



The Right to Return: Rebuilding the Gulf through the Framework of International Human Rights

Background

Stephanie Mingo rented her home in the St. Bernard Public Housing Development in New Orleans prior to Katrina.¹ During the storm, Mingo reportedly floated on a refrigerator through the hurricane flood waters to reach a highway overpass, where she was evacuated by helicopter. Since the storm, she has not been able to return to her apartment. "People say we don't want to come home, but I do want to come home."² "Why pay for a trailer for me when you could pay someone to clean up my unit, so I can come home? Just give me my home back! I have such a big hole in my heart, sometimes I just feel like dying so I won't have any more problems. They don't realize how much people are suffering."³

On August 29, 2005, Hurricane Katrina, one of the strongest hurricanes to ever hit the United States, caused flooding to most of the low-lying areas of the Gulf Coast, including New Orleans, Louisiana and Biloxi, Mississippi and the surrounding communities.⁴

According to Federal government figures, approximately 200,000 people were evacuated from the Gulf Coast Region to places such as Texas, Florida, Georgia, and Washington, D.C.⁵ Of the more than 400,000 residents who lived in New Orleans prior to Katrina, approximately 350,000 lived in areas that were damaged by the storm, with 75% of those individuals being African American and 29.2% living below the national poverty line (which was calculated at an income of \$19,350 for a family of four in 2005).⁶

"New Orleans is not going to be as black as it was for a long time, if ever again."⁷

Alphonso Jackson, Housing and Urban Development Secretary

Thousands of former residents of low income housing have not yet been able to return to their homes and continue to live in temporary housing or even emergency shelter far from their homes. Amnesty International USA is concerned that many displaced residents may be prevented from returning home in the future because authorities are currently planning to reduce the number of units available for low income public housing. The Federal Department of Housing and Urban Development (HUD) and the Housing Authority of New Orleans (HANO) have closed and are reportedly planning to demolish four of the largest public housing developments in New Orleans (St. Bernard; C.J. Peete; B.W. Cooper and Lafitte), and replace them with mixed income housing.⁸ If implemented, this decision would mean that the majority of public housing units in New Orleans will be eliminated, reportedly affecting thousands of former residents, many of whom are keen to return.⁹

“We just came back from Houston because we wanted to come home...This is my home. I don’t want to make no where else my home...I’ve passed [my housing unit] sometimes and I don’t even want to look this way because it hurts so bad. I mean, everybody else is going home and going back and we can’t. It’s just, everything is boarded up like we had so much water...that’s just not true. I don’t think it’s a need to tear it down.”

Tashara Smith, Displaced Public Housing Resident¹⁰

An internally displaced person (IDP) is someone who has been forced to leave their home for reasons such as religious or political persecution, war or natural disaster, but has not crossed an international border.

While HUD reportedly plans to demolish and rebuild these developments,¹¹ residents, advocates¹² and some experts¹³ believe the existing public housing units could be renovated and reoccupied by the former residents in a much shorter timeframe.¹⁴

There are also environmental concerns that must be taken into consideration when planning the return of those internally displaced as a result of Hurricane Katrina (hereafter internally displaced people or IDPs). For example, in soil samples collected by the Environmental Protection Agency and analyzed by the Natural Resources Defense Council (NRDC), a non-profit environmental organization, over the five months immediately following Hurricane Katrina, the NRDC found levels of arsenic that “potentially pose a significant cancer risk, according to EPA Guidelines.”¹⁵ Furthermore, according to the Federal Government Accountability Office (GAO), “millions of gallons of oil and unknown quantities of potentially hazardous chemicals were released into the environment” in the wake of Hurricane Katrina.¹⁶ Sources of chemical spills included “tanks, barges, pipelines, rail cars, [and] industrial facilities.”¹⁷

In the meantime, many IDPs are reportedly living in unsafe conditions in trailers provided by the federal government throughout the region. Reportedly those trailers contain levels of formaldehyde, a carcinogenic toxin, which are 75 times the recommended maximum for U.S. workers.¹⁸ Furthermore, a recent survey of displaced residents living in trailers found that, nearly half of those surveyed reported being in worse health than the day before Katrina, 30 per cent had been victims of theft and 1 in 6 women reported being a victim of domestic violence.¹⁹

International Human Rights Standards

Amnesty International believes that the best and most effective way to secure and rebuild lives in the wake of Hurricane Katrina, is by respecting, protecting and fulfilling the human rights of those affected.

Adequate Housing as a Human Right

The right to adequate housing guarantees access to a safe, habitable, and affordable home with protection against forced eviction. Without adequate housing, an individual is vulnerable to human and natural forces, compromising other human rights including family life, health,

education, employment and privacy. The right to adequate housing is clearly supported by international law, starting with the foundational Universal Declaration of Human Rights.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care ...”

The Universal Declaration of Human Rights (UDHR), Article 25.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948, by a unanimous vote by all member countries, including the United States. The right to adequate housing has been reaffirmed in the International Convention on the Elimination of All Forms of Racial Discrimination, to which the USA is a party, states:

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

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5.

The right to adequate housing is also protected in Article 14(2)(h) of the International Convention on the Elimination of Discrimination Against Women, Article 27(3) of the Convention on the Rights of the Child, and Article 11 of the International Covenant on Economic, Social and Cultural Rights, all of which have been signed, but not ratified, by the United States. The International Covenant on Civil and Political Rights (ICCPR), which the US has ratified, also includes “the right to participate in the conduct of public affairs”. The latter has been interpreted broadly: “the conduct of public affairs, referred to in paragraph (a), is a broad concept ... It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”²⁰

The status of the right to adequate housing in international human rights law and standards, including in conventions which the USA has signed and ratified is clear and unequivocal. States' obligations related to the right to adequate housing include to respect that right through non-interference, to protect it from interference by third parties, and to fulfill the right through concrete, targeted and effective steps to achieve progressively the full realization of the right, including through prohibiting and eliminating discrimination in the realization of the right, and prioritizing the most vulnerable, including those affected by natural disasters.²¹

United Nation's Guiding Principles on Internally Displaced Persons

The United Nations General Assembly adopted the “UN Guiding Principles for Internally Displaced Persons,” (the IDP Guidelines) which are non-binding, but set out authoritative standards based on existing instruments of international human rights and humanitarian law. The Federal Government's United States Agency for International Development has recognized that UN Guiding Principles on Internal Displacement offer a useful tool and framework for dealing with IDPs.²²

The IDP Guidelines offer protection from forced displacement and protection to IDPs at all stages of displacement: during displacement (including humanitarian assistance) and in the return, resettlement and reintegration processes. These principles have been systematically undermined in the aftermath of Hurricane Katrina.

“ ... [A]uthorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country”.

Principle 28(1), United Nations Guiding Principles on Internal Displacement

“Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of the return or resettlement and reintegration.”

Principle 28(2), United Nations Guiding Principles on Internal Displacement²³

In addition to providing guidance on the protection of IDPs from arbitrary displacement, and their protection during displacement from their homes or places of habitual residence, the Guiding Principles provide guidance on duties and responsibilities of the state and other actors in relation to return, resettlement and reintegration of IDPs, stressing in this process the fundamental importance of the principle of returning or resettling voluntarily, and in conditions of dignity and safety. In particular, Principle 29(2) observes the duty of the authorities to assist IDPs to recover their property and notes in this regard that “when recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.” This reflects the obligation of states parties to the ICCPR to ensure an “effective remedy”²⁴ and a general trend in human rights and refugee law towards recognizing a right to restitution of property, whether destroyed or occupied, or to compensation for its loss.²⁵

In terms of return, reintegration or resettlement, the authorities must ensure that any solutions are sustainable and that an individual does not suffer multiple cycles of displacement. Relocating IDPs to places of insecurity or to places where they cannot enjoy basic economic, social and cultural rights and are therefore unsustainable may breach a range of human rights standards.

The Principles on Housing, and Property Restitution for Refugees and Displaced Persons, submitted to the UN Sub Commission for the Promotion and Protection of Human Rights in the 2005 final report of the Special Rapporteur Paulo Sérgio Pinheiro²⁶ are based on existing international human rights and humanitarian law and standards. They recognize the right to adequate housing²⁷ and the right to fully participate in the planning and management of their return or resettlement and reintegration.²⁸ For example, international standards state that:

- “States should ensure that the rights of tenants, social-occupancy rights holder and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.” (*Principle 16.1 United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*)²⁹

The U.N. Human Rights Committee, the ICCPR monitoring body, has urged the United States to review its practices and policies to ensure the full implementation of its obligations to protect life and of the prohibition of discrimination against IDPs; whether direct or indirect, as well as of the Guiding Principles on Internal Displacement. It further urged the U.S. to increase its efforts

to ensure that the rights of poor people and in particular African Americans, are fully taken into consideration in the post-Katrina reconstruction plans with respect to access to housing and healthcare.³⁰

The right to health

States shall “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

(Art. 12(1), International Covenant on Economic, Social and Cultural Rights)³¹

The right to health is the right to the “highest attainable standard of physical and mental health”. It encompasses freedoms (such as the right to control one’s health and body) and entitlements (for example, to equality of access to health care) and consists of two basic components: healthy living conditions and health care.³²

The right to health is recognized in the constitution of the World Health Organization to which the US is a party, and in Article 5(e)(iv) of the ICERD to which the US is also a party. The latter states that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to public health, medical care, social security and social services.”³³

The Committee on Economic, Social and Cultural Rights (the body of independent experts which monitors implementation of the International Covenant on Economic, Social and Cultural Rights) has adopted a broad conception of the right to health, recognizing it as: “*an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information ... A further important aspect is the participation of the population in all health-related decision making at the community, national and international levels.*”³⁴

Article 12(2)(b) of the ICESCR states that “steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... The improvement of all aspects of environmental and industrial hygiene” which has been authoritatively interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) (in General Comment 14) to incorporate “The right to a healthy natural environment comprising, “*inter alia*... the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. ... Article 12.2 (b) also embraces adequate housing ...”

The United States has signed but not ratified the International Covenant on Economic, Social and Cultural Rights. As a signatory, the U.S. is obligated not to defeat the object and purpose of the Covenant.³⁵

Recommendations

Amnesty International USA calls on Federal, State and local governments to ensure that all Katrina IDPs be guaranteed their right to return to their former homes without discrimination or to be compensated for any housing that is factually impossible to restore as determined by a competent, impartial tribunal.

Amnesty International USA also calls on the Federal, State and local governments to ensure that all Gulf Coast residents return to adequate housing and an environment which is consistent with the right to the highest attainable standard of health.³⁶

More specifically:

- The United States government, through its agencies, should recognize that all Internally Displaced Persons have the right to return to their homes or places of origin; authorities should ensure the availability of housing for low income IDPs returning to the Gulf Coast.
- The United States government, through its agencies, should ensure that the principles of equality and non-discrimination are applied to the resettlement and return of all Internally Displaced Persons;
- Internally Displaced Persons should be able to participate in the planning and management of their return, resettlement and reintegration into their communities. Authorities should ensure that survivors have access to information to enable them to genuinely and effectively participate in shaping the administrative decisions which affect the exercise of their housing rights.
- All decisions regarding the future of existing public housing developments should be made in close consultation with former residents. In particular, demolition of any public housing development occupied prior to Hurricane Katrina should not take place without consultation with and the full participation of residents.
- Authorities should develop transitional and permanent housing plans in consultation with and the participation of survivors that will enable resettlement and reintegration, and respect their human rights.
- The United States Congress should pass the Gulf Coast Housing Recovery Act, which will ensure that all Internally Displaced Persons who previously resided in low income housing in the Katrina-affected areas be guaranteed their right to return to their former homes or a replacement dwelling as described in the Bill.
- The United States Government should ensure the right to adequate housing and the right to the highest attainable standard of physical and mental health in ensuring that the public is protected from harmful environmental conditions created by the hurricane and subsequent flooding when returning to the Gulf Coast.
- The Environmental Protection Agency should make sure that the environment of New Orleans and the surrounding Gulf Coast communities are safe and habitable for returning residents according to EPA standards.

¹ Cass, Julia and Peter Whoriskey, *New Orleans to Raze Public Housing*, The Washington Post, December 8, 2006, at A03, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/07/AR2006120701482.html> . Public housing residents pay approximately 30% of their adjusted monthly income. See: <http://www.hud.gov/>

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- ² Sasser, Bill, *Our Town: New Orleans Residents Demand the Reopening of Public Housing Units*, The Beehive, February 23, 2006, available at: <http://www.thebeehive.org/Templates/HurricaneKatrina/Level3NoFrills.aspx?PagelId=1.5369.6532.6972>.
- ³ Lydersen, Kari, *New Orleans Public Housing Residents Set to Fight Off Developers*, The New Standard, February 27, 2006, available at: <http://newstandardnews.net/content/index.cfm/items/2868>.
- ⁴ See National Climatic Data Center, *Summary of Hurricane Katrina*, available at: <http://www.ncdc.noaa.gov/oa/climate/research/2005/katrina.html>.
- ⁵ See *Hurricane Katrina Response and Recovery Update*, Federal Emergency Management Agency, News Release HQ-05-198B, September 4, 2005, available at: <http://www.fema.gov/news/newsrelease.fema?id=18602>.
- ⁶ Logan, John, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, Brown University, January 2006, at 7, available at: <http://www.s4.brown.edu/Katrina/report.pdf>; see also the Department of Health and Human Services website, *The 2005 HHS Poverty Guidelines*, available at: <http://aspe.hhs.gov/poverty/05poverty.shtml>.
- ⁷ Rodriguez, Lori and Zeke Minaya, *New Orleans' Racial Makeup Up in Air*, The Houston Chronicle, September 29, 2005, at 1, available at: <http://www.chron.com/disp/story.mpl/front/3374480.html>.
- ⁸ Christopher Tidmore, *Public Housing Redevelopment Sparks Multi-City Protest & Lawsuit*, The Louisiana Weekly, July 3, 2006.
- ⁹ Anne Hawke, *HUD To Demolish Four New Orleans Housing Projects*, NPR, June 18, 2006, <http://www.npr.org/templates/story/story.php?storyId=5493936>.
- ¹⁰ Advancement Project, *This Is My Home: The Fight For Public Housing In New Orleans*, available at: <http://www.advancementproject.org/>.
- ¹¹ Anne Hawke, *HUD To Demolish Four New Orleans Housing Projects*, NPR, June 18, 2006, <http://www.npr.org/templates/story/story.php?storyId=5493936>.
- ¹² *A Storm Over New Orleans Public Housing in Katrina Wake*, Salt of the Earth, January 2007, available at: <http://salt.claretianpubs.org/sjnews/2007/01/sjn0701d.html>; Kari Lydersen, *New Orleans Public Housing Residents Set to Fight Off Developers*, The Newstandardnews.net, February 27, 2006, available at: <http://newstandardnews.net/content/index.cfm/items/2868> (Citing to Dr. Marty Rowland's tour of St. Bernard, a civil engineer, told reporters that all of the first floor apartments which suffered water damage could be livable again with rewiring and restoration of utilities while second and third floor units were hardly damaged at all).
- ¹³ See Declaration of John E. Fernandez, *Anderson v. Jackson*, Civil Action No. 06-3298, available at: <http://www.justiceforneworleans.org/jfnodocs/Declaration.pdf> (John Fernandez, an associate professor of Architecture at M.I.T. stating his inspection and assessment "did not find any conditions in which the integrity of the structure and exterior envelope of the buildings or the interior conditions of residential units themselves could not be brought to safe and livable conditions with relatively minor investment."); Reckdahl, Katy, *Like a Ton of Bricks*, Best of New Orleans.com, October 24, 2006, available at: http://www.bestofneworleans.com/dispatch/2006-10-24/news_feat.php (noting that during a recent walk through of the Lafitte housing development, Katrina water lines were clearly below the top of the buildings' foundations).
- ¹⁴ Maggi, Laura, and Gwen Filosa, *New Orleans Faces Public Housing Dilemma: Build It Right or Build It Fast*, Newhouse News, October 2006, available at: http://www.bgr.org/BGR%20in%20the%20News/New_Orleans_faces_public_housing_dilemma_NNS102006.pdf (quoting Lafitte Resident Leah Green that at least 128 of Lafitte's 865 units could have been repaired and reopened by [October 2006]); Reckdahl, Katy, *Like a Ton of Bricks*, Best of New Orleans.com, October 24, 2006, available at: http://www.bestofneworleans.com/dispatch/2006-10-24/news_feat.php (quoting Judith-Browne-Dianis, co-Director of Advancement Project that redevelopment will take years and [IDPs] can't wait that long).
- ¹⁵ See Solomon, Gina, *Contaminants in New Orleans Sediment: An Analysis of EPA Data*, Natural Resources Defense Council, February 2007, at 4, available at: <http://www.nrdc.org/health/effects/katrinadata/sedimentepa.pdf>. The average level of arsenic found by the EPA in the greater New Orleans area is 10.6 mg/kg of soil. In comparison, the Region 6 EPA health-based soil screening level for residential areas is set at 0.29 mg/kg of soil to protect against cancer. EPA Region 6 Human Health Medium-Specific Screening Levels. November 2005: http://www.epa.gov/earth/r6/6pd/rcra_c/pd-n/screen.htm.
- ¹⁶ See Government Accountability Office, *Report to Congressional Committees, Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast*, June 2007, at 1, available at: <http://www.gao.gov/new.items/d07651.pdf>.
- ¹⁷ Environmental Protection Agency, *News Release, EPA and LDEQ Use Helicopters to Detect Chemical Spills in Katrina's Aftermath*, September 16, 2005, available at: <http://yosemite.epa.gov/opa/admpress.nsf/7c02ca8c86062a0f85257018004118a6/96284005886c769d852570d6005e7f28!OpenDocument&Highlight=0,rail>.
- ¹⁸ Hsu, Spencer S., *FEMA knew of Toxic Gas in Trailers*, Washington Post, July 20, 2007, at A01, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/19/AR2007071901039.html>.

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- ¹⁹ Whoriskey, Peter, *Study Says Storms Displaced More People Than Estimated*, The Washington Post, August 8, 2007, at A04, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/07/AR2007080701873.html>; See also, Schafer, Mark J., Joachim Singelmann, LSU AgCenter, *Louisiana FEMA park Survey*, Interim report, Louisiana Recovery Authority, April 2007, available at: http://www.lra.louisiana.gov/assets/migration/LouisianaFEMAParkSurvey_web.pdf.
- ²⁰ Human Rights Committee: General Comment 25. The right to participate in public affairs, voting rights and the right of equal access to public service.(Article 25) (UN Doc. CCPR/C/21/Rev.1/Add.7).
- ²¹ For more information see UN Committee on Economic, Social and Cultural Rights, General Comment no 4, the right to adequate housing, contained in UN Doc. E/1992/23; and Amnesty International, *Human Rights for Human Dignity: a primer on economic, social and cultural rights*, AI Index POL 34/009/2005
- ²² Although the United States does not accept the UN Guiding Principles as an expression of governing international law, it recognizes the valuable practical role the principles can play in the protection of IDPs. United States Agency for International Development, *Assistance to Internally Displaced Persons Policy*, October 2004, PD-ACA-558, available at http://pdf.dec.org/pdf_docs/PDACA558.pdf
- ²³ Principle 28(2), Guiding Principles on Internal Displacement, Office of the High Commissioner for Human Rights, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), noted in Comm. Hum. Rts. res. 1998/50, available at: <http://www.unhcr.ch/html/menu2/7/b/principles.htm>.
- ²⁴ ICCPR, Article 2 (3) (a)
- ²⁵ See, W. Kälin, 'Guiding Principles on Internal Displacement: Annotations', *Studies in Trans-national Legal Policy*, No. 32 (Amer. Soc. Int'l L. and the Brookings Institution Project on Internal Displacement, 2000), 72; EXCOM Conclusion No. 101 (LV) 2004: Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees.
- ²⁶ UN Doc. E/CN.4/Sub.2/2005/17.
- ²⁷ Principle 8.1, The Pinheiro Principles, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, available at: <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>.
- ²⁸ Human Rights Committee: General Comment 25. The right to participate in public affairs, voting rights and the right of equal access to public service.(Article 25) (UN Doc. CCPR/C/21/Rev.1/Add.7).
- ²⁹ Principle 16.1, The Pinheiro Principles, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, available at: <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>.
- ³⁰ Human Rights Committee, 10-28 July 2006, Consideration of Reports by States Parties under Art. 40 of the International Covenant on Civil and Political Rights, Concluding Observations on the United States of America.
- ³¹ Art. 12(1), International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976. The United States has signed but not ratified this Covenant. As a signatory, the U.S. is obligated not to defeat the object and purpose of the Covenant. Vienna Convention on the Law of Treaties, Article 18.
- ³² The right to health: Article 12, ICESCR; 5 (e) (iv) ICERD; 11.1 (f), CEDAW among others.
- ³³ Article 5(e)(iv) ICERD
- ³⁴ Committee on Economic, Social and Cultural Rights, General Comment 14, *The Right to Health*, UN Doc. e/C.12/2000/4, para 11. The scope of the right to health has also been clarified in the work of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur on the right to health).
- ³⁵ Vienna Convention on the Law of Treaties, Article 18.
- ³⁶ Art. 12(1), International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.