

Introduction: Guarantees of freedom from inhumane treatment, torture and degrading punishment along with rights to a fair trial, are central to the United States commitments made under the ICCPR. These rights are underpinned by guarantees of equality under the law and anti-discrimination. Women Lead Network's comments highlight the importance of a gendered and intersectional analysis of human rights obligations and practices under the International Covenant on Civil and Political Rights. Specifically, issues impacting women incarcerated and detained in the United States.

The U.S. articulates its guarantee of "equality under the law" through its commitments made at the highest levels of domestic and international law, including the United States Constitution and its status as a party to the International Covenant on Civil and Political Rights. Yet, while women have enjoyed meager gains in equality in a variety of areas including education and employment, women's political participation is significantly lagging behind men'sⁱ, access to self-determination is substantially undermined as a result of the criminalization of abortion in a growing number of states and women's risk of gender-based violence and inability to access justice in criminal justice settings subvert that equality.

While access to justice is a fundamental aspect of the U.S. human rights agenda, too often the experiences of women prisoners are invisible. Having a carceral system which confines more than 1.2 million peopleⁱⁱⁱⁱ, not including those in pre-trial, immigration or juvenile detention, we are obligated to scrutinize the impact of this system for those whose lives it touches. While women make up only 10%^{iv} of the prison population, the U.S. still incarcerates more women than any other country in the world and their incarceration rates have increased by more than 700%^v between 1980 and 2019.

Additionally, women have trajectories into the carceral system that include abuse, addiction and struggles with mental health and access to treatment^{vi}. An appropriate approach to ensure access to justice for women who have experienced abuse, have a substance use problem or mental health need would be to provide that support through a social support network. Instead, these women filter into a vast privatized carceral system, with minimal, if any, access to treatment and rehabilitation. In addition, women prisoners are denied access to reproductive health services, including abortion, and are required to pay for their own menstrual supplies. Both reproductive health care and menstrual stigma have been addressed as fundamental to equality under the law in a variety of U.N. Instruments and Bodies.

Forced Sterilization of Incarcerated Women Prisoners: *Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"*^{vii}, yet recent advocacy work by women prisoners themselves has revealed the pattern of forced sterilizations of incarcerated and institutionalized women remains a 21st century problem. While most states have outlawed Eugenics today, in a critical case, *Buck v. Bell*^{viii}, sterilization was legitimized under the Constitution for institutionalized persons. Although a later case (*Skinner v. Oklahoma*^x), noted that sterilization is not a valid state goal, *Buck v. Bell* has never been overturned. Recent disclosures from women prisoners and detainees in California and Georgia have revealed a continuing pattern of non-consensual sterilization. Additionally, a recent report by the National Women's Law Center^x showed that forced sterilization is legal in 31 states. While these laws are typically targeted at disabled and incarcerated women, they are a violation of the foundational principle of the ICCPR, self-determination. Additionally, the *United Nation's Committee against Torture* has acknowledged denying abortion care can result in "physical and mental suffering so severe in pain and intensity as to amount to torture"^{xi}, and the same can be said of non-consensual sterilization.

Article 7 also articulates that, "no one shall be subjected without his free consent to medical or scientific experimentation"^{xii} yet incarcerated women were subject to these medical sterilization procedures without giving fully informed consent. For example, more than 1000 women in California were sterilized while incarcerated without fully consenting to the procedures or being provided falsified documents to gain their consent. Many had gone to prison medical personnel with complaints ranging from period cramping to between period bleeding and emerged having been completely sterilized without consenting to the procedure. This is a clear violation of the right to consent to medical procedures and experimentation.

Additionally, *Article 23 (2) of the ICCPR states that "The right of men and women...to found a family shall be recognized"*^{xiii}. The non-consensual sterilization of these incarcerated women has interfered with their right to found a family, many of them not being aware, even today, that they have been sterilized.

Criminalization of Self Defense for Survivors of Gender-Based Violence: We'd also like to call attention to the disproportionate sentencing experienced by women in criminal justice settings when the victim is an abusive partner. Gender based violence survivors are often prosecuted for "fighting back" or resistive violence. Their sentences tend to be much more significant than the sentences received by those who are abusing them. The average sentence for abusers who kill their spouses are 2-6 years, while women who kill their abusive partners have an average sentence of 15 years^{xiv}. Also, gender-based violence survivors may be charged and prosecuted for crimes like defending their children, taking their children when they leave an abuser and of course, immigration violations due to the inhumane crossover between immigration and the criminal legal system.

Contact: Denice Labertew, J.D. Master of Human Rights at womenleadchange@gmail.com

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Article 14 1) articulates that “All persons shall be equal before the courts and tribunals.”^{xv}. Despite the pervasive myth that “chivalry” prevails for women in the American legal system, women’s sentences for crimes ranging from drug use to homicide are frequently much more severe than their male counterparts especially for queer women, trans women and women of color. This suggests that women may be sanctioned more harshly when their behavior violates sex-role stereotypes.^{xvi}

Additionally, defenses to their crimes are frequently more limited than men’s defenses. “Stand your ground” laws have often been used as a defense to crimes related to protection of self and property. These laws have typically been interpreted through the lens of the “public sphere”, applying in cases where an intruder enters the home from the outside. While men have been quite successful in the use of these laws, women, in particular victims of crime, have been much less successful. First, these laws have not customarily been interpreted to apply within the “private sphere” of the home, viewed typically as the domain of women and frequently the location of the incident in domestic violence cases. Also, much of the required evidence to support these claims is unavailable including police reports, restraining orders or witness statements. Additionally, women who experience victimization and abuse, often don’t fight back when in the moment of the abuse, but later, to protect themselves or their children. Finally, defenses that incorporate the real lived experiences of women including “Battering and its Effects”^{xvii} or “Battered Women’s Syndrome” are not available in all jurisdictions, meaning that women experiencing gender-based violence are often not able to raise this abuse in court as a mitigating factor at trial or sentencing.

Recommendations:

- 1) Ensure the robust collection of data on incarceration through a gendered lens, incorporating victimization as a variable.
- 2) Engage in research to understand the implications of the carceral system on women and femme identified persons.
- 3) Develop strategies for diversion to KEEP WOMEN OUT OF CARCERAL SETTINGS that align with the articulated values of the U.N. Rules for the Treatment of Prisoners, The Mandela Rules and The Bangkok Rules
- 4) Articulate clearly, and ensure the oversight of, “informed consent” to ALL medical procedures for women prisoners, in particular reproductive procedures
- 5) Implement strategies to increase the support for survivors of abuse including economic support, housing support and support for the care of children.
- 6) Standardize the use of court procedures that ensure introduction and consideration of evidence of abuse and victimization.

ⁱ Center for American Women and Politics (CAWP). 2023. “Women in Elective Office 2023.” New Brunswick, NJ: Center for American Women and Politics, Eagleton Institute of Politics, Rutgers University-New Brunswick. <https://cawp.rutgers.edu/facts/current-numbers/women-elective-office-2023> (Accessed September 27, 2023)

ⁱⁱ Prison Policy Initiative, 2023, March 14, *Mass Incarceration: The Whole Pie 2023*, <https://www.prisonpolicy.org/reports/pie2023.html#:~:text=Together%2C%20these%20systems%20hold%20almost,centers%2C%20state%20psychiatric%20hospitals%2C%20and>

ⁱⁱⁱ Bureau of Justice Statistics, (2022, December) *Prisoners in 2021: Statistical Tables*, <https://bjs.ojp.gov/library/publications/prisoners-2021-statistical-tables>

^{iv} Prison Policy Initiative, 2023, March 14, *Mass Incarceration: The Whole Pie 2023*, <https://www.prisonpolicy.org/reports/pie2023.html#:~:text=Together%2C%20these%20systems%20hold%20almost,centers%2C%20state%20psychiatric%20hospitals%2C%20and>

^v The Sentencing Project. 2020 Lewis, N., & Griffin, A. (2020, November). *The Marshall Project. The System: The United States of Incarceration* (pp. 1–11).

^{vi} DeHart, Dana D. (2008). *“Pathways to Prison Impact of Victimization in the Lives of Incarcerated Women”*. *Violence Against Women*. **14** (12): 1362–1381. doi:10.1177/1077801208327018. PMID 19008544. S2CID 23005508.

^{vii} United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” Treaty Series 999 (December): 171

^{viii} *Buck v. Bell* :: 274 U.S. 200 (1927)

^{ix} *Skinner v. Oklahoma ex rel. Williamson*, 316 US 535 (1942)

^x National Women’s Law Center, 2022, NWLC <https://nwlc.org/resource/forced-sterilization-of-disabled-people-in-the-united-states/>

^{xi} Human Rights Watch, 2023, March 2, Letter to the UN Special Procedures on Abortion Rights in the US

^{xii} United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” Treaty Series 999 (December): 171

^{xiii} United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” Treaty Series 999 (December): 171

^{xiv} *National Coalition Against Domestic Violence*. 1989.

^{xv} United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” Treaty Series 999 (December): 171

^{xvi} Johnston, J., Kenedy, T., & Shuman, 1. (March 1987). Gender Differences in the Sentencing of Felony Offenders. *Federal Probation* Volume: 51 Issue: 1, 49-55.:M Zingraff, R Thomson. (November 1984) *Differential Sentencing of Women and Men in the USA*. *International Journal of Sociology of Law* Volume: 12 Issue: 4 Dated: Pages: 401-413

^{xvii} Smith PH, Gittelman DK. Psychological consequences of battering. Implications for women's health and medical practice. *N C Med J*. 1994 Sep;55(9):434-9. PMID: 7969527.

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