

WOMEN'S HUMAN RIGHTS IN THE UNITED STATES: A Response to the United States Country Report for the Universal Periodic Review

US Human Rights Network Women's Rights Working Group
Coordinator: Denice Labertew, J.D.: Contact: womenleadchange@gmail.com

Women Rights are Human Rights

This includes all who define themselves as women, as well as other birthing and menstruating people.ⁱ

Overview: The language to address issues of gender in the United States Country Report utilizes a binary framework and is exclusive of a broad range of gender expression or gender identity.ⁱⁱ Without acknowledgement of gender diversity, the mental and physical health of women and girls in the U.S. can be severely compromisedⁱⁱⁱ. Additionally, while the U.S. highlights its engagement with Civil Society, only one specific call for consultation was sent out from the U.S. Department of State, broadly, to Civil Society in preparation for the UPR.

A: Treaties, International Mechanisms and Domestic Implementation

The United States notes that it is a party to five (5) of the nine (9) human rights treaties described by the Office of the High Commissioner as "Core International Human Rights Instruments."^{iv} To the detriment of women, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is not one of them. While the U.S. notes that it is a signatory to CEDAW, it has yet to be ratified, leaving a gap in the protections for U.S. women^v.

The U.S. also points out its commitment to human rights by invoking its creation of a Commission on Inalienable Rights. This Commission, instead of expanding access to rights, creates a risk to women as it is being used to "justify restrictions on reproductive freedom and the rights of LGBTQ people."^{vi}

B: Civil Rights and Non-Discrimination

The U.S. government states that law enforcement and criminal justice systems in the U.S. are not "systemically racist", however there is significant evidence to the contrary^{vii}. When we add gender to race as a variable, a picture emerges of a deeply racist and sexist environment. Women of color make up an increasing share of arrests and use of force^{viii}, women's incarceration rates have increased twice as quickly as men's over the last several decades, with a disproportionate number of Black, Brown and Indigenous women being incarcerated^{ix}. Additionally, the treatment of women in carceral settings constitutes significant violations of women's human rights. While we have previously submitted a report on the lack of reproductive health care and sexual assault experienced by undocumented immigrant women in immigration detention^x, recent reports about the non-consensual sterilizations of predominantly Black and Latinx women in prison^{xi xii} have unveiled the both racist and misogynistic law enforcement system and practices in the United States^{xiii}.

The U.S. report also claims that State and Federal laws protect the rights of individuals with regard to race and gender. While laws preventing racial discrimination at a Federal level are in place, recent court rulings have chiseled away at those protections^{xiv} and states increasingly enact laws that prevent women's access to reproductive care^{xv} and that lift protections in the workplace^{xvi}.

C. Criminal Justice, Violence Against Women and Human Trafficking

In its report, the United States highlights the Civil Rights of Institutionalized Persons Act which is supposed to provide tools to the Department of Justice to investigate and correct conditions in prisons where there is a pattern or practice of the deprivation of individuals' Constitutional rights. The use of an Alabama case of prisoner-on-prisoner sexual abuse as an example of this process does not provide context for sexual abuse perpetrated against prisoners, particularly women, at the hands of facility staff. This has been raised in both stakeholder reports and by the Special Rapporteur on Violence Against Women^{xvii} and instead of an investigation, the U.S. deflects responsibility to hold detention center staff accountable^{xviii}.

The U.S. report also highlights the use of the Violence Against Women Act as a mechanism to address gender based violence and protect women from abuse, yet Congress has failed to Re-Authorize it, so it cannot be used to support victims of gender based violence.

D. Economic, Social and Cultural Rights and Measures; Indigenous issues; and the Environment

The U.S. highlights, in its report, the Maternal and Child Health Services Block Grant Program that “seeks to improve maternal health outcomes, including rates of severe morbidity and maternal mortality”; however, the US has the highest maternal mortality rate of similarly wealthy countries. Pregnant people in the United States are now 50% more likely to die in childbirth or soon after than they were just 30 years ago, with those deaths more often occurring in states with the most restrictions on abortion access.^{xxix} Black, American Indian, and Alaska Native women are two to three times more likely to die from pregnancy-related causes than white women, primarily due to the lack of access to health care that is not associated with jobs^{xxx}. Women are overrepresented in jobs that lack health care benefits and provide low wages, like part time work, hospitality, and sex work. The U.S. has made clear in its report that it intends to continue to deprive women access to reproductive healthcare whether or not that care involves abortion access. Abortion is an essential health service and it must be kept accessible.^{xxxi}

E. National Security and Other Matters

The U.S. continues to frame the migrant crisis at the border as a “security” issue even though more than one-half of those immigrating to the U.S. are women and girls, often escaping gender-based violence in their own countries^{xxii}. In fact, the U.S. doesn’t address the experiences of migrant women at all. Inadequate reproductive health care is thought to play a role in the increasing number of pregnancy complications being reported for women and birthing people in the custody of Immigration and Customs Enforcement^{xxiii}. Menstrual hygiene is a critical part of reproductive health and has been recognized as a human right^{xxiv}. However, menstrual hygiene materials are considered a “luxury” item for women in detention settings who are often given only one sanitary pad per day and not allowed to access showers or private toilet facilities^{xxv}. Also, the separation of children from their families has a disproportionate impact on women in immigration detention. The right to parent children is a human right^{xxvi}.

COVID-19

One of the most glaring omissions from the U.S. report is that the ongoing impacts of COVID-19 are not mentioned at all. The COVID-19 pandemic has had a devastating impact on women. Women make up 76% of all healthcare jobs and informal care roles are disproportionately performed by women. They are also the majority of health facility service-staff, making them the most exposed to contracting the coronavirus^{xxvii}. COVID-19 creates circumstances that foster intimate partner violence, which is most often experienced by women -- specifically low-income women -- and LGBTQ people. The pandemic and social distancing orders leaves women with fewer options to find safety or help.

Recommendations:

- Promptly ratify CEDAW and disband the Commission on Inalienable Rights.
- Ensure statutory language, policies and practices protecting prisoners from sexual abuse include specific reference to the protection of immigration detainees and make explicit institutional accountability for anyone under the control of Immigration Control and Enforcement who abuse or sexually harass detainees.
- Immediately Re-Authorize the Violence Against Women Act and ensure protections for Black, Latinx, Indigenous and Transgender Women and prioritize services for prevention and response to gender-based violence
- Increase access to timely and appropriate quality health care for all women, free from economic, legal, psychosocial, and cultural barriers and ensure data collection is disaggregated.
- Protect essential health services for women and girls, including sexual and reproductive health services
- Ensure equal voice for women in decision making and long-term impact policy development

Appendix A: Footnotes

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- ⁱ It is important to note that individuals who do not identify as “women” may also be impacted by these violations, including transgender and non-binary individuals
- ⁱⁱ <https://www.tolerance.org/magazine/summer-2013/the-gender-spectrum>
- ⁱⁱⁱ <https://www.apa.org/pubs/books/The-Gender-Affirmative-Model-Chapter-1-Sample.pdf>
- ^{iv} <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/204/16/PDF/G2020416.pdf?OpenElement>
- ^v Several members of the U.N. urged the U.S. to ratify conventions reflecting international norms during the 2015 UPR Process
- ^{vi} <https://www.hrw.org/news/2020/08/27/pompeos-commission-unalienable-rights-will-endanger-everyones-human-rights#>
- ^{vii} <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>
- ^{viii} <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/>
- ^{ix} <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>
- ^x Motherhood, Menstruation and Sexual Violence: Joint Stakeholder Report MaMa JuNetwork/Women Lead Network 10.2019
- ^{xi} <https://www.npr.org/sections/thetwo-way/2013/07/09/200444613/californias-prison-sterilizations-reportedly-echoes-eugenics-era>
- ^{xii} <https://www.aclu.org/news/immigrants-rights/immigration-detention-and-coerced-sterilization-history-tragically-repeats-itself/>
- ^{xiii} Several U.N. members urged the U.S. to address issues related to humane incarceration standards and alternatives to incarceration, in particular for women
- ^{xiv} <https://www.documentcloud.org/documents/717244-supreme-court-decision-in-shelby-county-v-holder.html#document/p32>
- ^{xv} <https://www.americanprogress.org/issues/women/reports/2020/08/27/489786/state-actions-undermining-abortion-rights-2020/>
- ^{xvi} <https://www.plannedparenthoodaction.org/issues/birth-control/burwell-v-hobby-lobby>
- ^{xvii} Special Rapporteur on Violence Against Women. 2011. *Report of the Special Rapporteur on Violence Against Women it Causes and Consequences, Mission to the United States*. New York: United Nations.
- ^{xviii} <https://www.aclu.org/cases/ed-v-sharkey>
- ^{xix} UN Women Policy Brief on the Impact of COVID-19 on Women <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=5029>
- ^{xx} Black Mama’s Matter-Black Maternal Health and the COVID 19 Response-<https://blackmamasmatter.org/2020/black-maternal-health-week-2020-webinar-series/>
- ^{xxi} Feminist Alliance for Rights - Call for a Feminist COVID-19 Policy <http://feministallianceforrights.org/blog/2020/03/20/action-call-for-a-feminist-covid-19-policy/>
- ^{xxii} Link to Asylum, Migration and Borders <https://fra.europa.eu/en/themes/asylum-migration-and-borders>
- ^{xxiii} Link to Letter from The American Academy of Pediatrics, American Academy of Obstetricians and Gynecologists and the American Academy of Family Physicians <https://downloads.aap.org/DOFA/ACOG%20AAP%20AAP%20Letter%20to%20Deputy%20Director%20Homan%20FINAL.pdf>
- ^{xxiv} Human Rights Watch and Wash United. 2017. "Understanding Menstrual Hygiene Management and Human Rights." U.S.A.: Human Rights Watch.
- ^{xxv} Link to report by Alma Poletti, Investigator with Washington State documenting lack of access to menstrual products https://aqportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/2019-08-23%20Poletti_Declaration_FloresCDCA_Washington_FINAL.pdf
- ^{xxvi} Members of the international community have identified norms and standards in addressing the needs of migrants and refugees. The U.S. has lacked leadership in these areas.
- ^{xxvii} National Women’s Law Center-Promoting Equitable Access to Health Care in Response to COVID-19 <https://nwlc.org/resources/promoting-equitable-access-to-health-care-in-response-to-covid-19/>