AMNESTY
for Prisoners of Katrina

a special report by CRITICAL RESISTANCE

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Amnesty for Prisoners of Katrina: a special report

by Marina Sideris and the Critical Resistance Amnesty Working Group

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INTRODUCTION

In the aftermath of Hurricane Katrina the world watched as thousands of people, the majority poor and Black, were abandoned in the Gulf South. Many of those left to die were locked inside the flooding Orleans Parish Prison. While some of their stories, and the stories of those incarcerated at New Orleans' "Camp Greyhound" post-Katrina, have been exposed,[1] the vast majority of those imprisoned before, during and after Katrina—collectively, known as the "Prisoners of Katrina"—suffered, and continue to suffer, silently. Moreover, discussion of an appropriate remedy for the egregious violations of human rights suffered by the "Prisoners of Katrina" has not been prominent.

While much of the post-Katrina discourse has spoken of the Government's failure to respond, this report documents a few predominant ways in which the City, State and Federal government entities did respond: 1.) through unparalleled levels of policing, 2.) arrests, and 3.) the cruel abandonment of those locked up in Orleans Parish Prison.

Critical Resistance (CR) is a national grassroots organization whose mission is to end society's use of prisons and policing as responses to what are social, political economic problems. CR's Southern Regional Office has been located in New Orleans since 2002. This report is published as part of CR's Campaign for "Amnesty for the Prisoners of Katrina" which seeks to challenge the imprisonment, prosecution, arrest and conviction records of people whose cases were impacted by Hurricane Katrina.

CR's campaign seeks the release, dropping of charges, and expungement of records of those arrested during Katrina, for trying to take care of themselves and their loved ones, and those whose cases were impacted by the storm. Those whose cases were impacted by the storm include not only those arrested for trying to survive, but also those held past release dates after being transferred from OPP to prisons around the state; those who have had their fundamental constitutional right to defend themselves dramatically impacted by lost evidence and witnesses; and those who were awaiting court appearances in fall 2005 who were unaware that the courts restarted prosecutions of their cases and may have outstanding warrants for their arrest.

The following report details why the call for Amnesty for Prisoners of Katrina is not only a necessary step to rectify injustices, but also how amnesty has been used historically and is an appropriate remedy under International Human Rights treaties signed by the United States. In Post-Katrina New Orleans, amnesty is a logical solution to minimize the long term consequences for the "Prisoners of Katrina". Further, amnesty can fundamentally change the ways in which we approach true public safety.[2]

REPORT OVERVIEW

Part I of this report is an **overview of New Orleans' prisons and policing before, during, and in the immediate aftermath of Hurricane Katrina.**

Part II details various legal precedents, focusing on **International Human Rights treaties** that the United States is party to, and the violations of these treaties that mandate a grant of amnesty or similar remedy. Specifically, the report demonstrates that under The Convention on the Elimination of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) rights have been violated and a remedy, such as a grant of amnesty, is required.

Part III outlines **examples of grants of amnesty** or its equivalent in history. Historically, amnesty has been used to expose and recognize human rights violations and promote reconciliation amongst impacted parties and those responsible for the abuses. Perhaps, the most well known example of a national policy of amnesty occurred in South Africa as that nation dismantled its own system of racial apartheid. The newly elected Black South African government established a Committee on Amnesty, as a fundamental part of its Truth and Reconciliation Commission (TRC).

Finally, Part IV examines and recommends remedies similar to amnesty under **current provisions in Louisiana law such as executive pardon and expungement.**

Widespread deprivation of liberty was a prominent feature of the response to Hurricane Katrina, which has neither received sufficient attention nor official condemnation. International Human Rights treaties the U.S. has signed on to, along with community desires for healing and reconciliation, should compel an official grant of amnesty, to at least partially remedy the injustice suffered by prisoners of Katrina and their families.

When Hurricane Katrina hit New Orleans, approximately 6,500 (and possibly as many as 8,000) adults and youth were incarcerated

in Orleans Parish Prison (OPP), exempted from the otherwise mandatory city-wide evacuation. In the words of Sheriff Marlon Guzman, and with the backing of Mayor Ray Nagin and Governor Kathleen Blanco, Orleans Parish prisoners were left to stay "where they belong."[3] Additionally, youth from New Orleans' Youth Study Center and prisoners from Saint Bernard parish were moved to OPP. Sheriff Guzman's only plan in the event of disaster or emergency was to "vertically evacuate" prisoners to the top floors of the jail (which is three stories high) if flooding occurred. However, the swollen population of the jail made such a plan untenable, as has subsequently been well-documented by both prisoners and deputized staff.[4]

New Orleans is the 35th most populous city in the U.S., but OPP is the 9th largest local jail.[5] This disparity is explained by the fact that New Orleans has the highest incarceration rate of any large city in the nation, a rate that is double the national average (already higher than any other nation).[6] The sheer number of people incarcerated in New Orleans on any given day is grossly disproportionate to any other city in the world.

The demographics of New Orleans's imprisoned residents become even more skewed when race and class are taken into account. Prior to Hurricane Katrina, Orleans Parish was 66.6% Black, but almost 90% of prisoners at OPP were Black. On an average day, 60% of OPP prisoners were there on attachments, traffic violations, and municipal infractions—"crimes" which often boiled down to failure to pay a fine. For African-American residents of New Orleans, and poor residents of all races, the incredible toll that imprisonment of family members and loved ones was already taking on communities was severely heightened by Katrina.

A. The Prisoners of Katrina

"We're going to keep our prisoners where they belong." – Sheriff Guzman,[7] commenting on the decision not to evacuate prisoners from Orleans Parish Prison

After being abandoned for days in a flooded jail and held at gunpoint on a freeway overpass, OPP prisoners were sent "willy nilly" to prisons around the state.[8] As many as 8,500 people, the majority of them pre-trial, remained incarcerated in prisons and jails throughout Louisiana for months, following the storm.[9] The human and civil rights violations suffered are innumerable. The following case examples highlight the injustices people faced—through abusive arrest practices, cruel conditions of imprisonment, denial of due process, and illegal incarceration—and point to the urgent need to remedy any lasting effects the Prisoners of Katrina face.

- **Pedro Parra-Sanchez** was booked into the Camp Greyhound jail on October 13, 2005 and spent over a year in three different state prisons without speaking to a single attorney or judge. When he finally was taken to court, 400 days after his arrest, the DA apologized for his "prolonged incarceration" and the Judge called his time in jail "unacceptable."

- **Deaconess Merlene Maten** is a 73 year-old church deaconess and grandmother. She spent two weeks in jail for allegedly taking sausage from a deli the day after Katrina, while caring for herself and her 80 year-old disabled husband. Her charges were eventually dropped, the arrest record would remain unless a motion for expungement was granted.

- **Malik Young**, an employed father, was arrested September 1, 2005 and charged with looting a case of cold drinks, 56 dollars in change and a video game. Bail was set at $60,000 and Young spent six months in prison before finally being released to house arrest. He was subsequently offered a 3-year sentence.

- **Rachel Francois**'s mother had paid her bond before Katrina, but Ms. Francois was kept in OPP and transferred to Angola post-storm. If Ms. Francois had still been at OPP, the misdemeanor hold that meant she could not be released from Angola would not have prevented her bond release from OPP.

- **Leroy Foster**, age 60, returned to the apartment building his niece owned in Treme when Mayor Nagin told residents of zip code 70116 to come back to New Orleans. One evening, Mr. Foster went downstairs to move his car to a more well-lighted area. Having heard gun shots, Mr. Foster took his gun with him. He was stopped by New Orleans Police, handcuffed and asked for a driver's license. But, Mr. Foster had lost his license while wading through flood water for days. When asked if he had an arrest record, Mr. Foster stated that he had a conviction from a fight 22 years ago. The police told him he was a felon in possession of a gun, and

took him to the Camp Greyhound jail, where he spent four days in custody. He was finally arraigned approximately seven months after his arrest, and after retaining a private attorney, the charge against him was dropped. The arrest, however, remains on his record.

- **Iris Hardeman** was a 53 year old African American woman arrested in March 2005 on minor charges. Her family was told that but for the storm, she would have been released. Due to Katrina she was moved to Angola and did not have any paperwork. Ms. Hardeman, who had been ill, died while still in custody.

- **Vincent Norman** was arrested on August 24, 2005 on a warrant for failure to appear in court and to pay a $100 fine. He was scheduled to be released August 31, after spending 7 days in prison and paying his fine. Lost in the system after Katrina, he was finally released December 5, 2005.

- **Tammy Williams** accepted a ride from a stranger driving a stolen mail truck while attempting to get her family out of New Orleans. All of occupants of the vehicle were arrested after police stopped the truck.

- **Brandon Toussaint**, aged 18, was arrested in the weeks following Hurricane Katrina, while going from his apartment to another one upstairs. Toussaint was charged with a curfew violation and public intoxication, and taken to Camp Greyhound. In a make-shift legal proceeding at the jail, Toussaint was given the option of pleading guilty and accepting 40 hours of community service, or being sent to Hunts Correctional Facility and waiting as long as three weeks to be processed. Toussaint chose community service, and now has his first "criminal" conviction.[10]

The **over 1667 people** (for whom a team of defense attorneys filed habeas petitions)who challenged the legality of their incarceration and requested their immediate release.[11]

B. The Criminalization of New Orleans Residents

> *A fearful Friday has arrived in lawless New Orleans, with police snipers stationed on the roof of their precinct, trying to protect it from the armed thugs roaming seemingly at will through the flood-ravaged city...Governor Kathleen Blanco said "I have one message for these hoodlums:* ***These troops know how to shoot and kill, and they are more than willing to do so if necessary, and I expect they will."***
>
> – CNN, September 2, 2005 [12]

In the weeks immediately following the storm, media coverage of New Orleans was racially charged and false. High-ranking public officials, namely then-police Superintendent Eddie Compass III, reported rumors of violent crime in the Superdome and on the streets.[13] Subsequent critiques have highlighted how Black New Orleanians were primarily portrayed as "looters" while whites were seen as "resourceful."[14] Media coverage was dominated by footage and accounts of so-called "looting,"[15] and punctuated by reports of helicopters being fired upon and rescue boats being stolen.[16] As the People's Hurricane Relief Fund and Oversight Coalition noted, in this footage, Blacks were depicted as the perpetrators of crime while whites were viewed as resourceful.[17] Three days after the storm, police from the city of Gretna, on the west bank of the Mississippi, met mainly Black New Orleanians attempting to evacuate across the Crescent City Connection bridge with threat of force, firing warning shots over their heads and refusing to let them pass.[18]

Far less reported was the subsequent realization that most reports of serious and violent crime were simply false.[19] One month after Katrina devastated New Orleans, the New York Times front page blared: "fear exceeded crime's reality in New Orleans."[20] Police Chief Compass, who by that time had resigned, publicly retracted his earlier reports, admitting there were "no official reports to document any murder...rape or sexual assault."[21] As one scholar observed, "audiences are invariably smaller for the retraction." [22]

In response to the false reports, emphasis was placed on the need for law enforcement to restore order. For the greater American public who looked on, false crime reporting transformed disbelief at the appalling lack of response to the disaster into outrage at the notion that people were taking criminal advantage of an already horrific situation. [23] And this outrage, combined with deeply rooted racism, spurned a tremendous shift in the relief effort, towards a perceived need to restore law and order. By focusing on a massive effort of law enforcement and punishment, further suffering was generated in two ways: first, those who were swept up and incarcerated faced abusive conditions and prolonged, illegal imprisonment; second, an already faltering relief effort was further debilitated by draining valuable resources, people power, time and attention

away from the urgent needs of thousands still stranded in New Orleans.[24] One New Orleans-based community organizer linked the events surrounding the storm to the city's past: "this emphasis on 'law and order' has historically had a devastating impact on the people of New Orleans. Locking people up in this crisis is cruel mismanagement of city resources and counters the outpouring of...support and concern for all survivors of Hurricane Katrina."[25]

C. Camp Greyhound

They might spit on you. They might have AIDS...a looter to me is no different than a grave robber.[26]

– Warden Burl Cain, Camp Greyhound

One of Louisiana officials' top priorities in the rebuilding of New Orleans was the construction of a make-shift jail, Camp Greyhound, located within the Greyhound bus station and train terminal in downtown New Orleans. Constructed just five days after Katrina made landfall, Warden Burl Cain of Angola State Prison called Camp Greyhound "a real start to re-building" New Orleans.[27] At the direction of the Louisiana Department of Corrections, Warden Cain used the labor of prisoners from Angola to build cages out of chain-link fence topped with razor wire in the back parking lot of the station; those arrested would sleep on the pavement, guarded by correctional officers from Angola.[28]

Over 1,200 people were cycled through Camp Greyhound during the six weeks it was open,[29] clear evidence that arrest and incarceration were a primary means of dealing with the post-storm crisis. Early on, the vast majority of arrests were for acts broadly characterized as "looting," which ranged from acts of desperation such as taking much needed supplies, to theft born of opportunity.[30] In the ensuing weeks, other common reasons for arrest included, vehicle theft and resisting arrest, as well as curfew violations, and public intoxication.[31] That so many arrests were made during a period when the city was "largely empty and water logged" suggests that law enforcement was throwing its net widely and operating at exceptional levels.[32] Law enforcement officials "settled into a posture of undeclared martial law"[33] and proceeded to engage in "prophylactic" arrest-making and incarceration.[34] For those unlucky enough to be caught in this fray, the devastation wrought by the hurricane was made significantly worse at the hands of officials who supposedly had arrived to help.

The first arrest and booking into Camp Greyhound is a story that corrections officers lauded in the media, but one that can and should be reconsidered as an early indication of how misguided the focus on law enforcement was. A man desperate to get out of New Orleans drove up in a stolen Enterprise rental car, hoping to buy a bus ticket out of town.[35] Instead, he was arrested and imprisoned for auto theft at the newly converted jail.[36] Other stories echoed this one, such as a young man who used a public school bus and helped 60 people evacuate to Houston, only to be called a "thief," and a group who were arrested for fleeing the city in a stolen mail truck.[37] These stories exemplify a rather astonishing approach to disaster relief, where the chosen method was evacuation-by-incarceration. They also demonstrate the widespread portrayal of pro-social behavior, wherein community members attempted to aid in one another's rescue and survival, as deviant or anti-social.[38]

The harsh attitudes of officials at all levels directed towards residents accused of being "looters" were striking given the catastrophic situation. For example, Warden Cain confided to a Times-Picayune reporter that, "a looter to me is no different than a grave robber."[39] This sentiment mirrored that of the most prominent political actors, including Mayor Nagin, Governor Blanco, and President Bush, who implicitly and explicitly authorized the use of deadly force against "looters."[40] The decision to place so much attention and energy on "looting" in the midst of a much larger crisis that by most accounts did not receive adequate or appropriate response begs the question, as Professor Jonathan Simon implies, whether this was a deliberate diversionary tactic to distract from a miserably failing federal response.[41]

ABOVE: *Broad Street bridge, where thousands of prisoners were left for days.*

Later reports, once the storm was a bit farther removed and clean up efforts had begun, demonstrate an equally unnerving shift in arrest and incarceration at Camp Greyhound. A report in the independent news outlet, the

New Standard, offered compelling evidence that arrests began to serve as a means of acquiring free labor.[42] One reporter described that people who were arrested primarily for curfew violations and public intoxication, were denied the use of a phone or access to an attorney, then pressured to plead guilty and accept "community service."[43] Prisoners described being arrested on their own property for curfew violations, in public places for criminal trespassing, and for public intoxication and battery after simply asking to be left alone. [44] Asked about lack of access to phones, one guard explained, "I have a fax phone and I have one local line [here], and that's it."[45]

A make-shift courtroom was set up on the second floor of the station, where prisoners were taken the morning after their arrests. There, a single public defender, Clyde Merritt, explained their options: plead guilty and accept 40 hours of service, or be sent to Elayn Hunt Correctional Facility and wait a minimum of 21 days before being processed. Merritt then explained that he could offer no individual legal advice; for that, people would have to retain their own attorneys (seemingly impossible given the lack of phone access and the number of people evacuated from the city). Under such coercive circumstances, it is easy to understand why most accepted the labor (primarily spent cleaning up the aftermath of Katrina from police stations, courthouses and jails) in exchange for a guilty plea. All of these individuals now have a conviction on their record.[46]

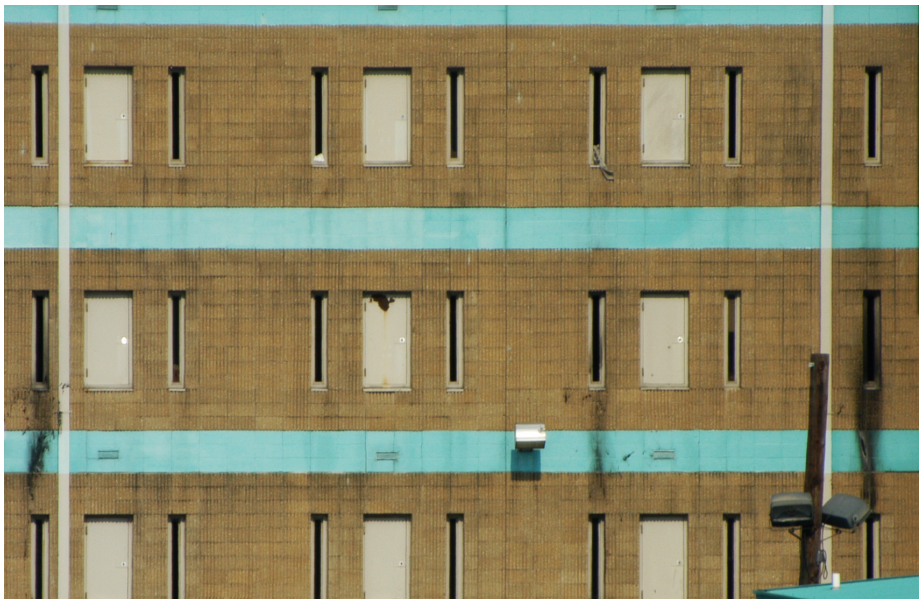
D. Legal Limbo

Accounts from defense attorneys and others suggest that what happened to people once transferred out of Camp Greyhound was anyone's guess.[47] With over 6,500 adults and youth evacuated from Orleans Parish Prison days after Katrina hit, and an additional 1,200 or more that were booked through Camp Greyhound, defense attorneys estimate that at least 8,000 prisoners, the majority of them pre-trial, were displaced into jails and prisons around the state.[48] Virtually all of these evacuees were subsequently denied access to attorneys, courts, and often, any information about their case or exactly why they were being held.[49]

Prisoners were also denied contact with their families and loved ones. Attorneys estimate that "[f]or days and sometimes weeks, defendants were not given access to telephones to find out whether their families had survived the storm."[50] Thus, in addition to widespread civil and constitutional rights violations, the emotional distress such dislocation must have caused is almost unspeakable.

For those who were given a bond hearing after being transferred out of Camp Greyhound, defense attorney Phyllis Mann reports that, rather than releasing people back to New Orleans or providing a means to be reunited with family members who had been evacuated, local judges set bonds higher than many could pay.[51] As a result, some people accepted guilty pleas in order to be released.[52] Many others, however, were not even given that chance.

A team of defense attorneys, including Mann, found that individuals who were caught in legal limbo after Louisiana's criminal legal system collapsed fell into several categories. Of those who were arrested before Katrina, some were unable to post bail before the storm and were lost in the shuffle afterwards, and some were arrested so soon before the storm that they never saw an attorney or magistrate courtroom. Of those who were arrested during and after the storm, some never had a bond hearing; some were unable to post bond and subsequently had no access to an attorney. [53] Many people in both groups were held beyond their release dates or for longer than the maximum amount of time to which they could have been sentenced. More than a year after the storm, Mann wrote that people arrested in New Orleans continued to do "police-sentencing time:" waiting as long as 45 days on a misdemeanor or as long as 60 days on a felony before the D.A. decided not to prosecute;[54] "DA time:" for those unable to post bond because of over-charging; and "Katrina time:" sitting in jail since being evacuated, even well beyond release dates.[55]



ABOVE: *Burn marks on the side of Orleans Parish Prison from the sheets and blankets prisoners burned out their windows during Hurricane Katrina to receive help.*

II. THE LEGAL CASE FOR AMNESTY

Three international human rights treaties, signed and ratified by the United States, govern the fundamental rights and freedoms that should have protected survivors of Hurricane Katrina.[56] The Supremacy Clause of Article IV of the United States Constitution sets forth that "all treaties made...under the authority of the United States shall be the supreme law of the land" along with the Constitution and domestic laws. Thus, adherence to the provisions of these human rights treaties should be no less stringent than to the Articles and Amendments of the U.S. Constitution.[57] Both the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Covenant on Civil and Political Rights (ICCPR) are to be implemented at the state and local, as well as federal, levels. Therefore, they apply directly to the municipal governments of the city of the New Orleans and the Parish of Orleans, the Louisiana state government, and the United States government.

A. International Human Rights Treaty Obligations

The **Convention on the Elimination of All Forms of Racial Discrimination (CERD)** resolves "to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices."[58]

The International Covenant on Civil and Political Rights (ICCPR) recognizes "the inherent dignity and...the equal and inalienable rights of all members of the human family."[59] And the **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** calls for more effective measures to be taken in the struggle against torture and cruel, inhuman and degrading treatment, and includes specific provisions pertaining to law enforcement practices and incarceration.[60] The response of local, state and federal government to Hurricane Katrina finds the U.S. in breach of all three of these treaties. Many non-governmental organizations throughout the impacted region and the world have recognized and documented the widespread human rights abuses suffered disproportionately by African American and poor residents of New Orleans during and after the storm.[61]

The relevant provisions of **CERD** provide a framework for race-related human rights abuses that occurred during Hurricane Katrina, and impose an obligation on signatories including the United States to ensure effective remedies and reparation for these abuses. Article 2 sets forth the fundamental obligations of CERD, wherein States Parties to the treaty commit to eradicating racially discriminatory practices from public institutions and pledge not to "sponsor, defend or support racial discrimination." States Parties must also review and nullify existing laws which perpetuate racial discrimination, and utilize "all appropriate means" to end racial discrimination. Article 5 guarantees equality before the courts and all institutions administering justice, and the right to security "against violence or bodily harm, whether inflicted by government officials or by any individual group or institution." Article 6 requires states to assure "effective protection and remedies" against, and the right to seek "just and adequate reparation" for any acts of racial discrimination.

The **ICCPR** guarantees a fundamental set of rights and freedoms, including to self-determination, life, liberty and freedom from torture.[62] Several treaty provisions pertain to the situation during and after Hurricane Katrina. Article 2 mandates that parties to the treaty provide an "effective remedy to those whose rights are violated, notwithstanding that the violation has been committed by persons acting in an official capacity." Articles 9 and 10 declare the "right to liberty and security of person" and freedom from "arbitrary arrest or detention," while requiring that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Article 14 guarantees equal treatment before the law, including the right to a "fair and public hearing," to be promptly informed of the details of one's case, to communicate with counsel, and to prepare one's defense. Article 26 requires equal protection of the law, free from discrimination based on race, color or any other factor.

The **CAT** prohibits torture and cruel, inhuman or degrading treatment wherein severe pain and suffering" are "intentionally inflicted," whether for the purposes of coercion, punishment or discrimination. The treaty requires education and training of public officials, including law enforcement; regular and systematic review of arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment; and prompt and impartial investigation into allegations of torture or cruel, inhuman or degrading treatment. Finally, "no exceptional circumstances whatsoever," including public emergency, can justify the use of torture or cruel, inhuman or degrading treatment.

B. Violations of International Treaty Obligations

The treatment of Prisoners of Katrina constituted an egregious abrogation of their rights. The right to due process of law and freedom from arbitrary arrest or detention; the right to have one's case timely heard in an established tribunal or court of law; and freedom from torture or cruel, inhuman or degrading treatment, for example, apply in unique and essential ways to prisoners. With the collapse of New Orleans' already racist criminal justice system in the wake of the storm, racial discrimination within the system was even more glaring.

Many of the human rights violations suffered by those who were imprisoned before, during, and after Hurricane Katrina have been extensively documented and reported on. A comprehensive account of the horrific and life-threatening conditions faced by prisoners abandoned in OPP and then sent to prisons around the state, *Abandoned and Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina*, was compiled by the American Civil Liberties Union. This report provides extensive documentation of clear violations of Article 10 of the ICCPR, that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,"[63] and CERD's Article 5 prohibition "against violence or bodily harm whether inflicted by government officials or by any individual group or institution."[64]

ABOVE: *Orleans Parish Prison*

In response to the federal government's *Second and Third Periodic Report to the United Nations Human Rights Committee* regarding compliance with the ICCPR and CAT, which stunningly failed to discuss the events surrounding Hurricane Katrina despite being submitted three months after the storm, a coalition of human rights advocates produced an exhaustive report documenting arrest practices and police brutality following Hurricane Katrina. The report, *In the Shadows of the War on Terror: Persistent Police* Brutality and Abuse in the United States, co-authored by members of Columbia Law School's Human Rights Clinic, INCITE! Women of Color Against Violence, and the American Friends Service Committee, amongst others, implicates Articles 2, 4, 7 and 10 of the ICCPR.[65]

Given the extremely disproportionate representation of African-Americans in OPP and amongst those who suffered police harassment and brutality in the weeks and months following the storm, the above reports document violations of Articles 2, 5 and 6 of CERD, as well.[66] Broadly, the criminalization and incarceration of African-American residents of New Orleans before, during and after Hurricane Katrina violated CERD's prohibitions on state-sponsored racial discrimination. The treaty's requirement of equal treatment before the law was flatly proscribed through racially discriminatory arrest and incarceration practices and denial of liberty and justice to those who were imprisoned.

In light of these widespread violations, CERD Article 6 mandates the assurance of a remedy, and the right of reparation. Similarly, Article 2 of the ICCPR demands that parties to the treaty ensure an effective remedy for anyone whose enumerated rights are violated. To date, neither the state or local governments of Louisiana nor the federal government has complied with these obligations.

The call for Amnesty falls within the framework of CERD's Article 6 requirement that "just reparation" be afforded individuals whose human rights and fundamental freedoms are violated and ICCPR's mandate that parties to the treaty ensure an effective remedy for anyone whose enumerated rights are violated. In the past, Amnesty has been used to expose and recognize human rights violations and promote reconciliation amongst impacted parties and those responsible for the abuses.

III. HISTORICAL EXAMPLES OF AMNESTY

The most well known example of a national policy of amnesty occurred in South Africa as that nation dismantled its own system of racial apartheid. The newly elected Black South African government established a Committee on Amnesty as a fundamental part of its **Truth and Reconciliation Commission (TRC)**.[67] The TRC's objective was to promote national unity and reconciliation through a process of establishing a complete record of the human rights violations that had transpired, granting amnesty to those who made full disclosure of their participation in abusive acts, establishing the whereabouts or fate of victims, and providing victims the opportunity to share their experiences and be compensated. A grant of amnesty meant that criminal proceedings were halted, any conviction was void and deemed not to have occurred, any sentence was terminated, those who were imprisoned were immediately released, and records of conviction were expunged.

Within the United States, a far-reaching policy of amnesty in the form of **Presidential pardon was utilized by President Carter in order to end all pending and future prosecutions against Vietnam War resisters.** Carter's act served as a blanket amnesty for all who had or potentially could face draft evasion charges.[68] There was no formal application process; prosecutions were simply halted or never pursued, and records were cleared of all draft evasion charges. Such a grant of blanket amnesty could serve as a model for granting pardon to a group of persons rather than on a case-by-case basis.

IV. RECOMMENDATIONS

In the context of Hurricane Katrina, the call for amnesty is a call to address the injustices suffered by those stranded in a chaotic system, and ensure that those who have charges pending or arrest or convictions on their records for Katrina-specific "crimes" can move forward with their lives. Today, the frequent use of background checks, particularly for housing and employment, greatly jeopardizes displaced residents' right to return home. Individuals with a criminal conviction or a pending case, as well as their family members can be excluded from public housing and job opportunities. In a post-Katrina New Orleans, this is particularly egregious. A blanket grant of amnesty modeled on the TRC's hearings in South Africa or President Carter's grant could minimize the long-term consequences of arrests, convictions, and imprisonment before, during and after Hurricane Katrina.

In the alternative, Louisiana law provides legal mechanisms whereby individuals can gain something akin to amnesty. **Executive pardon and criminal record expungement** are the two most appropriate such remedies available for prisoners of Katrina. Given the gravity of the abuses suffered by prisoners of Katrina and the uphill battle they already face in order to rebuild their lives, a call for Amnesty in the form of executive pardon and expungement of criminal charges is both appropriate and overdue. By halting prosecutions, terminating prison sentences, waiving fees and fines, and clearing criminal records, the direct l and indirect effects of Katrina-related arrests and incarceration would be mitigated, and people's ability to return home and reestablish their lives could be facilitated.

In making the case for pardon in another context (for women who kill their batterers), Linda Ammons articulates why the "fallibility and inflexibility" of the legal and criminal justice systems justify the power to pardon convictions and grant clemency:

> Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The *administration of justice by the courts is not necessarily...considerate of circumstances which may properly mitigate guilt* (emphasis added).[69]

Granting clemency, then, is in part an acknowledgement that justice and the interests of the public can be better served outside the bounds of the traditional criminal justice system.[70]

Executive pardon is a constitutionally guaranteed remedy in Louisiana. *La. Const. Art. 4, § 5(E)(1)* (2007). Section 15:572 of the Louisiana Revised Statutes provides for the granting of two types of pardon,[71] the second of which, executive pardon by the governor, is applicable for prisoners of Katrina. *La. Rev. Stat. Ann. § 15:572 et seq.* (2003). The statute states in relevant part: "The governor may...upon recommendation of the Board of Pardons... commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses." *§15:572(A)*. As such, the decision to grant an executive pardon, while ultimately within the authority of the governor, requires a

recommendation from the Louisiana Board of Pardons.

Executive pardon has been interpreted by the Supreme Court of Louisiana as restoring "the pardoned individual [to] a status of innocence of crime."[72] A grant of pardon allows for the destruction of all records of arrest and conviction for the pardoned individual, so that the negative effects of having a criminal record, such as being barred from employment, housing, educational assistance, social welfare benefits, holding certain licenses (such as for many employment opportunities in health care or to sell liquor), or serving on a jury, will no longer be felt. Additionally, an executive pardon may result in monetary compensation under limited circumstances, if the conviction has been reversed or vacated, and the applicant has proven that s/he is factually innocent. *§ 15:572.8.*

ABOVE: *Supporters pour out of Waton Memorial during Amnesty Weekend.*

For those who were arrested but never convicted, **record expungement** is a possible and meaningful remedy. Procedures for the expungement of municipal or parish ordinances or state statutes (both misdemeanors and felonies) are set forth in Louisiana Revised Statutes Annotated section 44:9 (2007). This statute distinguishes between expungement and destruction of records: "'Expungement' means removal of a record from public access but does not mean destruction of the record. An expunged record is confidential, but remains available for use by law enforcement agencies, criminal justice agencies, [and state licensing boards.]" *§ 44:9(F).* On the other hand, when records are ordered to be destroyed, references thereto may not be made available to the public and must be kept under lock and key for administrative purposes only. See *§ 44:9(A)(2).* In general, misdemeanor arrest records may be destroyed and felony arrest records may be expunged. Although expungement does not remove the event from someone's record in quite the same way as executive pardon—whereby an individual is restored to "a status of innocence"—it can similarly mitigate barriers such as to housing or employment.

While Louisiana's remedies of expungement and pardon do not go nearly far enough, they do represent Louisiana state law examples of remedies relevant to the call for amnesty. Louisiana state law remedies are time-consuming, costly, and narrow in scope. The pardon process requires that each application be presented individually to, and granted by, the Governor. The cost of criminal record expungement, for those who qualify, can be unreachable. And in the cases of both pardon and criminal record expungement, the case-by-case approach currently utilized will be prohibitively time-consuming for a disaster of this scale, and masks the breadth of injustice that must be accounted for. As a result, most prisoners of Hurricane Katrina will not be adequately remedied through these mechanisms.

A more appropriate and effective solution would be to create a reviewing body to document the instances of abuse and injustice faced by those incarcerated before, during and after Hurricane Katrina. A review board should be tasked with documenting and addressing the full scope of human and constitutional rights violations incarcerated persons experienced during and after Katrina. It should also scrupulously examine whether elected and judicial officials acted within the scope of international treaty obligations and the Constitution when they made decisions such as to not evacuate Orleans Parish Prison, to halt deadlines in all judicial proceedings, and to detain people beyond release dates. Ultimately, a review board could be empowered to issue a blanket grant of amnesty for those whose rights were violated, which would be more appropriate than requiring case-by-case decision-making. A more effective means of granting amnesty and clearing people's records of Katrina-related charges is essential to honoring the right of New Orleans residents to return home.

CONCLUSION

Granting an amnesty or pardon and criminal record expungement would not be the first unprecedented aspect of Hurricane Katrina. The systematic way in which thousands of people's human and constitutional rights were violated is equally unparalleled in this country's history.

Hurricane Katrina exposed the deep poverty and inequality that is the continuing legacy of our nation's criminal justice policies and racism – along with the very human effects of how our society invests in prisons and jail cells rather than providing the support systems (education, health care, housing, and infrastructure like levees). Katrina illustrated the way we as a nation increasingly deal with social ills: police and imprison primarily poor Black communities.

Widespread deprivation of liberty was a prominent feature of the response to Hurricane Katrina which has neither received sufficient attention nor official condemnation. Public recognition of this reality should compel an official move to grant Amnesty, and in some way, remedy the injustice suffered by prisoners of Katrina and their families.

CITATIONS

[1] See, e.g., Laura Maggi, *Inmate Lost in System Resurfaces: After 13 Months He Gets His Day in Court*, New Orleans Times-Picayune, Nov. 29, 2006; Gwen Filosa, *ACLU Sues Over Arrest*, New Orleans Times Picayune, Jan. 27, 2007.

[2] Though Katrina impacted a large geographic area, this report focuses on New Orleans/Orleans Parish as one of the clearest examples of violations of human rights requiring remedy.

[3] Transcript of CNN Coverage of Press Conference, Aug. 28, 2005, http://transcripts.cnn.com/TRANSCRIPTS/0508/28/bn.04.html.

[4] One OPP prisoner made daily reports documenting her terrifying experiences on the day of the storm and the five days following. Her account of the utter failure of the Sheriff's plan can be found at: http://criticalresist.live.radicaldesigns.org/katrina/testimonites-stmnt.html. An examination of the conditions OPP prisoners faced is beyond the scope of this paper, but has been exhaustively documented by others. See, e.g. Am. Civil Liberties Union, Abandoned and Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina (2006); Human Rights Watch, New Orleans: Prisoners Abandoned to Flood Waters (2005).

5 ACLU at 13.

6 *Id.*

7 Transcript of CNN Coverage of Press Conference, Aug. 28, 2005, available at http://transcripts.cnn.com/TRANSCRIPTS/0508/28/bn.04.html.

8 Rachel Jones, staff attorney with the Louisiana Capital Defense Center and member of the team of defense attorneys who spearheaded efforts to locate prisoners and file petitions for their release in the months following the storm, used this phrase in a conversation with the author on July 18, 2007.

9 This number is based on the files and approximation of Phyllis Mann, a criminal defense lawyer who led a team of attorneys in efforts to locate evacuated prisoners and petition for their release. Phyllis E. Mann, *Hurricanes Katrina and Rita—A Year Later in Louisiana*, Champion 6, 7 (2006).

10 These case examples are taken from newspaper accounts, the ACLU report cited supra footnote 1, and personal testimonies given to Critical Resistance. See also, Jessica Azulay, *Abuse, Forced Labor Rampant in New Orleans Justice System*, The New Standard, Oct. 15, 2005, http://newstandardnews.net/content/index.cfm/items/2475.

[11] This number provided by the records of Rachel Jones, staff attorney with the Louisiana Capital Assistance Center and member of the team who filed the habeas petitions, on file with the author.

[12] CNN.com, *Military Due to Move in to New Orleans*, (September 2, 2005), http://edition.cnn.com/2005/WEATHER/09/02/katrina.impact/index.html.

[13] CNN.com, CNN Newsnight Aaron Brown, *New Orleans Police Chief Eddie Compass Announced Retirement*, http://transcripts.cnn.com/TRANSCRIPTS/0509/28/asb.02.html

[14] For an illustration of this phenomenon, see Prof. Bill Quigley's power-point presentation, "Katrina – 18 Months Later," available at: http://law.loyno.edu/~quigley/flash.php?id=katrina_18mos.swf.

[15] *See, e.g., New Orleans Mayor Orders Looting Crackdown*, Assoc'd. Press, Sept. 1, 2005, http://www.msnbc.msn.com/id/9063708; Jodi Wilgoren, *Storm and Crisis: Voices From the Storm; What the Hurricane Didn't Take, the Looters Did*, N.Y. Times, Sept. 12, 2005, at A14.

[16] *See, e.g., In Depth:: Hurricane Katrina: Hurricane Katrina Timeline*, CBCNEWS, Sept. 4, 2005, http://www.cbc.ca/news/background/katrina/katrina_timeline.html (reporting that, on September 1, "violence in the region escalate[d], with rescue boats being stolen by marauders, and shots fired at helicopters that [were] bringing out hospital patients").

[17] *See* The People's Hurricane Relief Fund and Oversight Coalition, Justice After Katrina Rally Dec. 9-10, http://cluonline.live.radicaldesigns.org//?p=51 ("To the major media, Blacks seeking and finding food from abandoned stores were looters, while whites doing the same were identified as having found food.").

[18] *The Bridge to Gretna: Why Did Police Block Desperate Refugees From New Orleans?*, 60 Minutes, Dec. 18, 2005, http://www.cbsnews.com/stories/2005/12/15/60minutes/main1129440.shtml.

[19] Jim Dwyer & Christopher Drew, *Storm and Crisis: Lawlessness; Fear Exceeded Crime's Reality in New Orleans*, N.Y. Times, Sept. 29, 2005, at A1; Matt Welch, *They Shoot Helicopters, Don't They?*, Reason Magazine, Dec. 2005.

[20] Dwyer & Drew, *supra* note 48.

[21] *Id.*; and see Jere Longman, Storm and Crisis: *The Police; New Orleans Police Superintendent Quits Amid Criticism*, N.Y. Times, Sept. 28, 2005, at A25.

[22] See Jonathon Simon, *Wake of the Flood: Crime, Disaster and the American Risk Imaginary after Katrina*, Issues in Legal Scholarship:: Catastrophic Risks: Prevention, Compensation, and Recovery, art. 4 at 4 (2007), http://bepress.com/ils.

[23] *See, e.g.*, Welch, *supra* note 48 (quoting Tiger Woods: "it's just unbelievable...how people are behaving, with the shootings and now the gang rapes and the gang violence and shooting at helicopters who are trying to help out and rescue people.").

[24] For an exhaustive account of the abusive conditions prisoners suffered at Orleans Parish Prison, Camp Greyhound, and prisons around the state, *see generally* ACLU, *supra* note 1.

[25] Editorial, *Looter Label Inappropriate According to Respondents of a National Poll*, La. Weekly, Nov. 7, 2005 (quoting Tamika Middleton, community organizer with Critical Resistance).

[26] Gwen Filosa, *Looting Suspects Stationed at Greyhound Terminal*, New Orleans Times-Picayune, Oct. 9, 2005.

[27] Alex Berenson, *Storms and Crisis: Prisoners; With Jails Flooded, Bus Station Fills the Void*, N.Y. Times, Sept. 7, 2005, at A20.

[28] Tetlow & Garrett, *supra* note 31, at 144; *Illegal Imprisonment Not Just For 'Suspected Terrorists'—New Orleans Man Held For 7 Months After Katrina*, Mother Jones, Jan. 29, 2007, http://www.motherjones.com/mojoblog/archives/2007/01/3374_illegal_impriso.html.

[29] Gwen Filosa, *ACLU Sues Over Arrest*, New Orleans Times-Picayune, Jan. 27, 2007, at 1.

[30] By September 8, more than 200 arrests had been made: 178 for "looting," 26 for possession of stolen vehicles, 20 for resisting arrest, 14 for theft and 9 for attempted murder. Garrett & Tetlow, *supra* note 31, at 145.

[31] *Id*.

[32] See Simon, *supra* note 51, at 1.

[33] Garrett & Tetlow, *supra* note 31, at 143.

[34] UC Berkeley Professor Jonathon Simon used this word to describe law enforcement efforts in an interview in Berkeley, Cal. (Apr. 19, 2007).

[35] Gwen Filosa, *Looting Suspects Stationed at Greyhound Terminal*, New Orleans Times-Picayune, Oct. 9, 2005; *Camp Greyhound: Outpost of Law and Order*, USA Today, http://www.doc.louisiana.gov/Press%20Releases/KATRINA/Press%20Releases/USA%20Today%20Detention%20Facility.pdf.

[36] Filosa, *supra* note 64.

[37] *Storm Victims Steal School Buses to Flee New Orleans*, Local6.com, Sept. 2, 2005, http://www.local6.com/news/4929516/detail.html; Jared Wadley, *Advocates Seek Due Process for Hundreds of Incarcerated Hurricane Victims*, The University Record Online, Jan. 23, 2006, http://www.umich.edu/~urecord/0506/Jan23_06/16.shtml.

[38] For a detailed analysis of this trend, and of the patterns of prosocial behavior that emerged in the wake of Katrina, see Havidan Rodriguez, Joseph Trainor and Enrico Quarantelli, *Rising to the Challenges of a Catastrophe: The Emergent and Prosocial Behavior Following Hurricane Katrina*, 604 The ANNALS of the American Academy of Political and Social Science 82-101 (2006).

[39] *Id*.

[40] See Simon, *supra* note 51, at 1.

[41] See Simon, *supra* note 51, at 9 ("[O]fficials from the White House on down suggested that the crime and lawlessness was in part responsible for the failure of adequate provision for the refugees. [...F]acing a storm of criticism for their lack of effective preparation...officials repeatedly issued tough sounding statements about shooting and killing looters....That [this posturing] should be successfully deployed in the face of a disaster which has underlined the importance of basic civil governance was sobering but not surprising.").

42 Jessica Azulay, *Abuse, Forced Labor Rampant in New Orleans Justice System*, The New Standard, Oct. 15, 2005, http://newstandardnews.net/content/index.cfm/items/2475.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] See generally Mann, *supra* note 32; Garrett & Tetlow, *supra* note 31.

[48] Mann, *supra* note 32, at 6.

[49] *Id*.

[50] Garrett & Tetlow, *supra* note X, at 139

[51] *Id*. at 145.

[52] *Id*.

[53] *Id*. at 149.

[54] As a means of comparison, consider San Francisco: the District Attorney must make a decision within 72 hours on whether or not to prosecute someone brought in on a felony offense; those arrested on misdemeanor charges must go to court on the next business day.

[55] Mann, *supra* note 32, at 8.

[56] All of these treaties can be found in their entirety on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch/html/intlinst.htm. The Convention on the Elimination of All Forms of Racial Discrimination was signed September 28, 1966 and ratified October 21, 1994. The International Covenant on Civil and Political Rights was signed on October 5, 1977 and ratified on June 8, 1992. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed April 18, 1988 and ratified October 21, 1994.

[57] The United States issued "Reservations" to these treaties, such that they do no extend beyond the terms of our Constitution. In other words, the treaties cannot hold the government of the United States (or any local or state government) accountable for any right, or violation thereof, not already protected by our Constitution. For a full list of the Reservations, Understandings and Declarations issued by the United States with respect to each of these treaties, please visit the "Ratifications and Reservations" page of the Office of the United Nations High Commissioner for Human Rights website, at: http://www.ohchr.org/english/bodies/ratification/index.htm

[58] *Preamble* to CERD, available at http://www.ohchr.org/english/law/cerd.htm.

[59] *Preamble* to ICCPR; available at http://www.ohchr.org/english/law/ccpr.htm.

[60] *See generally*, Convention Against Torture, available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm.

[61] As indicated by the number of organizational signatories to such reports as *Abandoned and Abused*, ACLU *supra* note 3; *In the Shadows of the War on Terror*, http://www.afsc.org/news/2006/human-rights-report.htm.

[62] Notably, the events surrounding Katrina do not fall within the framework of Article 4, which allows for derogation from the treaty "in time of public emergency which threatens the life of the nation" and only "to the extent strictly required by the exigencies of the situation." (emphasis added). Even a disaster of Hurricane Katrina's scale does not satisfy this criterion.

[63] ACLU, *supra* note 2; ICCPR Art. 10(1).

[64] CERD Art. 5(b).

[65] *See, In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States – A report prepared for the United Nations Human Rights Committee on the occasion of its review of The United States of America's Second and Third Periodic Report to the Human Rights Committee* (May 2006), available at: http://www.afsc.org/news/2006/human-rights-report.htm.

[66] The provisions of the ICCPR guard against many of the same human rights violations as does CERD, and also prohibit discrimination on the basis of race. Yet the creation of CERD as a separate treaty was not merely redundant. By explicitly highlighting discrimination on the basis of race, CERD underscores both the continued prevalence of such discrimination and the international community's commitment to eradicate it. The fact that the events of Hurricane Katrina find the United States in such egregious abrogation of both CERD and ICCPR demonstrates the extent to which we, as a nation, have much work to do to eliminate racism. The severity of abuses which occurred in the days, months and years since the storm make the imperative of remedying & repairing these abuses—to whatever extent possible—that much more significant.

[67] Promotion of National Unity and Reconciliation Act, Act No. 34 of 1995, available at: http://www.doj.gov.za/trc/legal/act9534.htm

[68] See Harold Jordan, *What Happened to Vietnam Era War Resisters?*, American Friends Service Committee, http://www.afsc.org/youthmil/conscientious-objection/Vietnam-war-resisters.htm.

[69] *See Discretionary Justice: A Legal and Policy Analysis of a Governor's Use of the Clemency Power in the Cases of Incarcerated Battered Women*, 3 J.L. & Pol'y 1, 30-31 (1994).

[70] *Id*. at 35.

[71] The first type of pardon, automatic, or "first offender" pardon, is granted automatically when an individual completes the sentence for his/her first felony conviction; the effect is to restore "all rights of citizenship and franchise" to that person. This type of pardon is provided for statutorily under Louisiana Revised Statutes Annotated section 15:572.

[72] *State v. Lee*, 171 La. 744, 746 (1931).