

Women's¹ Human Rights in the United States

U.S. Human Rights Network Women's Rights Working Group

Briefing Paper for the Third Universal Periodic Review of the United States

For more information on these issues, please contact Denice Labertew at womenleadchange@gmail.com.

I. Treaties, International Mechanisms, and Domestic Implementation

Although the United States touts that it is a party to five of the nine human rights treaties described by the Office of the High Commissioner as “Core International Human Rights Instruments,”² the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is not one of them.³ CEDAW is widely known as the international bill of rights for women, ensuring equal access and opportunities to political and public life and to education, health, and employment. Conversely, rather than expanding access to women's rights, the United States created the Commission on Unalienable Rights, a U.S. advisory committee that is being used to “justify restrictions on reproductive freedom and the rights of LGBTQ+ people.”⁴

II. Discrimination Against Women of Color

There is significant evidence that law enforcement and criminal justice systems in the United States are “systemically racist.”⁵ Adding 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 police arrests and use of force⁶ and women's incarceration rates have increased twice as quickly as men's over the last several decades, affecting a disproportionate number of Black, Brown and Indigenous women.⁷ Additionally, the treatment of women in carceral settings constitutes significant violations of women's human rights. For example, recent reports have unveiled the non-consensual sterilizations of predominantly Black and Latinx women in prison.⁸ While there are U.S. federal laws preventing racial discrimination, recent court rulings have chiseled away at those protections⁹ and U.S. states have increasingly enacted laws that prevent women's access to reproductive care¹⁰ and that lift protections in the workplace.¹¹

III. Gender Violence and the Criminal Justice System

Issues with the U.S. Civil Rights of Institutionalized Persons Act, a federal law intended to protect the rights of people in confinement operated by state or local facilities, have been raised in both stakeholder reports and by the Special Rapporteur on Violence Against Women.¹² Instead of investigating reports of mistreatment, including reports of sexual violence against women in confinement by facility staff, the United States often deflects responsibility and refuses to hold state and local facilities accountable for wrongdoing.¹³ Additionally, Congress has failed to re-authorize the Violence Against Women Act, a federal law that supported effective responses to domestic violence, sexual assault, dating violence, and stalking, since the Act's expiration in 2019. Therefore, victims of gender-based violence are significantly less protected now than in previous years. Finally, while sexual violence in the military continues to be perpetrated at alarming rates, the United States neglects to acknowledge that reporting rates,¹⁴ as well as rates of prosecution and conviction, remain extremely low.¹⁵ The United States claims it has taken steps to address sexual violence in the military but fails to provide any evidence that such steps have remedied the systemic problems that continue to impede access to justice for survivors of military sexual violence.¹⁶ Finally, while the U.S. highlight's

¹ This includes all who define themselves as women, as well as other birthing and menstruating people.

² Working Group on the Universal Periodic Review, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* United States of America, U.N. Doc. A/HRC/WG.6/36/USA/1, at 4 (Aug. 13, 2020).

³ Although the United States is a signatory to CEDAW, the United States has yet to ratify the treaty, thus leaving a gap in the protections for U.S. women. Several members of the United Nations urged the United States to ratify conventions reflecting international norms during the 2015 UPR Process.

⁴ Kenneth Roth, *Pompeo's Commission on Unalienable Rights Will Endanger Everyone's Human Rights*, Human Rights Watch (Aug. 27, 2020), <https://www.hrw.org/news/2020/08/27/pompeos-commission-unalienable-rights-will-endanger-everyones-human-rights#>.

⁵ Drew DeSilver, Michael Lipka, Dalia Fahmy, *10 Things We Know About Race and Policing in the U.S.*, Pew Research Center (June 3, 2020), <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.

⁶ *Policing Women: Race and Gender Disparities in Police Stops, Searches, and Use of Force*, Prison Policy Initiative (May 14, 2019), <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/>.

⁷ *Incarcerated Women and Girls*, The Sentencing Project (June 6, 2019), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

⁸ Bill Chappell, *California's Prison Sterilizations Reportedly Echo Eugenics Era*, NPR (July 9, 2013), <https://www.npr.org/sections/thetwo-way/2013/07/09/200444613/californias-prison-sterilizations-reportedly-echoes-eugenics-era>. Several U.N. members urged the United States to address issues related to humane incarceration standards and alternatives to incarceration, in particular for women.

⁹ *Shelby County v. Holder*, 570 U.S. 529, 559 (2013) (Ginsberg, J., dissenting).

¹⁰ Nora Ellmann, *State Actions Undermining Abortion Rights in 2020*, Center for American Progress (Aug. 27, 2020), <https://www.americanprogress.org/issues/women/reports/2020/08/27/489786/state-actions-undermining-abortion-rights-2020/>.

¹¹ *Burwell v. Hobby Lobby and Birth Control*, Planned Parenthood, <https://www.plannedparenthoodaction.org/issues/birth-control/burwell-v-hobby-lobby>.

¹² 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.

¹³ *E.D. v. Sharkey*, ACLU (updated July 1, 2019), <https://www.aclu.org/cases/ed-v-sharkey>.

¹⁴ As noted in the U.S. report, the Department of Defense estimated that 20,500 service members (13,000 women and 7,500 men) were subjected to sexual violence in 2018. This represented a 38% increase overall and a 47% increase in sexual violence against service women since 2016. Department of Defense, *Fiscal Year 2018 Department of Defense Annual Report on Sexual Assault in the Military*, 3 (2019).

¹⁵ Only an estimated 30% of service members who experienced sexual violence in 2018 reported their assault. *Id.* at 4. Of the 7,829 reports of military sexual assault in 2019, only 795 cases were referred for prosecution of a sexual offense, 363 cases proceeded to trial, and 273 cases resulted in conviction, only some of which were on a sexual offense charge. Department of Defense, *Fiscal Year 2019 Department of Defense Annual Report on Sexual Assault in the Military*, 15, Appendix B at 21 (2020).

¹⁶ See Cornell Gender Justice Clinic, Stakeholder Submission to the UN UPR of the United States of America (3rd Cycle), *Sexual Violence in the U.S. Military* (Sept. 2019), <https://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/upload/UPR-Submission-September-2019.pdf>.

their work to address human trafficking they endanger the “precariously held rights of individuals working in prostitution”¹⁷ by conflating the two.

IV. Reproductive Health Care

The United States has the highest maternal mortality rate of similarly wealthy countries. Pregnant people in the United States are now 50% more likely to die due to childbirth complications than they were 30 years ago, with those deaths more often occurring in states with more restrictions on abortion access.¹⁸ 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 employment benefits.¹⁹ Despite the United States’ clear intention to continue to deprive women access to reproductive health care, regardless if that care includes abortion access, reproductive health care and abortion access are essential services that save women’s lives and must be accessible to all.²⁰ Further, women are overrepresented in jobs that provide low wages and lack any health care benefits at all, such as part-time work, hospitality, and sex work.

V. Migrant Women

The United States frames the migrant crisis at the border as a “security” issue and ignores the reality that more than half of those immigrating to the United States are women and girls, often escaping gender-based violence in their own countries.²¹ 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.²² Further, menstrual hygiene materials are considered “luxury” items 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.²³ Menstrual hygiene is a critical part of reproductive health and has been recognized as a human right.²⁴ Also, the separation of children from their families has a disproportionate impact on women in immigration detention²⁵. The right to parent children is a human right.

VI. COVID-19

COVID-19 has had a devastating impact on women. Women are the most exposed to contracting COVID-19 as they make up 76% of all health care jobs, the majority of health facility service staff, and the majority of informal care roles.²⁶ Further, stay-at-home orders and social distancing protocols have fostered environments for increased intimate partner violence, which is most often experienced by women and LGBTQ+ people, while also limiting access to safety or help for victims of the violence.

Suggested Questions

1. *Can the U.S. provide an update on the ratification of CEDAW and adoption of other international treaties?*
2. *What legal or policy measures have been adopted to protect all women from gender-based violence and institutional abuse?*
3. *What measures has the United States taken to ensure access to reproductive health care to all women?*

Suggested Recommendations

1. Promptly ratify CEDAW and disband the Commission on Inalienable Rights.
2. 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.
3. 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, and remedy structural problems that impede access to justice for survivors of military sexual assault.
4. 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.
5. Protect essential health services for women and girls, including sexual and reproductive health services.
6. Ensure equal voice for women in decision making and long-term impact policy development.

¹⁷ <https://sexworkersproject.org/media-toolkit/downloads/05-HumanTraffickingAndSexWork.pdf>

¹⁸ U.N. Secretary-General, *Policy Brief: The Impact of COVID-19 on Women* (Apr. 9, 2020), <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>.

¹⁹ Black Mama’s Matter-Black Maternal Health and the COVID 19 Response, <https://blackmamasmatter.org/2020/black-maternal-health-week-2020-webinar-series/>; <https://www.nytimes.com/2019/05/07/health/pregnancy-deaths.html>.

²⁰ *Call for a Feminist COVID-19 Policy*, Feminist Alliance for Rights, <http://feministallianceforrights.org/blog/2020/03/20/action-call-for-a-feminist-covid-19-policy/>.

²¹ Asylum, Migration and Borders, European Union Agency for Fundamental Rights, <https://fra.europa.eu/en/themes/asylum-migration-and-borders>.

²² The American Academy of Pediatrics, American Academy of Obstetricians and Gynecologists and the American Academy of Family Physicians, Letter to Thomas Homan, Acting Director of U.S. Immigration and Customs Enforcement (Mar. 30, 2018), <https://downloads.aap.org/DOFA/ACOG%20AAP%20AAFP%20Letter%20to%20Deputy%20Director%20Homan%20FINAL.pdf>.

²³ Alma Poletti, Declaration Documenting Lack of Access to Menstrual Products (Aug. 23, 2019), https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/2019-08-23%20Poletti_Declaration_FloresCDCA_Washington_FINAL.pdf.

²⁴ Human Rights Watch & Wash United, *Understanding Menstrual Hygiene Management and Human Rights* (2017), https://www.hrw.org/sites/default/files/news_attachments/mhm_practitioner_guide_web.pdf.

²⁵ Motherhood, Menstruation and Sexual Violence: Joint Stakeholder Report, MaMa JuNetwork/Women Lead Network (Oct. 2019);

<https://www.americanprogress.org/issues/women/reports/2019/10/21/475997/immigration-detention-dangerous-womens-health-rights/>

²⁶ National Women’s Law Center, *Promoting Equitable Access to Health Care in Response to COVID-19* (Mar. 30, 2020), <https://nwc.org/resources/promoting-equitable-access-to-health-care-in-response-to-covid-19/>.