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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Working Group on the issue of discrimination against women in law and in practice, on its mission to the United States\***

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on its visit to the United States conducted from 30 November to 11 December 2015. This report describes the situation regarding gender equality and the human rights of women in the country and analyses achievements and challenges. It examines the legal, institutional and policy framework for promoting equality and the participation and empowerment of women in economic, social, political and public life, with particular attention to women victims of multiple forms of discrimination. The Working Group presents its recommendations for further progress in eliminating discrimination and promoting equality.

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\* Late submission.

**Report of the Working Group on the issue of discrimination  
against women in law and in practice, on its mission to the  
United States (30 November-11 December 2015)\*\***

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\*\* Circulated in the language of submission only.

## I. Introduction

### A. The visit

1. The Working Group visited the United States from 30 November to 11 December 2015 at the invitation of the Government. The Group met with various concerned stakeholders in Washington DC, Austin and Mc Allen (Texas), Montgomery and the Lowndes County (Alabama), Salem and Portland (Oregon). The experts wish to thank the federal and state authorities as well as civil society organisations for their assistance in the organization of this visit.

2. In Washington DC, the Group met with the Departments of State, Labour, Health and Human Services, Education, Justice, Homeland Security, Housing and Urban Development, the White House Council on Women and Girls, the White House Advisor on Violence Against Women, the Equal Employment Opportunity Commission and the Office of Personnel Management. The Group also met with members of Congress, a Judge of the DC Superior Court and a member of the National Association of Women Judges. In Austin, the Group met with the Commission for Women, the Speaker's Office, state trial judges and the Assistant City Manager Mayor's office in Mc Allen. In Montgomery, the Group met with the Lt. Governor, a Middle District Judge and a legislator. In Salem, the experts met with the Attorney General and the Office of Child Care. In Portland, they met with a District Judge, the Oregon Commission for Women and the Commissioner.

3. During its visit, the Working Group met with numerous NGOs, visited the Coffee Creek Penitentiary (Oregon), health centres, abortion clinics, child care centres and relief nurseries. The Group would like to express its sincere gratitude for the exceptional level of cooperation and support extended by civil society during the visit.

### B. Context

4. The visit of the Working Group took place, at a moment when the political rhetoric of some of the candidates for the Presidency in the upcoming elections has included unprecedented hostile stereotyping of women; when there are increasingly restrictive legislative measures at the state level and violent attacks to prevent women's access to exercise of their rights to reproductive health<sup>1</sup> and when there is a significant and disparate worsening of women's economic situation, in particular women of colour.

5. The Working Group acknowledges the United States' commitment to liberty, so well represented by the Statue of Liberty which symbolizes both womanhood and freedom. Nevertheless, in global context, women in the United States do not take their due place as citizens of the world's leading economy, which has one of the highest rates of per capita income. In the United States, women fall behind as regards their public and political representation, their economic and social rights and their health and safety protections.

6. Coming as it did in an economy which already had a high level of socio-economic inequality, the global economic crisis further increased economic

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<sup>1</sup> On 27 November 2015, a gunman attacked a Planned Parenthood clinic in Colorado. Three people were killed and several others injured

insecurity for the middle and lower deciles of the population and had a significantly adverse impact on women, in particular women of colour<sup>2</sup>. Government recovery policies to boost the economy resulted in decreased expenditures on critical social protection programs, many of which are essential for women.

7. The experts are fully aware of the diversity of the United States and of its political and legal framework, which combines federal and state legislation. Accordingly, the Working Group, rather than reviewing multitudinous provisions does comprehensively seek to extract the key features of national policy, selected examples of state policy, the most recent trends in women's political, civil, social and economic situation and the achievements and obstacles in promoting gender equality<sup>3</sup>.

## **II. Legal, institutional and policy framework for women's equality and human rights**

### **A. Legal framework**

#### **1. Ratification of Conventions at the international and regional levels**

8. The United States ratified the International Covenant on Civil and Political Rights (1992), the International Convention on the Elimination of All Forms of Racial Discrimination (1994), the Convention against Torture (1994) and the two Optional Protocols to the Convention on the rights of the child (2002).

9. The Working Group deeply regrets that the United States has not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. In 2010 and 2015, in the framework of the Universal Periodic Review, the Government committed to ratify the Convention but this has not yet been translated into action. The Group notes that resistance to ratification of CEDAW reflects, inter alia, the opposition of a powerful sector of society to the Convention's formulation of women's international human right to equality. The United States is one of only seven countries in the world which have not ratified CEDAW. Even in the absence of ratification of CEDAW, many of its standards are entrenched in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and in customary international law, and are hence binding on the United States. Nevertheless, the Group is of the unreserved opinion that ratification of CEDAW is crucial, on both the domestic and the global levels, in order to confirm the US commitment to substantive equality for women in all spheres of life. At the domestic level, ratification is essential in order to provide all US women with missing rights and protections guaranteed under CEDAW, such as universal paid maternity leave, accessible reproductive health care and equal opportunity in standing for political election. The Group welcomes in this regard the Cities for CEDAW initiatives which have started a process of incorporating CEDAW principles at the local level.

10. The Working Group also deeply regrets that the United States has not ratified other major international and regional human rights instruments, which have a direct

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<sup>2</sup> See also statement of UN Working Group on People of African Descent on its recent visit to the United States  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000&LangID=E>

<sup>3</sup> The report cannot exceed an established strict word limit

impact on the rights of women, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Convention on the Rights of Persons with Disabilities<sup>4</sup>, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará, 1994). It further regrets that it is not party to the ILO Equal Remuneration Convention, No. 100 (1951), Workers with Family Responsibilities Convention, No. 156 (1981), Indigenous and Tribal Peoples Convention, No. 169 (1989), Maternity Protection Convention, No. 183 (2000) and Domestic Workers Convention, No. 189 (2011).

## 2. Main achievements in prohibiting discrimination and violence against women

11. The experts recognize the very significant protection for women's rights under federal legislation and under the Constitution and greatly appreciate landmark decisions, in particular of the Supreme Court<sup>5</sup>, which have created benchmarks in prohibiting sex discrimination. They note in particular:

### *Employment rights*

12. The Equal Pay Act of 1963 requires that men and women in the same workplace be given equal pay for equal work.

13. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination, including sexual harassment, based on race, colour, religion, sex, or national origin by employers with fifteen or more employees<sup>6</sup>.

14. The Pregnancy Discrimination Act (PDA) of 1978, amending Title VII of the Civil Rights Act of 1964, prohibits sex discrimination on the basis of pregnancy<sup>7</sup>, clarified that employment discrimination on the basis of pregnancy, childbirth, or related medical conditions is sex discrimination under Title VII.

15. The Family and Medical Leave Act (1993) provides employees with the right to take unpaid, job-protected leave of twelve workweeks in a 12-month period, including for the birth of a child and to care for the new-born child within one year of birth (see para 15).

16. The Lilly Ledbetter Fair Pay Restoration Act (2009)<sup>8</sup> and Executive Order 13665 (2014), promoting pay transparency provide more effective procedures for challenging unequal pay.

<sup>4</sup> <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

<sup>5</sup> See [https://www.aclu.org/files/interactive/womensrights\\_sotus\\_0303a.html#00](https://www.aclu.org/files/interactive/womensrights_sotus_0303a.html#00)

<sup>6</sup> While the Equal Pay Act is limited to jobs within the same work place, Title VII does not have this limitation in its language. In 1981, four female prison guards sued the county of Washington in Oregon under Title VII for paying them less than male prison guards (*County of Washington vs. Gunther*: Court clarified that claims of wage discrimination brought under Title VII were not limited to equal pay for the exact same work, as they are under the Equal Pay Act.

<sup>7</sup> Only Indiana and North Carolina do not offer any protections against pregnancy discrimination. In Texas and 13 other states, employers, by law, must provide reasonable accommodations for pregnant workers. Oregon and 18 other states have passed laws providing workplace breastfeeding rights (such as break times and a private space for pumping breast milk). South Dakota, Nevada and Alabama provide that employers must allow pregnant employees to take sickness or disability leave owing to them for pregnancy related conditions

<sup>8</sup> See <http://www.nwlc.org/resource/lilly-ledbetter-fair-pay-act-0>

*Education*

17. Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded educational programs.

*Same sex marriage*

18. The landmark 2015 decision of the Supreme Court in *Obergefell et Al. v. Hodges, Director, Ohio Department of Health, et Al.* has recognised same-sex marriage as a constitutional right under the 14th Amendment of the US Constitution.

*Right to health*

19. The adoption of the Affordable Care Act (ACA) in 2010, by expanding access to health care for many uninsured citizens, with the gains biggest for the poor, minorities and low-wage workers, marked significant progress in women's enjoyment of the right to health. ACA also establishes crucial protections against discriminatory practices by health insurance plans in charges and coverage regarding women's reproductive health needs, as well as provisions for coverage of provider screening and counselling for domestic violence. (see para 63).

*Violence against women*

20. The Violence against Women Act of 1994<sup>9</sup>, as last reauthorized in 2013 is a key resource to prevent gender-based violence, including specifically domestic violence, sexual assault, dating violence and stalking. There are also statutory protections at state and local levels. The last reauthorization of the VAW Act created set-aside funding to support Sexual Assault Response Teams and train law enforcement and prosecutors about sexual assault and explicitly bars discrimination based on gender identity or sexual orientation.<sup>21</sup> The Working Group also notes positively the adoption of the National Standards to Prevent, Detect, and Respond to Prison Rape in 2012, pursuant to the Prison Rape Elimination Act (2003).

22. The experts welcome the significant legislative and judicial measures in the past decades aimed at eliminating discrimination and violence against women, nonetheless, the Working Group notes significant remaining gaps in many of these legal frameworks and makes recommendations for further measures in order to guarantee gender equality in the workplace, in family status, in the right to health and as regards violence against women.

### **3. Challenges**

*Absence of an equality provision in the Constitution*

23. The Working Group regrets that political resistance has consistently blocked efforts to pass an equal rights amendment<sup>10</sup>, which would entrench women's right to equality in the US Constitution. Constitutional guarantee is considered by leading human rights experts as crucial in order to secure women's right to equality and is

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<sup>9</sup> See A/HRC/17/26/Add.5

<sup>10</sup> In 1972, the ERA was passed by Congress with a seven year deadline for ratification by the states (to enter into force, an amendment requires ratification from  $\frac{3}{4}$  of the states (38 out 50). This number was never reached

included in almost all constitutions globally. According to a poll in 2012, 91% of US people think that the Constitution should include equal rights for men and women.<sup>11</sup>

24. An Equal Rights Amendment also is essential to demonstrate genuine political will to attain substantive equality between women and men, to pre-empt legislative reversal of gains made in the protection of women's right to equality and to further strengthen the review power of the Supreme Court to strike down discrimination against women.

#### *Marital status*

25. Family laws are organised and passed by the states. There are therefore 50 different marriage laws across the US<sup>12</sup>. Most states set the age of marriage at 18 without parental consent and 16 with parental consent and under certain conditions. Mississippi is the only State where women can get married without parental consent from 15 years old and men from 17 years old<sup>13</sup>.

26. Although polygamy is illegal in all States since 1862 (Morrill anti-bigamy Act), some illegal cases of polygamy have been reported, especially in Utah and in Colorado. However, in December 2013, a US district court in Utah ruled in the case *Brown v. Buhman* that Utah's anti-polygamy law was unconstitutional on the basis of the First Amendment of the US Constitution<sup>14</sup>.

#### *Guns and gender based violence*

27. A series of federal and state laws have aimed to keep guns out of the hands of the most dangerous domestic violence offenders. The strongest state laws prohibit domestic abusers and stalkers from buying or possessing guns, require background checks for all gun sales, and create processes to ensure that abusers and stalkers surrender the guns already in their possession. However, federal prohibitions apply to abusers who are currently or formerly married to their victims, who live with or formerly lived with their victims but do not prohibit dating partners or misdemeanor stalkers from buying or possessing guns. The experts regret that existing regulations have done little to curb the problem of guns and violence against women, in particular regarding intimate partner homicides (see para 76) but welcome the new actions announced by the Executive in January 2016 to reduce gun violence by increasing background checks for purchasers.

#### *Rights to reproductive and sexual health*

28. The experts regret to note that throughout the years, US women have seen their rights to sexual and reproductive health significantly eroded. Since the 1973 constitutional guarantee under *Roe v. Wade* for a woman to be able to choose to terminate a pregnancy in the first trimester prior to viability<sup>15</sup>, other Supreme Court decisions have opened the door to, inter alia, greater state regulation of abortion, barred abortion counselling and referral by family planning programs funded under Title X of the federal Public Health Service Act, established the "undue burden test," providing that state regulations can survive constitutional review so long as they do

<sup>11</sup> Equal means Equal, Jessica Neuwirth, 2015

<sup>12</sup> For all 50 marriage laws: [https://www.law.cornell.edu/wex/table\\_marriage](https://www.law.cornell.edu/wex/table_marriage)

<sup>13</sup> Mississippi Code (2013), Title 93, para. 93 1-5, see at: <http://law.justia.com/codes/mississippi/2013/title-93/chapter-1/section-93-1-5/>

<sup>14</sup> Guarantees freedoms concerning religion, expression, assembly, and the right to petition

<sup>15</sup> See <https://www.aclu.org/timeline-important-reproductive-freedom-cases-decided-supreme-court>

not place a "substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus", decided that lawmakers could overrule a doctor's medical judgment and that the "State's interest in promoting respect for human life at all stages in the pregnancy" could outweigh a woman's interest in protecting her health<sup>16</sup>. Women's rights to sexual and reproductive health are constantly being challenged.

29. The Supreme Court is reviewing a major case (*Whole Woman's Health v. Hellerstedt* (Texas HB2<sup>17</sup>) for the future of access to essential reproductive health care in the United States. The expert group deeply hopes that this decision will reinstate the fundamental right of women to access reproductive and sexual health services in accordance with their constitutional rights. The Working Group is also concerned that the Supreme Court's recognition, in the *Hobby Lobby* case<sup>18</sup>, of an exemption on grounds of freedom of religion to opt out of contraceptive insurance for employees, will deprive some women of the possibility of accessing contraceptives. *Zubik v. Burwell* (contraception and religious refusals) is also being reviewed by the Supreme Court.

30. Furthermore, the Working Group deplores the adoption in 1973 of the Helms Amendment to the Foreign Assistance Act<sup>19</sup> which prohibits U.S. foreign assistance from being used to pay for the performance of abortion "as a method of family planning", but is being applied as a complete ban, even when a pregnancy is a result of rape or incest, or when a pregnancy is a threat to the life of a woman or girl. The Working Group also regrets that in 1976 the Hyde Amendment prohibited the expenditure of Federal funds for abortions, except in cases of rape, incest or preserving the life of the mother.

#### *Social and economic rights*

31. The Working Group regrets the important gaps in the legal framework which prevent women in the United States from fully enjoying their economic and social rights, including their equal right to work (see paras 46 to 62).

## **B. Access to justice**

32. The courts play a central role in determining women's ability to enjoy and exercise the rights accorded to them by law. In the United States, there has been an increase in awareness of the need for gender diversity and gender sensitive adjudication in judiciaries. Since the beginning of his mandate, the President has appointed over 130 women judges. The Supreme Court counts three women among its nine Justices for the first time in history<sup>20</sup>. Of the 170 active judges currently sitting on the 13 federal courts of appeal, 60 are women (35%)<sup>21</sup>.

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<sup>16</sup> See e.g. 1989 *Webster v. Reproductive Health Services*; 1991 *Rust v. Sullivan*; 1992 *Planned Parenthood of Southeastern Pennsylvania v. Casey*; 2007 *Gonzales v. Carhart and Gonzales v. Planned Parenthood Federation of America, Inc. (Carhart II)*

<sup>17</sup> See WG communication in A/HRC/29/50, p.54

<sup>18</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)

<sup>19</sup> <http://plannedparenthoodaction.org/community/planned-parenthood-global/helms-amendment-hurts-women-worldwide>

<sup>20</sup> Only 4 of the 112 Justices ever to serve on the highest court in the US have been women

<sup>21</sup> <http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1>



33. A severe problem for women litigants is in access to justice: free legal counsel and aid is not systematic for women living in poverty and when legal aid is partially provided to the most destitute, it is allegedly of very poor quality. The experts hope that the White House Legal AID Interagency Roundtable established in September 2015 will propose concrete solutions and adequate budget to address this gap.

34. The institution of the class action which has allowed large numbers of women to access compensation for discrimination or injury caused by powerful corporations, is being eroded with particular impact on women's legal resources for fighting gender discrimination, as demonstrated in the Supreme Court's rejection in 2013 of a class action suit against Wal-Mart Stores Inc. for discrimination on behalf of potentially a million female workers. The justices held that the petitioners failed to point to a common corporate policy that led to gender discrimination against workers at thousands of Wal-Mart and Sam's Club stores across the country.

35. The Working Group also remains concerned at the particular difficulties faced by Native women in accessing justice. The interaction between federal, state and tribal jurisdictions means that crimes committed by non-indigenous men on reservations often go unpunished. To address this, in July 2010, the Tribal Law and Order Act was passed, with the aim of clarifying responsibilities and increasing coordination among the various law enforcement agencies.<sup>22</sup> Efforts at remedying the criminal justice response to violence against Native women were also made with the reauthorization of the VAWA in 2013. However, the Group received reports that these legislations are not being fully and effectively implemented, resulting in a persistent failure of the justice system to respond adequately to acts of violence against Native women.<sup>23</sup>

36. The experts recommend that the issue of substantive equality for women in court proceedings be revisited and reinvigorated and that access to justice for all, with adequate legal representation, be regarded as a civil right which, where necessary, should be publically funded.

## **C. Institutional framework and policies at the federal level**

### **1. Institutional framework**

37. The Government has considerably strengthened the institutional structure to promote women's rights and gender equality, including through the White House Council on Women and Girls, the White House Advisor on Violence against Women, which have reinforced the Civil Rights Division and the Office on Violence against Women within the Department of Justice, the Office on Women's Health<sup>24</sup>, the Family Violence Prevention and Services Division and the Office of Minority Health within the Department of Health and Human Services. Other departments and federal entities also play a key role such as the Department of Labour, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Commission on Civil Rights.

38. The Working Group observed during its visit the very limited knowledge by federal or state authorities of international human rights standards and mechanisms. It regrets that

<sup>22</sup> UN Women, "2011-2012: Progress of the World's Women: in pursuit of justice", p73

<sup>23</sup> See CERD Concluding Observations, 2014 and A/HRC/17/26/Add.5

<sup>24</sup> Conducting gender mainstreamed research

no national human rights institution<sup>25</sup> has been established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)<sup>26</sup>. The Working Group appreciates the existence of six interagency working groups, under White House leadership, to coordinate the review of UPR recommendations and concluding observations of Treaty Bodies but regrets the absence of a mechanism which would coordinate and monitor the implementation of Special Procedures recommendations.

## 2. Policies

39. The Working Group acknowledges that the promotion of gender equality and empowerment of women and girls has been at the forefront of the current administration's policies. Indeed, the Government has been working to combat discrimination, eliminate violence against women and girls, expand access to women's health care, including sexual and reproductive health and rights, support women-owned businesses and entrepreneurs, and encourage women's economic and political leadership<sup>27</sup>. In the Government's report on the Implementation of the Beijing Declaration and Platform for Action, several of these policies are detailed<sup>28</sup>.

### III. Participation of women in political and public life, in economic and social life and access to health

#### A. Participation in political life

40. Despite the current administration's commitment to advancing women's rights, it is far from achieving adequate representation for women in political life and, indeed, only 4 out of 15 members of cabinet are women.

41. Women hold 19.4% of seats in the House of Representatives and 20% at the Senate. Between 2004 and 2015, the number of women in the Senate increased from 14 to 20, and the number of women in the House of Representatives grew from 60 to 84. This represents the highest level of legislative representation ever achieved by women in the United States. However, it still places the country at only 95 in global ranking<sup>29</sup>. Women of colour make up 7.4% (32 of 435 representatives) of the House of Representatives. There is only one woman of colour<sup>30</sup> serving in the Senate, but not a single African American woman for instance.

42. Only six states have female Governors: New Hampshire, New Mexico, Oklahoma, Oregon, Rhode Island, and South Carolina. The share of state senate seats held by women is largest in Arizona (43, 3%) and smallest in South Carolina (2, 2%). The share of seats in

<sup>25</sup> The Commission on Civil Rights has authority to undertake many of the monitoring activities envisioned by a national human rights institution, including the power to convene hearings, issue reports, and make recommendations to Congress and the Executive branch but does not comply with the Paris Principles

<sup>26</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

<sup>27</sup> <https://www.whitehouse.gov/the-press-office/2015/09/27/fact-sheet-promoting-gender-equality-and-womens-empowerment>

<sup>28</sup> [http://www.unece.org/fileadmin/DAM/Gender/Beijing\\_20/United\\_States\\_Beijing\\_20\\_Review.pdf](http://www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf)

<sup>29</sup> <http://www.ipu.org/wmn-e/classif.htm>

<sup>30</sup> Mazie Hirono of Hawaii

the state house or assembly held by women is largest in Colorado (46, 2 %) and smallest in Oklahoma (12, 9%)<sup>31</sup>.

43. According to several interlocutors met during the Working Group's visit, the low level of representation for women in elected political posts is partly due to the greater difficulties women face in fundraising for campaigns. The financing of political campaigns has increasingly been playing a major role in the last decades and has drastically altered the landscape for elections and political participation. The experts observed that women's difficulty in fundraising is considered to result from complex causes. In particular, it is a result of exclusion from the predominantly male political networks that promote funding. Interlocutors also attribute women's low rate of election to negative stereotypes and biased presentation of women in the media, which adversely affect both women's fundraising ability and their political candidacy. The experts consider the objective difficulties women face in raising campaign funding as a serious limitation on women's opportunities for political representation and are deeply concerned that the removal of limits on campaign funding by the Supreme Court in 2014 threatens to exacerbate this situation.

44. In this regard, the Working Group welcomes the initiatives undertaken by some states and cities which have started to use programs for public financing of campaigns. One method, which its supporters call "Clean Money, Clean Elections", gives each candidate who chooses to participate a fixed amount of money. Some interlocutors have pointed out that, in order to effectively give women an equal chance, competing private funding would have to be restricted. The Working Group encourages the efforts deployed by some voluntary organisations, such as Emily's List, which promote women candidates. The Working Group recalls that, in accordance with international human rights law requirements, temporary special measures have been adopted in many democratic countries to ensure more adequate representation of women in politics.

45. Furthermore, while women currently vote in higher percentages than men<sup>32</sup>, it is essential to ensure women's continued access to the voting booth. Today, a patchwork of state laws is making it more and more difficult to exercise the right to vote. For instance, officials from Ohio to Texas and North Carolina have manipulated rules to keep part of the population out of the voting booth. The Working Group welcomes the efforts deployed by the League of Women Voters that has for instance successfully challenged the Florida state legislature for redrawing congressional districts for a particular party's benefit.<sup>33</sup> The Working Group is concerned that changes in voter identification laws, such as those in Alabama, which increase bureaucratic requirements for voter identification, is particularly problematic for women who changed their name after marriage and reduction of the number of voting centers, can make registration and voting less accessible for the poor, of whom a majority are women. A counter example and good practice is the state of Oregon which has facilitated voter registration and voting by mail.

## **B. Participation in economic and social life**

46. Women's participation in the workforce has played a key role in contributing to the last decades of the country's economic growth. Women constitute nearly half of the labour force in the United States, at a participation rate of 57.0%. Mothers are more likely to provide significant financial support to their families than ever before,

<sup>31</sup> Status of women in the states, IWPR, 2015

<sup>32</sup> Status of Women in the states

<sup>33</sup> Equal means equal, Jessica Neuwirth, 2015

with nearly two-thirds primary or co-breadwinners for their families<sup>34</sup>. Among dual-earner couples, 29% of women equalled or out-earned their husbands. Women today are more likely than men to graduate college, and are as likely to obtain advanced degrees<sup>35</sup>.

47. However, while women have made great achievements in education and have increased their workforce participation, the Working Group is concerned that their crucial labour force participation and educational achievements are not accompanied by equal economic returns, especially as it is reflected in the wage gap and the high numbers of women earnings minimum or beneath minimum wage. It notes that, in practice, the discrimination against women in employment continues, valuing women's work less and providing less favourable terms and conditions of work, including salary and promotion. Furthermore it considers that, despite the prohibition of discrimination in employment and the establishment of an Equal Employment Opportunity Commission, the legal system does not provide women with an equal playing field, failing to secure the workplace accommodations necessary for women to fulfil both reproductive and productive roles.

48. The Working Group regrets the persistence of a corporate culture that perpetuates gender stereotypes. The Working Group was informed that women own over one third of US firms, mainly in small and medium size businesses<sup>36</sup>, and that these businesses face greater barriers in obtaining low cost capital from sources such as the Small Business Administration and clearly need support in order to achieve equal economic potential. However, the Small Businesses Administration has a stated goal of awarding only 5% of federal contracts to women-owned businesses. It is reported that this goal has never been reached in practice.

49. The Working Group recognizes the gains for women's equal opportunity in employment made under the equal protection guarantees of the Fourteenth and Fifth Amendments and the prohibition against employment discrimination contained in Title VII of the Civil Rights Act of 1964. It also appreciates the sex discrimination decisions, in which the United States Supreme Court has rejected the use of gender stereotypes, has recognised the legitimacy of affirmative action and the discriminatory effect of sexual harassment and gender hostility in the workplace. However, in other of its decisions, the Court has made it more difficult for women to prove discrimination. In equal protection cases under the 14<sup>th</sup> Amendment, the Court has traditionally applied intermediate scrutiny rather than strict scrutiny. In Title VII cases, the Court has developed two principal models for proving claims of employment discrimination. The "disparate treatment" model focuses on an employer's intent to discriminate. Alternately, the "disparate impact" model a facially neutral employment practice may violate Title VII even if there is no evidence of an employer's intent to discriminate. Both models require the plaintiff to establish a prima facie case of discrimination and the burden then shifts to the employer to articulate a defense. Ultimately, however, the plaintiff retains the burden of persuasion to establish that the employer's assertion of a legitimate, non-discriminatory reason for its actions was a mere pretext. The Supreme Court has also recently circumscribed the effectiveness of using class action suits in employment discrimination claims (see para 33).

50. The gender wage gap is 21% and during the last decade little improvement has been made in closing it despite the Equal Pay Act of 1963 (EPA). According to some

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<sup>34</sup> See Heather Boushey's research: <https://heatherboushey.com/writing-and-testimonies/>

<sup>35</sup> [http://www.unece.org/fileadmin/DAM/Gender/Beijing\\_20/United\\_States\\_Beijing\\_20\\_Review.pdf](http://www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf)

<sup>36</sup> Women Chamber of Commerce

research, a woman working every year between 25 and 65 will have lost \$420,000 over her working lifetime because of the earnings gap.<sup>37</sup> Education increases women's earnings but does not eliminate the gap, which is in fact larger for those with the highest levels of educational attainment. In her lifetime, a woman with an advanced degree such as law or medicine can expect to earn 2 million dollars less than her male peers<sup>38</sup>. The wage gap affects women's income throughout their lives, impacting their financial security and independence and increasing pension poverty.

51. The wage gap may be attributed both to vertical discrimination in wage scales and to horizontal discrimination as a result of a gender segregated labour market. In order to address the latter, international human rights law requires the right to equal pay for work of equal value. However, in the United States, neither federal nor state equal pay laws have required equal pay for work of equal value. Exceptionally, California has now set a precedent with its 2015 California Fair Pay Act legislating the right to equal pay for work of equal value.

52. Women's earnings also differ considerably by ethnicity: Afro-American, Native American and Hispanic women have the lowest earnings. Across the largest racial and ethnic groups in the United States, Asian/Pacific Islander women have the highest median annual earnings at \$46,000<sup>39</sup>, followed by white women (\$40,000). Native American and Hispanic women have the lowest earnings at \$31,000 and \$28,000, respectively. Data also indicates that women of color are less likely to attain a Bachelor's degree or higher when compared to other women<sup>40</sup>.

53. The expert group is concerned that, although the 1978 Pregnancy Discrimination Act established that pregnancy discrimination is sex discrimination under Title VII, between 1997 and 2011, the number of pregnancy discrimination complaints filed with the Equal Employment Opportunity Commission increased by 46 percent<sup>41</sup> and pregnant women have largely continued to lose their requests for remedy. The experts hope that the 2014 guidelines of the EEOC and the decision of the Supreme Court in 2015 in *Peggy Young vs. UPS*<sup>42</sup>, improve access to justice for pregnancy related discrimination<sup>43</sup>.

54. The Working Group is appalled by the lack of mandatory standards for paid maternity leave, which is required in international human rights law. The Family and Medical Leave Act, which gives employees of employers who have more than 50 employees the right to take unpaid, job-protected leave of twelve workweeks in a 12-month period, cannot be regarded as in lieu of paid maternity leave and falls far beneath international human rights standards, which require that maternity leave must be paid leave for a minimum of 14 weeks, with best practice being the provision of additional paid leave for fathers too. Some form of paid parental leave is provided by legislation in 3 states<sup>44</sup> but only for six weeks and none at full pay.

<sup>37</sup> Equal means equal, Jessica Neuwirth, 2015

<sup>38</sup> Status of women in states

<sup>39</sup> For further disaggregated data on these ethnic subgroups showing incoming disparities, please see [https://www.dol.gov/wb/images/Asian\\_Pacific\\_Islander\\_Infographic.pdf](https://www.dol.gov/wb/images/Asian_Pacific_Islander_Infographic.pdf)

<sup>40</sup> Ibid

<sup>41</sup> <https://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm>

<sup>42</sup> [http://www.supremecourt.gov/opinions/14pdf/12-1226\\_k5fl.pdf](http://www.supremecourt.gov/opinions/14pdf/12-1226_k5fl.pdf)

<sup>43</sup> The EEOC reissued its Enforcement Guidance on Pregnancy and Related Issues in June 2015 to address the US Supreme Court's decision in *Young v. UPS*.

<sup>44</sup> California, New Jersey and Rhode Island.

[https://www.whitehouse.gov/sites/default/files/docs/leave\\_report\\_final.pdf](https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf)

Attempts by the current administration to provide paid maternity leave for federal employees have not yet been successful.<sup>45</sup> The United States is one of only two countries in the world without a mandatory paid maternity leave for all women workers.

55. The Working Group is also concerned at the unequal division of family caregiving work demonstrated by the fact that women are nine times as likely as men to work part-time for family care reasons. Part-time work means lower earnings (and lower Social Security contributions) than full-time work; part-time workers are also much less likely than full-time workers to have access to paid leave of any kind or to benefit from employer contributions to employer-provided health insurance or pension plans. Women are also three times as likely as men to report having left their job because of caregiving responsibilities (6 percent compared with 2 percent respectively, according to a 2013 AARP survey of people aged 45 to 74). A study by MetLife (2011) estimated that women with caregiving responsibilities who are over the age of 50 lose \$324,044 in income and benefits over their lifetime when they completely exit the workforce for caregiving reasons.<sup>46</sup> The Working Group considers that the public budget should provide childcare, after-school and also elder and disabled facilities, which are affordable and accessible, to allow adults with care responsibilities, women and men, to work in full time employment.

56. The percentage of women in poverty has increased over the past decade, from 12.1% to 14.5%, at a higher rate of poverty than men, affecting predominantly women of colour, single parent families and older women. As noted previously by other UN independent experts, the subprime mortgage market disparately targeted the poor and, in particular, poor women, thus contributing to this increase in women's poverty.

57. The Working Group suggests that both Federal and state governments address this problem urgently, by promoting employment for women, raising the minimum wage and eliminating the wage gap. Residual poverty should be addressed through the social security system and, given the country's economic strength, there should be a policy of zero tolerance for the relegation of people to poverty.

58. Furthermore, many stakeholders complained that minimum wages have lost value as a living wage. The majority of minimum wage earners are women working full time and as the sole source of income for their families. The Working Group regards the raising of the minimum wage to the level of a living wage as one of the most appropriate ways both to reduce the wage gap and reduce poverty amongst working women. The Working Group welcomes recent efforts by the Government in this regard<sup>47</sup>.

59. The Working Group is also concerned at the situation of the estimated 2.5 million domestic workers in the US who are overwhelmingly women<sup>48</sup>, frequently immigrant women<sup>49</sup> many of whom are undocumented. During their visit, the experts heard dreadful testimonies from these workers who are victims of verbal and physical abuse and wage

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California is already one of only a few states that offer paid parental leave, with workers receiving 55 percent of their pay for six weeks, paid for by employee-financed public disability insurance.

<sup>45</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/> and <https://www.whitehouse.gov/the-press-office/2015/01/15/presidential-memorandum-modernizing-federal-leave-policies-childbirth-ad>

<sup>46</sup> Status of women in states

<sup>47</sup> [http://www.unece.org/fileadmin/DAM/Gender/Beijing\\_20/United\\_States\\_Beijing\\_20\\_Review.pdf](http://www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf)

<sup>48</sup> Submission of the National Domestic Workers Alliance

<sup>49</sup> See <http://www.immigrationpolicy.org/just-facts/immigrant-women-united-states-portrait-demographic-diversity>

theft. The Working Group welcomes the initiatives taken by the CSOs to improve conditions for domestic workers through a domestic workers' bill of rights<sup>50</sup>. Wage theft also impacts other low-income and migrant workers (such as manufacturing, construction and some service jobs). The Working Group welcomes the recent increase in the budget of the Wage and Hour Division within the Department of Labor to support investigations.

60. The Working Group recalls that international human rights law requires the establishment of social protection floors for core economic and social rights, provision for paid maternity leave, and the taking of all appropriate measures to produce de facto equality between all women and men in the labour market. It is not for the Working Group to suggest how these minimum standards should be achieved but only to point out how the United States, as economic leader of the world, lags behind in providing a safety net and a decent life for those of its women who do not have access to independent wealth, high salaries or economic support from a partner or family.

### C. Access to health care

61. The Working Group praises the considerable progress achieved in the adoption of the Affordable Care Act (see para 18). However, it regrets the absence of a universal health insurance coverage. The experts also regret the decision of the Supreme Court to allow states to opt out from the expansion of their Medicaid thresholds foreseen by the ACA<sup>51</sup>. Too many women pay the price, sometimes with their lives, of this considerable coverage gap with strong regional and ethnic disparities. According to official data<sup>52</sup>, 28% of the people living in poverty are still uninsured, affecting primarily women, in particular Afro-American and Hispanic women, preventing them from accessing basic preventive care and treatments.

62. Furthermore, there are restrictions for immigrants, including immigrant women to access Medicaid during a five year waiting period and there is perpetual exclusion of undocumented migrants from health care with the exception of emergency care, including labor and delivery and access to community and migrant health centers, HIV/AIDS and maternal child health programs. During their visit, the experts observed that Texas and Alabama do not allow lawfully residing immigrants to enroll in Medicaid even after completion of the federal waiting period of five years. The experts heard appalling testimonies of migrant women who were diagnosed with breast cancer but could not afford the appropriate treatment. The Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act, currently before Congress, would expand access to health care for immigrants, particularly for women and children. The Working Group also regretted to learn about the serious inadequacies of health care facilities to treat women with disabilities and calls for improvement in this regard.

63. The Working Group deplores that substantial disparities persist in the prevalence of certain diseases, like obesity, cancer, HIV/AIDS by ethnicity, sex and education<sup>53</sup>. Black women for instance experience the highest rates of hypertension and obesity compared to any other ethnic group<sup>54</sup>. The experts also regret that the vast majority of LGBTI persons

<sup>50</sup> <http://www.domesticworkers.org/homeeconomics/>

<sup>51</sup> National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)

<sup>52</sup> <http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201508.pdf>

<sup>53</sup> CDC Health Disparities and inequalities report 2013

<sup>54</sup> Office of Minority Health, Data Brief No.4, November 2015

report “experiencing discrimination by healthcare providers, including refusal of care, harsh language and physical roughness”<sup>55</sup>.

64. The experts are also concerned at the results of a recent study which showed that, after a period of consistent decline, suicide rates among women has increased between 1999 and 2014 from 4% to 5,8%. Suicide is a very worrying public health issue and concerned authorities should urgently address this issue<sup>56</sup>.

#### *Sexual and reproductive health*

65. Women’s empowerment is intrinsically linked to their ability to control their reproductive lives<sup>57</sup>. The Working Group would like to recall that, by international human rights standards, in accordance with CEDAW<sup>58</sup>, states must take all appropriate measures to ensure women’s equal right to decide freely and responsibly on the number and spacing of their children which includes women’s right to access contraceptives.

66. The Working Group notes positively the ACA’s requirement that new private health plans cover contraceptive counselling, without out-of-pocket costs. Despite the Government’s efforts and a significant drop in teen pregnancy, the Group remains concerned that the U.S. rate is substantially higher than in other western industrialized nations, and ethnic and geographic disparities in teen birth rates persist<sup>59</sup>.

67. The experts were informed that, being a prerogative of each state, there is no national policy on sex education and adequate and quality sex education in schools, such as which the Group learned is provided in Oregon, was lacking in many curricula. According to interlocutors, in many schools, only abstinence was taught instead of scientifically based sex education which is a key element of health policy.

68. Although women have a right under federal law to terminate a pregnancy, in various circumstances including the constitutional guarantee under *Roe v. Wade* for a woman to be able to choose to terminate a pregnancy in the first trimester (see para 27), ever increasing barriers are being created to prevent their access to abortion procedures. Women’s access to reproductive health services has been truncated in some states by imposition of severe barriers. These take the form of unjustified medical procedures, such as compelling women to undergo ultrasounds or to endure groundless waiting periods, withholding of early pregnancy abortion medications, imposing burdensome conditions for the licensing of clinics, which have resulted in the closing of clinics across the country leaving women without access to sexual and reproductive health services. Furthermore, marketplace insurance coverage for the legal termination of pregnancy is far from universal. Thus, insurance will frequently not be available for women who wish to exercise their right to terminate their pregnancy in the first trimester. These restrictions have a disproportionate and discriminatory impact on poor women. As the experts observed during their visit in the Rio Grande Valley, one of the poorest regions in the country, immigrant women face severe barriers in accessing sexual and reproductive health services<sup>60</sup>. The adoption of the Woman’s Health Protection Act would prohibit states from enacting unconstitutional restrictions on reproductive health care providers that block access to safe and legal abortion services; and to require all hospitals to provide these services and

<sup>55</sup> Human Rights Campaign Foundation submission to the Working Group

<sup>56</sup> <http://www.cdc.gov/nchs/products/databriefs/db241.htm>

<sup>57</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/44](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44)

<sup>58</sup> Not ratified by the US, see para. 9

<sup>59</sup> <http://www.cdc.gov/teenpregnancy/about/index.htm>

<sup>60</sup> <http://www.reproductiverights.org/document/nuestro-texas-the-fight-for-reproductive-health-in-the-rio-grande-valley>



insurance schemes to provide coverage for abortions to which women have a right under US law.

69. The Working Group is also worried that an increasing number of states are targeting women's health providers for exclusion from key federal health programs, including the Title X family planning program, Centers for Disease Control and Prevention (CDC) Section 318 STI prevention programs, and Medicaid programs. At least 17 states have done so since 2011. Ten of these states have taken official action to block certain women's health providers, such as Planned Parenthood, from participating in Medicaid.

70. In addition, many of the clinics work in conditions of constant threats, harassment and vandalising, too often without any kind of protection measures by law enforcement officials, as was observed by the experts during their visits to Texas and Alabama. Alabama has a history of severe violence against abortion providers including the killing of Dr. David Gunn, in 1993, the first doctor to be murdered for performing abortions in the United States. The recent massacre in the Colorado family planning centre, which occurred just before the start of the visit, once again demonstrated the extreme hostility and danger faced by family planning providers and patients. The experts are concerned by the stigma attached to reproductive and sexual health care, which leads to violence, harassment and intimidation against those seeking or providing reproductive health care. It reminds the Government of its due diligence obligation and encourages it to investigate and prosecute violence or threats of violence.

71. The experts reiterate that the enjoyment of the right to freedom of religion or belief cannot be used to justify gender discrimination and therefore should not be regarded as a justification for hindering the realization of women's right to the enjoyment of the highest attainable standard of physical and mental health<sup>61</sup>. U.S. laws on religious or conscience-based refusals to provide reproductive health care should be reconciled with international human rights standards. Refusal to provide sexual and reproductive health services on grounds of religious freedom should not be permitted, where such refusal would effectively deny women immediate access to the highest attainable standard of reproductive health care, for implementation of rights to which they are entitled under both international human rights law and US law.

72. The Working Group expresses serious concern at the increase in maternal mortality rates in the United States. According to UN reports<sup>62</sup>, the ratio increased by 136% between 1990 and 2013. These numbers also hide distressing ethnic and socio-economic disparities. African-American women are nearly four times more at risk to die in childbirth. States with high poverty rates have a 77% higher maternal mortality rate. Concerned authorities should continue to elaborate adequate policies to address this issue.

73. The Working Group is surprised at the extremely high levels of cesarean deliveries in the United States which reach 32.2%<sup>63</sup>, while according to WHO, the ideal rate for caesarean sections should be between 10 and 15%. When medically necessary, a caesarean section can effectively prevent maternal and newborn mortality, however when this rate goes above 10%, there is no evidence that mortality rates improve.<sup>64</sup> The experts would encourage concerned authorities to carefully address this issue and take measures to prevent the performance of caesarian sections for non-medical reasons.

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<sup>61</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/44](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44)

<sup>62</sup> [http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226_eng.pdf)

<sup>63</sup> <http://www.cdc.gov/nchs/fastats/delivery.htm>

<sup>64</sup> [http://www.who.int/reproductivehealth/publications/maternal\\_perinatal\\_health/cs-statement/en/](http://www.who.int/reproductivehealth/publications/maternal_perinatal_health/cs-statement/en/)

74. The Working Group welcomes the progressive policies introduced by several states to promote access to reproductive and sexual health care in the United States. A recent report<sup>65</sup> provides a compendium of proactive policy solutions on reproductive health issues ranging from access to contraception and termination of pregnancy to promoting comprehensive sexuality education and improving maternal health and recommends that these solutions should be widely adopted. The Group also notes with satisfaction the recent law passed in Oregon allowing pharmacists to prescribe contraceptives, thus facilitating access to family planning measures

#### **IV. Gender based violence and women victims of multiple forms of discrimination**

75. Despite the considerable efforts deployed in the past two decades at the legal, institutional and policy levels and some positive achievements to prevent and respond to gender based violence, all stakeholders have unanimously denounced the alarmingly persistent high levels of such violence.

##### *Poverty and violence*

76. The Working Group observed that poverty may result in homelessness which exposes women to higher levels of violence and vulnerability. During the visit, interlocutors pointed out that victims of domestic violence are often numbered amongst the homeless, either because they have been evicted as a result of the violence or because they have fled from their violent partner. Solutions should include effective protection orders, increased availability of shelters, housing support, prioritizing eligibility particularly for single mother households and those facing heavy unpaid care burdens.

##### *Gun violence*

77. The Working Group is troubled at the persistent fatal consequences for women of the lack of gun control, in particular in cases of domestic violence. Women in the United States are eleven times more likely to be murdered with guns than women in other high-income countries. Over the past 25 years, more intimate partner homicides have been committed with guns than with all other weapons combined. When a gun is present in a domestic violence situation, it increases the risk of homicide for women by 500 percent. In 35 states, persons convicted of domestic violence misdemeanours or subject to restraining orders are not prohibited from acquiring guns. Federal law (and the law in most states) allows domestic abusers and stalkers to easily evade gun prohibitions by purchasing guns from unlicensed, private sellers. Forty-one states do not require all prohibited domestic abusers to relinquish guns they already own. (see para 26)<sup>66</sup>.

##### *Minority women*

78. The Working Group is deeply concerned at the disproportionate number of women from ethnic minorities, particularly African American, Native American and immigrant women who are subjected to heightened levels of violence, including rape and sexual violence.<sup>67</sup> Relevant authorities stressed the difficulties in obtaining

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<sup>65</sup> <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/US-PAPS-Compendium-final-SM.pdf>

<sup>66</sup> Guns and Violence against women, Everytown for gun safety

<sup>67</sup> See CERD Concluding Observations, 2014 and A/HRC/17/26/Add.5

accurate data on various immigrant and refugee communities who may fear reporting to law enforcement officials. Indigenous women are more than twice as likely as all other women to be victims of violence and one in three of them will be raped during her lifetime. Estimates are that nearly 80 per cent of the rapes of indigenous women are by nonindigenous men<sup>68</sup>. The experts also deplore reports of police brutality and the increased number of homicides of African-American women by the police.<sup>69</sup>

79. LGBTI face heightened exposure to hate crimes and physical violence. Sexual orientation-based hate crimes made up about 21 percent of hate crimes reported by law enforcement in 2013 to the Bureau of Justice Statistics' Uniform Crime Reporting program. This percentage is probably an underestimate given a number of LGBTI survivors of hate violence may not report their abuse to the police.<sup>70</sup>

#### *Migrant women in detention centers*

80. The Working Group is extremely concerned at the situation of migrant women in detention centers<sup>71</sup>, in particular women with minor children who are in prolonged detention. According to the information received, some detention facilities are not complying with federal mandates and agency policies. Regarding women seeking asylum<sup>72</sup>, the Civil Rights Commission noted that the expedited removal process creates a fundamentally unfair process by not affording detained immigrants the proper ability to obtain counsel and that the credible fear process should be improved to ensure that those who fear persecution can exercise their right to seek asylum in the U.S. The Working Group also received allegations of sexual abuse and assault of women detainees, as well as mistreatment by CBP officials. Migrant women are often victims of trafficking and violence, including sexual violence during their journey to the United States. In spite of requirements under detention standards, the experts received complaints that appropriate health care services are not systematically provided to these women in a timely manner despite the horrifying physical and emotional ordeals endured. The experts also received complaints of migrant transgender women being mistreated in detention often wrongfully placed with males.

#### *Incarcerated women*

81. The Working Group shares the concerns expressed by the Special Rapporteur on violence against women in her report on her visit to the United States<sup>73</sup> regarding women in detention (over-incarceration, sexual violence, shackling of pregnant women, solitary confinement, and lack of alternatives to custodial sentences for women with dependent children, inappropriate access to health care and inadequate re-entry programmes). The Working Group is also concerned at the negative effects of the Prison Litigation Reform Act on the ability of prisoners to seek protection of their rights, which requires prisoners to exhaust all internal complaint procedures before bringing an action in federal court. While welcoming the adoption of National Standards to Prevent, Detect, and Respond to Prison Rape, pursuant to the Prison

<sup>68</sup> A/HRC/21/47/Add.1

<sup>69</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT\\_CAT\\_CSS\\_USA\\_18555\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_CSS_USA_18555_E.pdf)

<sup>70</sup> Ibid

<sup>71</sup> See also [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf)

<sup>72</sup> Ibid.

<sup>73</sup> A/HRC/17/26/Add.5

Rape Elimination Act (2003), the Working Group expresses serious concerns at reports that their implementation at the state level continues to be a substantial challenge.

*Women in prostitution/sex workers*

82. The criminalization of women in prostitution/sex workers in most of the country exposes them further to violence, places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights law. As the CEDAW Committee has systematically reiterated, women should not be criminalized for being in a situation of prostitution. Furthermore, as stipulated in the Palermo Protocol, efforts should be deployed to discourage the demand that fosters all forms of exploitation of women.

## V. Conclusions and recommendations

### A. Conclusions

83. **The experts greatly appreciate the invitation by the US government to this visit which opened the door to an open and frank exchange regarding both good practices and gaps in US women's enjoyment of their human rights.**

84. **The experts are of the opinion that, in a global context, US women do not take their due place as citizens of the world's leading economy, which has one of the highest rates of per capita income. In the US, women are left behind in terms of international standards as regards their public and political representation, their economic and social rights and their health and safety protections.**

85. **The experts welcome the genuine support expressed by the current administration for the cause of women's equality and its undertaking to ratify CEDAW. However, the experts regret the failure to implement these aims. As many stakeholders have underscored, the extreme polarisation of politics has profoundly affected the ability of the Government to ratify CEDAW and to introduce measures to guarantee women's human rights.**

86. **At the domestic level, ratification of CEDAW is essential in order to provide all US women with the rights and protections guaranteed under the Convention. There is a myth that women already enjoy all these rights and protections under US law. However, there are missing rights and protections to which US women would be entitled under CEDAW, such as universal paid maternity leave, accessible reproductive health care and equal opportunity in standing for political election.**

87. **The United States, which is a leading state in formulating international human rights standards, is allowing its women to lag behind these standards. While all women are the victims of these missing rights, women who are poor, belong to Native American, African-American, Hispanic and Asian ethnic minorities, migrant women, LGBTI women, women with disabilities and older women are in a situation of heightened vulnerability.**

88. **Addressing these challenges is limited by a range of factors. Such obstacles include lack of political will to pass essential legislation, women's limited representation in leadership positions in Congress and in business, a strong Conservative religious lobby which opposes reproductive rights, gun**

lobbies which oppose gun control and discriminatory gender norms perpetuating a culture that allows discrimination against women to flourish. Women's underrepresentation and negative representation in the media also present major challenges and reinforce existing gender biases.

## **B. Recommendations**

89. In a spirit of cooperation and collaboration, the Working Group makes the following recommendations to the federal and state authorities, as relevant, with a view to strengthening measures designed to guarantee gender equality, the empowerment of women and the promotion and protection of women's human rights:

90. With regard to the legal framework, the Working Group recommends to:

- (i) Ratify CEDAW;
- (ii) Pass an equal rights amendment which would entrench women's right to equality in the Constitution;
- (iii) Reinforce existing legislation in order to eliminate all forms of sex discrimination in employment, to pre-empt restrictive interpretation of the laws which prejudice women's access to remedies and to allow class action suits for employment discrimination claims on the basis of overall data against large corporations;
- (iv) Amend the Equal Pay Act to include the right to equal pay for work of equal value, with the implementation provisions recommended in the Economic and Social Life Report of the Working Group in 2014<sup>74</sup>;
- (v) Mandate 14 weeks of paid maternity leave for all women workers in public and private employment, taking into account that best practice is payment from a social security fund which does not impose the direct financial burden on employers;
- (vi) Ratify the ILO Domestic Workers Convention and apply its provisions to ensure that domestic work is decent work;
- (vii) Make sure that women can, in practice, exercise their existing constitutional right under *Roe v. Wade* to choose to terminate a pregnancy in the first trimester;
- (viii) Ensure that the ACA provisions regarding insured access to contraceptives are universally enforced;
- (ix) Repeal the Helms amendment and issue in the meantime an executive order clarifying the scope of the existing legislation and clarifying women's right to insured reproductive health care for termination of pregnancy in cases of risk to life, to health (physical and mental), a pregnancy resulting from rape or other unlawful intercourse, teenage pregnancy or severe foetal impairment;
- (x) Repeal the Hyde Amendment;
- (xi) Adopt the Woman's Health Protection Act;

<sup>74</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/128/34/PDF/G1412834.pdf?OpenElement>

(xii) Disallow conscientious objection by health care personnel, providers and insurers to performing procedures to which women are legally entitled and for which there is no easily accessible, affordable and immediate alternative health provider; (xiii) Expand access to health care for immigrants via for instance the adoption of the Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act;

(xiii) Ensure women in prostitution/sex workers are not criminalized;

(xiv) Amend gun control laws to effectively protect women against gun violence;

(xv) Change laws to ensure that the legal age of marriage is systematically 18 for both women and men;

*Access to justice*

(xvi) Ensure further gender diversity and gender sensitive adjudication in judiciaries;

(xvii) Revisit and reinvigorate substantive equality for women in court proceedings and ensure access to justice for all without discrimination, with adequate legal representation be regarded as a civil right which, where necessary, should be publically funded;

(xviii) Ensure systematic accountability in cases of police brutality noting in particular the frequency of police brutality against African American women;

(xix) Empower Native American tribes to ensure justice in their communities through the exercise of full criminal jurisdiction within their lands.

(xx) Ensure the implementation of the National Standards to Prevent, Detect, and Respond to Prison Rape;

91. Regarding the institutional framework, the Working Group recommends to:

(i) Establish an independent human rights institution in compliance with the Paris Principles, which should include a woman's rights commission;

(ii) Establish a high-level Interagency Working Group on Human Rights Implementation with a mandate to oversee and coordinate the implementation of U.S. human rights obligations and commitments domestically, including the implementation of Special Procedures recommendations;

92. As to policies, the Working Group recommends:

*Public and political life*

(i) Apply temporary special measures to ensure gender equality in political representation both at the executive and legislative levels;

(ii) Introduce initiatives to encourage the participation of women in elected positions, including by provision of public funding for election campaigns.

*Economic and social life*

- (iii) **Develop policies to address occupational segregation both vertical and horizontal;**
- (iv) **Provide childcare, after-school and also elder and disabled facilities, which are affordable and accessible to all women without discrimination, to allow adults with care responsibilities, women and men, to work in full time employment;**
- (v) **Raise the minimum wage to a living wage level;**
- (vi) **Facilitate access to capital and increase the level of federal contract procurement for women-owned businesses; and take measures to combat a corporate culture that perpetuates gender stereotypes;**
- (vii) **Ensure proper investigations from the Wage and Hour Division within the U.S. Department of Labor. Increase supervision to hold employers who violate the rights of vulnerable women workers to account.**
- (viii) **Address the legacies of racism and persistent forms of racial discrimination and ethnic disparities in every sphere of life (inequalities in access to education, employment, housing and healthcare);**

*Health*

- (ix) **Increase funding of clinics under the Title X Family Planning Program in order to expand coverage for low-income women who lack insurance in order for them to access preventive care, including sexual and reproductive health services, and in order to reduce maternal mortality;**
- (x) **Prevent politically motivated actions to exclude women's health providers from federally supported public health programs;**
- (xi) **Take additional measures to make contraception available and accessible at no cost, in particular for teenagers with a view to combat teen pregnancy;**
- (xii) **Consider reviewing the eligibility requirements to the public welfare system, so that the basic human rights of immigrants, including the undocumented, are guaranteed, in particular access to health for women and children**
- (xiii) **Address the root causes of increased maternal mortality, in particular among African American women;**
- (xiv) **Ensure adequate, scientifically based sex education in school curricula;**
- (xv) **Ensure mandatory human rights education in schools, including the promotion of gender equality, the elimination of violence against women and harmful gender stereotypes as well as the legacy of slavery and racism;**
- (xvi) **Combat the stigma attached to reproductive and sexual health care, which leads to violence, harassment and intimidation against those seeking or providing reproductive health care, and duly investigate and prosecute violence or threats of violence;**
- (xvii) **Take steps to reconcile U.S. laws on religious or conscience-based refusals to provide reproductive health care with international human rights law and to prohibit refusal to provide sexual and reproductive health services on grounds of religious freedom, where such refusal would effectively deny women**

**immediate access to the highest attainable standard of health care to implement the rights to which they are entitled under both international human rights law and US law;**

*Violence against women and safety*

**(xviii) Implement fully the VAWA 2013;**

**(xix) Ensure effective protection orders, increased availability of shelters, culturally and linguistically responsive programs, housing support, prioritizing eligibility particularly for single mother households and those facing heavy unpaid care burdens;**

**(xx) End detention of migrant women with children and establish accountability mechanisms and adequate gender sensitive training of CBP;**

**(xxi) Seek alternatives to custodial sentences for mothers of dependent children;**

*Women in the media*

**(i) Strengthen the enforcement of Federal Communications Commission's Equal Employment Opportunity rules;**

**(ii) Promote the training of journalists regarding gender equality and women's rights to try and combat harmful gender stereotyping in the media.**

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