

PRRAC

Poverty & Race Research Action Council

1015 15th St. NW • Suite 400 • Washington, DC 20005 • 202/906-8023 • Fax 202/842-2885
www.prrac.org

September 30, 2005

To: The Hon. Miloon Kothari, U.N. Special Rapporteur on Housing

From: Philip Tegeler, Director, Poverty & Race Research Action Council, Washington, D.C., United States.

Re: Brief statement on the issue of housing segregation in the United States; prepared for the 2005 North American Consultation on Women and the Right to Housing

Introduction

The Poverty & Race Research Action Council is pleased to submit this statement on the issue of housing segregation in the United States and its impact on women, to the North American Consultation on Women and the Right to Housing. Our position is that racial and economic segregation in the United States, particularly in government-assisted housing, has harmful consequences for families and children, and that women – who make up a large proportion of heads of households in government-assisted housing – often bear the brunt of these harmful effects. We submit that to the extent that the federal and state governments have played a role in promoting housing segregation, and failing to eliminate it, the United States is in violation of its obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD). PRRAC recently submitted testimony on this issue to the Inter-American Commission on Human Rights. That testimony, which was submitted jointly with the Lowenstein Clinic at Yale Law School in April of 2005, is attached to this submission, and is intended to supplement the summary presented here.

The Poverty & Race Research Action Council

The Poverty & Race Research Action Council (PRRAC) is a U.S. non-governmental organization based in Washington, DC. PRRAC's primary mission is to help connect advocates with social scientists working on race and poverty issues, and to promote a research-based advocacy strategy on race and poverty issues. PRRAC also publishes the bimonthly *Poverty & Race*, and is co-publisher of the civil rights curriculum guide, *Putting the Movement Back Into Civil Rights Teaching*. PRRAC's current work in the area of housing focuses on the continuing legacy of government sponsored racial and

economic segregation in the U.S., and its consequences for low income families in the areas of health, education, employment, and incarceration.

The harms of racial and economic segregation and the role of the federal and state governments

The extreme levels of combined racial segregation and poverty concentration that characterize many American metropolitan areas has been defined by some sociologists as “hypersegregation” (Massey & Denton, 1993). The harms of high levels of concentrated poverty in racially segregated neighborhoods include lack of access to employment and educational opportunity; high unemployment; segregated schools; exposure to criminal activity; and high rates of incarceration (Wilson, 1987; Turner & Acevedo-Garcia, 2005).

The role of the U.S. federal and state governments in the development of housing segregation, beginning in the early part of the twentieth century has been extensively documented (see, e.g., Massey & Denton, 1993; Cashin 2004). The 1960s and 1970s were characterized by patterns of “white flight,” in which white middle-class and working-class families systematically moved out of cities into racially homogenous suburbs. State and federal policies encouraged this flight and sustained and exacerbated residential segregation in the United States. These policies included segregative public housing siting decisions and urban renewal programs as well as race-based tenant selection and assignment policies. Racially restrictive suburban mortgage insurance programs, racially divisive urban renewal and relocation programs, and federal transportation policies that divided African American neighborhoods further contributed to housing segregation. Moreover, by delegating uncontrolled land-use discretion to local governments, the federal government permitted states and municipalities to routinely exclude lower-cost housing occupied by African-American and Latino residents from their jurisdictions. (Id.) These actions were often undertaken with knowledge and/or intent regarding their racial impacts. (Id; see also Hirsch, 2005; Mohl, 2002). The role of the federal government in perpetuating these historical patterns continues today (Tegeler, 2005).

The liability of the federal and state governments for facilitating racial and economic segregation in housing has been recognized by U.S. federal courts, in a series of housing desegregation lawsuits dating to the 1960s. See, e.g., *Hills v. Gautreaux*, 425 U.S. 284 (1976); *NAACP v. HUD*, 817 F.2d 149 (1st Cir.1987); *Thompson v. HUD*, 348 F.Supp.2d 398 (D. Md. 2005). The complicity of the government in housing segregation has also been acknowledged openly by federal housing officials. See PRRAC Submission to the Inter-American Commission on Human Rights, April 2005 (attached).

The impact of these policies on low income women of color

All citizens are harmed by government policies that limit the housing choices of poor families to high poverty, unsafe neighborhoods with little or no access to opportunity. However, poor women of color bear a disproportionate burden of these harms. First, women constitute a significant majority of public housing residents, and are

disproportionately represented in the most racially isolated developments. In recent studies of so-called “HOPE VI” public housing sites (which include some of the most dilapidated and racially isolated projects in the public housing inventory), up to 90 percent of the units were occupied by female-headed households (Popkin et al, 2002). Second, some types of outcomes associated with high poverty neighborhoods, such as high rates of teen pregnancy, crime victimization, and domestic violence, fall more heavily on women.

The responsibilities of the United States under domestic civil rights law

The actions of the federal government, and state governments within the U.S with respect to housing are constrained by the 14th Amendment to the U.S. Constitution, the federal Fair Housing Act (42 U.S.C. §3601 et seq), federal housing statutes, and state laws and constitutions. The 14th Amendment prohibits government actions in the housing arena that involve intentional discrimination or segregation on the basis of race (or other suspect categories). The Fair Housing Act goes further, prohibiting both intentional discrimination and government actions or policies that have a discriminatory or segregative impact, unless they are otherwise justified by an important government interest that cannot be satisfied in a less discriminatory way. Importantly, the Act also requires federal and state government to take steps “affirmatively to further” fair housing, 42 U.S.C. §3608, which includes assessing the racial impacts of proposed actions, and taking steps to reverse racial impact of past government policies and the private market.

Most domestic enforcement of these governmental obligations has come from outside private advocates and NGOs. Although the federal government has, at times, been actively involved in fair housing enforcement, this activity has generally been focused on private discrimination, as opposed to actions of federal and state governments themselves.

The Obligations of the United States under CERD

As set out in detail in the attached submission to the Inter-American Commission, the United States’ obligations under the Convention on the Elimination of All Forms of Racial Discrimination are similar to the types of duties set out under the Fair Housing Act: the duty to take steps to remedy private discrimination, to avoid governmental policies that perpetuate segregation, and to take affirmative steps to reverse historical patterns of segregation and discrimination. It is clear that the United States is not now meeting these obligations. For example, in the District of Maryland, a federal court recently found HUD liable for failing to offer non-segregated housing opportunities to low income African American residents over a period of many years. *Thompson v. HUD* 348 F. Supp. 2d 398 (D. Md. 2005). The court concluded, “[i]t is high time that HUD live up to its statutory mandate to consider the effect of its policies on the racial and socio-economic composition of the surrounding area and thus consider regional approaches to promoting fair housing opportunities for African-American public housing residents in the Baltimore Region.”

Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination declares that parties “particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.” The CERD Committee, which monitors state compliance with the treaty, issued a detailed interpretation of Article 3 in 1995, clarifying that the duty to eradicate segregation includes not only the obligation to cease active discrimination, but also to take positive measures to eliminate the lingering effects of past discrimination. Moreover, the Committee recognized that partial segregation can emerge from the interaction between private racial discrimination and economic inequality, and, as a result, the state obligation to eliminate segregation may exist even in the absence of any discriminatory initiative by public authorities, past or present. Thus, the Committee concluded that “a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities” and “invite[d] States parties to monitor all trends which can give rise to racial segregation [and] to work for the eradication of any negative consequences that ensue” (Committee on the Elimination of Racial Discrimination, 1995).

Conclusion

We urge the Special Rapporteur to include the issue of housing segregation as part of its ongoing assessment of the right to housing in the United States, including the rights of low-income women of color to access decent, safe, and affordable housing in a community of their choice.

References

Sheryll Cashin, *The Failures of Integration: How Race and Class Are Undermining the American Dream* (2004)

Committee on the Elimination of Racial Discrimination, General Recommendation 19, The prevention, prohibition and eradication of racial segregation and apartheid (Forty-seventh session, 1995), U.N. Doc. A/50/18 at 140 (1995), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 208 (2003), *available at* <http://www1.umn.edu/humanrts/gencomm/genrexix.htm>.

Arnold Hirsch, "The Last and Most Difficult Barrier: Segregation and Federal Housing Policy in the Eisenhower Administration, 1953-1960" (2005), included in *Housing and School Segregation: Government Culpability, Government Remedies, Poverty & Race* Research Action Council, 2005 (available at www.prrac.org)

Douglas Massey & Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993)

Raymond Mohl, "The Interstates and the Cities: Highways, Housing, and the Freeway Revolt" (2002), included in *Housing and School Segregation: Government Culpability, Government Remedies, Poverty & Race* Research Action Council, 2005 (available at www.prrac.org)

Popkin, Susan J., Diane K. Levy, Laura E. Harris, Jennifer Comey, Mary K. Cunningham, and Larry F. Buron. *HOPE VI Panel Study: Baseline Report*. Washington, D.C. (The Urban Institute, 2002).

Philip Tegeler, "The Persistence of Segregation in Government Housing Programs," in Xavier de Souza Briggs, *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (Brookings Institution Press, 2005)

Margery Austin Turner and Dolores Acevedo-Garcia, "Why Housing Mobility? The Research Evidence Today," *Poverty & Race* (January/February 2005)

William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (1987)