

United States of America

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SUBMITTED BY:

1.) The Women's Institute for Leadership Development (WILD) for Human Rights, an initiative of the Miller Institute for Global Challenges and the Law at Berkeley Law School, University of California at Berkeley.

EXECUTIVE SUMMARY:

2.) This report seeks to address the ways in which the human rights of women and girls in the United States (US) can be strengthened.

3.) A critical step the US must take is the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) followed by a detailed implementation plan which provides tangible outcomes for women and girls.

4.) However, in this UPR process the US will be evaluated under its current obligations. The ICCPR, CAT and CERD all have adopted both a substantive equality and inter-sectional approach requiring the dis-aggregation of data on women and girls with specific attention to: the inter-actions of race and gender (covering both persons identified at birth as female and transgender persons) and the effects of incarceration.

5.) These observations and recommendations are made with special attention to women and girls who are racial and ethnic minorities and/or members of the LGBT community. The rights of women and girls in these and other identity groups are threatened and impacted in particular and layered ways which often go undetected and unaddressed. This is in part due to the lack of accurate collection of data regarding women from marginalized groups. All efforts to further the rights of women and girls must include ways to capture information about differently situated groups of women and girls and thus to acknowledge the ways in which their rights are violated and the ways in which their rights can be protected and fulfilled.

6.) This practical requirement can be met by data which breaks out sub-groups of women and girls across the prohibited categories of discrimination in contemporary international law to which the US is bound, including age, sexual orientation, race, ethnicity, religion, disability, gender identity/expression, nationality/citizenship status, and health status.

7.) International human rights can provide the needed framework to further the rights of women and girls in an inclusive manner when implementation is rooted in the lived reality of women and girls and carried out in partnership with local governments and civil society. While the US is already bound under treaties it has ratified to address diversity

among girls and women, WILD's experience demonstrates that only with the addition of CEDAW are local, state and federal government actors likely to have the specific tools needed to fully advance the rights of girls and women.

ISSUES:

A. Ratification of CEDAW

8.) CEDAW calls for the equal opportunity and equal access¹ for women and girls in all social arenas and outlines mechanisms for reporting abuses and measures that can be taken to ensure these rights are respected. In 1980, President Carter signed CEDAW but in the intervening thirty years the US Senate has yet to ratify the treaty.² The US is one of six other countries that have failed to ratify CEDAW: Iran, Somalia, Sudan, Nauru, Palau and Tonga.

9.) Despite the failure to ratify the treaty nationally, local governments around the US have adopted CEDAW resolutions, explicitly embracing the principles and protections evoked in the treaty and providing for its implementation at the local level.³

10.) The Obama Administration and Secretary of State Clinton have made clear that the rights of women and girls are a central part of the State Department's agenda. Despite the emphasis placed on the rights of women and girls, US law lags behind and has significant gaps without the ratification of CEDAW and women and girls are deprived of a tool through which they can advance and protect their own rights.

B. Implementation of CEDAW

11.) Beyond formal ratification, the core goal is full implementation of CEDAW with leadership coming from the federal government in coordination with local governments and civil society groups. Any meaningful implementation must include dedicated government staff to develop and carry out an implementation plan in collaboration with local governments and non-government organizations. Such an implementation plan must also be accompanied by resources to ensure that there is adequate follow through for training, coordination, and monitoring.

12.) Several US cities have passed ordinances to adopt and implement various human rights treaties, some of which have been ratified by the US and some of which have not, at the local level.⁴ This grassroots movement to promote a human rights framework at the local level provides many insights and lessons around treaty implementation, and specifically how CEDAW's implementation can be carried out.

¹ CEDAW uses a substantive equality approach, not merely formal equality, which requires analysis of both de jure discriminatory practices and de facto results.

² See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

³ "State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework." Available online at:

http://www.ushrnetwork.org/sites/default/files/State_and_Local_Human_Rights_Agencies_Report.pdf

⁴ *Id.*

13.) The 1998 San Francisco CEDAW ordinance, which called for the implementation of the treaty on a local level, was the first of its kind. The San Francisco experience can provide a roadmap for implementation of CEDAW at the national level. The ordinance was the result of a close collaboration between the city and various non-government organizations. The passage of the ordinance was followed by the establishment of a CEDAW taskforce and the development of a detailed five-year implementation plan with a focus on employment practices, service delivery, and recourse allocation.⁵

14.) A component of the implementation plan involved the use of a *gender analysis tool*, which also considered factors such as race and ethnicity, age, immigration status, sexual orientation, and language, within various departments and by the city. These assessments revealed de facto discrimination and serious gaps in services for women and girls. Once these areas of need were identified and acknowledged, creative but practical solutions from the city and various departments followed. The Public Works Department responded to the safety concerns of women by installing additional street lights. The Juvenile Probation Department recognized unmet needs among its client base and developed new programs designed specifically for girls and young women. There was an increase in the number of women in positions traditionally held by men and in appointed positions. On a city-wide level, work-life balance policies were put in place and the role of the Department on the Status of Women was strengthened. Disaggregated data began to be collected and budgets were drafted only after an analysis of how resource allocations would impact the rights of women and girls and other groups.⁶

15.) The overarching affect of CEDAW implementation in San Francisco was a fundamental shift in the awareness within the city about the role gender in its policies, practices, and services. The incorporation of a human rights lens into local policy and service provision also promoted the realization of rights in a proactive manner, rather than just responding and attempting to respond to violations after they already occur. A strong overarching structure and sufficient funding is crucial in order to provide adequate training and monitoring. However, a meaningful implementation plan must also be designed and carried out in collaboration with civil society. This will ensure that programs and systems are responsive to real issues and will have a tangible impact rather than government imposing a generic model detached from community needs.

16.) The San Francisco experience, while just one of many local implementation projects, highlights that successful implementation must be accompanied by resources, dedicated staff, a detailed plan with benchmarks, monitoring tools, and a close collaboration with civil society.

⁵ "Respect, Protect, Fulfill: Raising the Bar on Women's Rights in San Francisco." WILD for Human Rights. 2008. Available online at:

http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/27_Women%20of%20Color.pdf

⁶ *Id.*

C. Marginalized Women's Groups

17.) The implementation of CEDAW and other efforts to promote the rights of women and girls in the US must address women in their diversity, recognizing that women and girls have multiple identities and thus their rights can be at risk in various ways at different times or simultaneously. However, often these complex identities are not captured or understood and thus the realization of rights is incomplete for many women. Other times, because of their status, the rights of certain groups of women are simply not recognized and the kinds of abuses they suffer are hidden. A human rights approach, with CEDAW as a tool, provides the opportunity to address the needs of women and girls who belong to marginalized groups. Human rights treaties under which the US is already bound, such as the ICCPR, CERD, and CAT, have in fact also advanced this approach (See, e.g., CERD, General Recommendation XXV). Ratification of CEDAW would strengthen the attention and capacity of the US to further support this existing obligation. CAT, for example, has specifically noted the need to address the sexual assault of prisoners of differing sexual orientations in a prior review of US practices.⁷

18.) A baseline requirement to more fully protect and promote the rights of women and girls is to collect data that accurately addresses their identities and realities. This requires that disaggregated data, including, but not limited to, race, gender, sexual orientation, immigration status, disability, and age be collected and used to inform policies, practices, resource allocation, and service provision. Only by better understanding the identities of women and girls of different groups are affected, can violations of those rights be exposed and prevented and meaningful remedies developed.

19.) A glaring national example of this is the failure of the 2010 United States Census to account for people who identify as transgender. Instead, the 2010 Census questionnaire limits respondents to choose between the two categories of male and female as their sex.⁸ Accordingly, a particular respondent may identify and ultimately be counted as female and Native American, for example, the person's more complete identification as a transgender female is not captured.

20.) This gap in data collection, which goes beyond the 2010 Census, has many serious implications from a human rights perspective. Unemployment rates among transgender women, especially transgender women of color, are startlingly high and can be linked to work place and other social discrimination.⁹ The resulting rates of poverty, substance abuse, and incarceration are also disproportionately high. However, these issues cannot be addressed unless and until the problem is more concretely identified in order for resources can be allocated and programs developed and put in practice. This makes

⁷ Committee Against Torture, 36th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/USA/CO/2, at ¶¶ 32, 37.

⁸ See http://2010.census.gov/partners/pdf/factSheet_General_LGBT.pdf

⁹ "Women of Color: Response to the Periodic Report of the United States to United Nations Committee on the Elimination of Racial Discrimination." WILD for Human Rights, Justice Now, and the Transgender, Gender Variant, and Intersex Justice Project, (2008). Available online at: http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/27_Women%20of%20Color.pdf

comprehensive data collection a prerequisite for the full realization of rights and development of remedies.

21.) Other marginalized women's groups may be tracked in data, but the rights violations they experience go unreported and without redress because of their particular status and because the data available is not analyzed in a cross-cutting way. In particular, the rights of incarcerated women are often violated in grave ways that go unrecognized and unaddressed. While incarcerated women confront many of the same issues as incarcerated men, such as biased sentencing guidelines and disenfranchisement, they also face additional issues related to their reproductive rights. Health practices in women's prisons, such as aggressive medical procedures like hysterectomies and the shackling of pregnant women during labor, often go unreported and without redress within the prison system.¹⁰ As a result, the particular issues facing incarcerated women are often not captured in larger debates around the US criminal justice system.

22.) However, because the percentage of incarcerated women of color is dramatically disproportionate to their numbers in the overall population, simply adding gender to equation does not fully capture the reality of the issue.¹¹ By addressing their status as incarcerated individuals, as women, and as members of different racial and ethnic groups, among other identities, a picture of the rights violations and their disparate impact on incarcerated women of color begins to be formed. Only then can steps be taken to make systemic changes and bring practices in line with international human rights norms as well as to provide redress to those affected.

23.) The collection of complete and accurate data, at all levels of government, which reflects the reality of women's lives and identities is a precursor to the full realization of their rights. Data gathered must be analyzed in a comprehensive way with an eye toward the promotion and protection of the rights of women and girls in the full complexity of their identities.

RECOMMENDATIONS:

- 1.) In regard to reporting to the UN UPR, the US should make a commitment to take steps to ratify CEDAW.
- 2.) The US must pass implementing legislation for CEDAW once ratified and partner with civil society groups in the development and execution of a detailed implementation plan which includes adequate resources, training, monitoring, and clear benchmarks.
- 3.) In its current UPR review, the US is already bound (under CAT, ICCPR and CERD) to identify and address the particular issues affecting women and girls from marginalized groups. This includes collecting disaggregated data regarding gender, sexual orientation, race, ethnicity, immigration status, disability, and other identifying factors in order for various groups to be recognized and their rights protected and promoted.

¹⁰ *Id.*

¹¹ *Id.*