CRS Report for Congress, *Hurricane Katrina-Related Immigration Issues and Legislation*, Sept. 19, 2005, at 1.; National Immigration Law Center, *Katrina "Immigration Relief" Falls Short*, Sept. 21, 2005, available at http://www.nilc.org/disaster_assistance/index.htm).

³⁵ Darryl Fears, "For Illegal Immigrants, Some Aid Is Too Risky: fears Abound as Government Won't Promise Immunity From Deportation" *Washington Post*, Sept. 20, 2005, at A6

³⁶ Suzanne Gamboa, "Handful of Katrina Victims in Deportation," *Associated Press*, Sept. 19, 2005; Jerry Seper, "ICE Agents Restore Order After Katrina," *Washington Times*, Sept. 8, 2005.

³⁷ James Varney, "Nuevo Orleans?: An influx of Hispanic workers in the wake of Hurricane Katrina has some officials wondering why locals aren't on the front lines of recovery," *Times-Picayune*, Oct. 18, 2005, at 1.

³⁸ David Rohde and Christopher Drew, "Storm and Crisis: The Inmates: Prisoners Evacuated After Katrina Allege Abuse", *N.Y. TIMES*, Oct. 2, 2005.

Moreover, hundreds of detainees, who were arrested for minor offenses in the aftermath of the storm such as sleeping in public, begging and public intoxication, are still awaiting their initial hearing before a judge. Even if such offenses were to be proven convictions usually require only 10 days of jail time. Many of these detainees, however have been waiting for a judge to determine whether or not their innocence or guilt in clear violation of rights against arbitrary detention. In addition, the Louisiana state attorney general, the district attorney, and the department of corrections have argued that the court should delay releasing those who served their time until they can demonstrate that they have a place to go once released. However, under Louisiana law, there is no requirement that an ex-offender must make such a showing.³⁹

Targeting of the Poor: Proposed Reductions in Federal Programs

While the federal costs for rebuilding the Gulf Coast are estimated at \$200 billion, conservative leaders are now pushing for spending cuts in programs for the poor using Hurricane relief as an excuse.⁴⁰ One such spending cut would be in Medicaid, the basic health insurance program for low-income individuals. The Bush Administration argues instead that evacuees would benefit from “modest changes in existing state programs.”⁴¹ Thus those already impoverished will be forced to bear the cost of the disaster.

Conclusion

We hope that all of these concerns will be raised as part of the Special Rapporteur’s analysis of the impact of Hurricane Katrina on the poor in the Gulf Coast region of the United States. Thank you for considering these remarks.

³⁹ Human Rights Watch, *Louisiana: Justice Obstructed, Not Restored Six Weeks after Hurricane, Arrests for Minor Offenses Turn into Indefinite Jail Time*, Oct. 14, 2005, available at <http://www.hrw.org/english/docs/2005/10/13/usdom11870.htm>

⁴⁰ Jason DeParle, “Liberal Hopes Ebb in Post-Storm Poverty Debate,” *New York Times*, Oct. 11, 2005, at A1.

⁴¹ *Id.*