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The United States of America - Submission to the UN Human Rights Committee for its 139th Session



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 **Equality Now**
A just world for women and girls.

FOREWORD

Bringing human rights home

For many years, the United States has been actively involved in promoting human rights and gender equality across the world, including supporting and helping develop programs to end gender-based violence, harmful practices, and sex-discriminatory laws that deeply impact women and girls. The US government has funded research, data collection, services, and advocacy for gender equality and ending violence against women on a truly global scale.



The establishment of the Gender Policy Council in 2021 by the Biden-Harris Administration and the National Strategy on Gender Equity and Equality, through which the US government plans to ensure “that gender equity and equality are at the forefront of America’s domestic and foreign policy,” is welcome. The US’ own record at home, however, remains lacking and requires serious attention and intervention.

At the time of publication, the Constitution of the United States - its most authoritative legal document - does not even guarantee equal rights on the basis of sex. This is in stark contrast to the vast majority of UN Member States (85%) in the world, which have constitutions that prohibit discrimination on the basis of sex and/or gender.

We have witnessed the severe impact of the US not having an explicit sex and gender equality legal rights framework. Through the decisions of the highest courts in the country, people have been denied the right to access safe and legal abortion. This has not only taken away women’s and girls’ hard-fought right to have bodily autonomy and life with dignity but, in their indivisible nature, has also impacted the enjoyment of other human rights. These devastating decisions make all rights based on similar reasoning vulnerable and precarious, especially for marginalized groups in American society, such as low-income people, LGBTQ+ people, and people of color.

In addition to the rolling-back of existing reproductive rights, other women’s and girls’ rights remain neglected and unfulfilled in the US, such as the right to be free from all forms of violence, including harmful practices such as female genital mutilation and child marriage, and protection from sexual exploitation, including in the digital world. In the attached report to the United Nations Human Rights Committee for its review of the US’ compliance with the International Covenant on Civil and Political Rights (ICCPR), Equality Now and our partners, the ERA Coalition, Unchained at Last, the U.S. End FGM/C Network, and the Alliance for Universal Digital Rights (AUDRi) have identified gaps in the current legal system in 4 key areas - legal inequality on the basis of sex and lack of protection against child marriage, FGM/C and Online Sexual Exploitation and Abuse (OSEA), which violate the ICCPR.

The lack of a firm commitment to gender equality in US domestic law is accompanied by the lack of a firm commitment to international law, as the US has not ratified several international human rights treaties, including those focused on gender equality. This makes the US one of the very few countries in the world, in the company of Iran, Palau, Somalia, Sudan, and Tonga, that have not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), lagging far behind most countries in the world, both in terms of countries which have ratified international legal protections and/or have gender equality in their constitutions. In a time where human rights and humanitarian crises transcend borders, international cooperation and accountability is necessary and urgent.

Given its global influence, position, and responsibility, the US must live by the same principles and values of human rights that it advocates for in other countries globally. Our hope is that the US will implement its current obligations to women and girls under international law by closing the gaps in law, policy and practice and also join other countries in the world and the region in ratifying CEDAW and other key human rights treaties, thereby making a greater difference in the lives of women and girls in all their diversity.

S. Mona Saha

CONTENTS

INTRODUCTION	4
INFORMATION ABOUT THE AUTHORS OF THIS REPORT	5
US NON-COMPLIANCE WITH ITS OBLIGATIONS UNDER THE ICCPR	6
I. Lack of Legal Equality on the Basis of Sex in the US Constitution	6
The Equal Rights Amendment (ERA) as the 28th Amendment	6
“Sex” as a protected class	7
The impact of the ERA	7
Future protection of all human rights	8
ERA at the state level	8
Appeal to the United States Court of Appeals for the District of Columbia	9
Joint resolution in the Senate	9
Obligation under the ICCPR to incorporate the ERA	10
II. Lack of Protection against Child Marriage	11
Child marriage as defense to statutory rape	11
Child marriage in the US is a form of violence and sex-based discrimination	12
Lack of access to justice	12
Lack of a domestic strategy and public awareness	13
III. Lack of Comprehensive Protections against Female Genital Mutilation/Cutting	14
Implementation of federal laws on FGM/C	14
State-level laws on FGM/C	15
Lack of institutional and financial support	15
Need for a data-driven and multi-sectoral approach	15
IV. Lack of Protection from Online Sexual Exploitation and Abuse (OSEA)	16
Online grooming and solicitation for OSEA	18
Online sexual coercion and extortion	19
Child sexual abuse material	19
Online sex trafficking	19
Image-based sexual abuse	19
CONCLUSION	21



INTRODUCTION

Equality Now, the ERA Coalition, Unchained at Last, the US End FGM/C Network, and the Alliance for Universal Digital Rights (AUDRI), present the following submission* in advance of the 139th session of the Human Rights Committee ('the Committee') taking place between 9th October and 3rd November 2023 where it will consider the United States' Fifth Periodic Report.

This submission focuses on four specific areas: 1) the longstanding failure by the State party to enshrine an explicit right to equality on the basis of sex in the US Constitution; 2) the continuing legality of child marriage in the majority of US states; 3) the lack of comprehensive protections against female genital mutilation/cutting (FGM/C); 4) the prevalence of discrimination, harassment and gender-based violence in the digital space, and lack of protection or effective remedy for online sexual exploitation and abuse (OSEA).

With regard to the specific concerns mentioned above, we note the State party's failure to comply with its obligations under the ICCPR, which explicitly prohibits discrimination on the basis of sex, mandates States Parties to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy," and requires State parties to "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights" (Arts. 2 and 3), including in marriage. ("States parties ... shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution" (Art. 23)). The State party is also in violation of the obligation to ensure that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law" (Art. 26). In addition, the ICCPR requires State parties to protect individuals from "torture or cruel, inhuman or degrading treatment," and states that "no one shall be held in slavery" or subject to arbitrary or unlawful interference with his or her privacy. (Arts. 7, 8 and 17). We also submit that the US has not met its obligations to ensure that everyone has the "right to liberty and security of person" and that "[e]very child shall have ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." (Arts. 9 and 24).

*submission made on 12 September 2023, online at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCPR%2FCSS%2FUSA%2F55918&Lang=en

INFORMATION ABOUT THE AUTHORS OF THIS REPORT



Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our network of individuals and organisations in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices, and achieving legal equality are the main areas of Equality Now's work. Equality Now is a co-convenor of the National Coalition to End Child Marriage in the United States and an active member of the United States End FGM/C Network, the ERA Coalition, and World Without Exploitation.



The ERA Coalition is comprised of nearly 300 national, state and local partner organizations across the country representing millions of advocates working for equality of all. Our goal is to amend the Constitution to ensure that one cannot be discriminated against because of one's sex. We strategize with states seeking ratification. We work with legislators on the amendment and other ERA bills. We provide groundbreaking research. Our team of legal scholars has examined the next step to a fully realized Equal Rights Amendment.



Unchained at Last is a survivor-led nonprofit working to end forced and child marriage in the United States through direct services and systems change.



The US End FGM/C Network (the "Network") is a vibrant and collaborative group of over 200 survivors, civil society organizations, foundations, activists, policymakers, researchers, healthcare providers, and others committed to promoting the abandonment of female genital mutilation and cutting (FGM/C). The Network serves as the main source for information and the lead advocacy voice in the United States on ending this harmful practice in the US and around the world. Currently, the Network functions as a platform that facilitates collaboration and information sharing, empowers grassroots organizations, builds bridges between US-based and international efforts to end FGM/C, influences policies and laws on FGM/C, and leads both national and global efforts to frame the issue of FGM/C in a broad and intersectional manner.



The Alliance for Universal Digital Rights (AUDRI) exists to explore ways of creating a digital future in which everyone can enjoy equal rights to safety, freedom, and dignity – whoever they are and wherever, whenever, and however they exist and connect in the digital world. They place particular focus on women, girls, and other people from discriminated-against groups, all of whom face intersecting forms of discrimination and gender-based stereotypes in the physical world.

US NON-COMPLIANCE WITH ITS OBLIGATIONS UNDER THE ICCPR

I. Lack of Legal Equality on the Basis of Sex in the US Constitution

As of September 2023, the US Constitution - the most authoritative legal document in the country - does not explicitly prohibit discrimination on the basis of sex (inclusive of gender). This is in stark contrast to the vast majority of UN Member States (85%) in the world, which have constitutions that prohibit discrimination on the basis of sex and/or gender.¹

Without a specific provision guaranteeing equality on the basis of sex in the country's constitution, the US is in direct violation of the ICCPR. A lack of constitutional equality contravenes one of the most fundamental international human rights principles of equality and non-discrimination, which signatory States have an obligation and duty to respect, protect and fulfill, including through formal protection in their constitutions.²

The Equal Rights Amendment (ERA) as the 28th Amendment

The Equal Rights Amendment³ (ERA) is an amendment to the US Constitution that, when incorporated, would guarantee equal rights under the law for all citizens regardless of sex (inclusive of gender).⁴ The amendment was first proposed 100 years ago in 1923. The ERA was finally passed by the House of Representatives in 1971 followed by the Senate in 1972 and sent to the states for ratification. It fell short of the necessary 38 states needed for ratification due to an arbitrary time limit placed by Congress in the preamble which gave the states only ten years to ratify.⁵ In 2020, however, the number of states required to ratify the ERA was met.⁶ Despite meeting all the requirements for ratification outlined in the Constitution, the US Government refuses to recognize the ERA as the 28th amendment to the Constitution.⁷



1 Heymann, J et al. 2020. *Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide*. California: University of California Press. DOI: <https://doi.org/10.1525/luminos.81>

2 United Nations Human Rights Office of the High Commissioner, *International Human Rights Law*, Online at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=By%20becoming%20parties%20to%20international,the%20enjoyment%20of%20human%20rights>

3 ERA Coalition, *The Amendment*, online at: <https://www.eracoalition.org/the-amendment>

4 In the landmark case of *Bostock v. Clayton County*, the US Supreme Court interpreted "sex" discrimination to include discrimination based on sexual orientation and gender identity. Online at: https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

5 In 1978, the ERA had received only 35 of the necessary 38 approvals (three-fourths of the states, as required by Article V of the US Constitution). The Congress passed a bill by a simple majority extending the deadline to June 30, 1982.

6 ERA, *Ratification Info State by State*, online at: <https://www.equalrightsamendment.org/era-ratification-map>; Also see, Equal Rights Amendment, *Latest Developments*, online at: <https://crsreports.congress.gov/product/pdf/LSB/LSB10731>

7 The Archivist of the United States has not yet taken the final procedural step of publishing the ERA in the Federal Register with certification of its ratification as the 28th Amendment, pending resolution of political, legal, and judicial challenges to its unique ratification process. See: <https://www.equalrightsamendment.org/faq> and see here: <https://www.justice.gov/olc/file/1232501/download> at 2.

“Sex” as a protected class

Recognizing the ERA is an essential step that will provide the necessary and firm constitutional protection for equality under the law on the basis of sex across the country.⁸ The ERA would also strengthen the legal framework on which all federal and state laws would have to align with constitutional provisions of sex equality. Elevating sex to the same level of protection afforded to race, religion and national origin in the Constitution would mean that sex-discriminatory laws could be struck down more easily.* The recognition of ERA would make sex a “suspect classification” like race, religion, and national origin and require cases of sex discrimination to undergo “strict scrutiny.” Strict scrutiny is the highest level of review in the US legal system and would recognize and raise gender equality to the status of a fundamental right and categorize sex as a “protected class.” Moreover, the ERA would give Congress the legal foundation and constitutional mandate to enact laws to address systemic and structural gender inequality, i.e., take positive measures to advance equality beyond the narrow prohibition of discrimination.

The impact of the ERA

It is well-documented that constitutional equality provisions around the world have had far-reaching impacts and have acted as an effective trigger for legislative and policy changes in support of gender equality.⁹ The US government has submitted to this Committee that legal equality is guaranteed to women through the Equal Protection and Due Process clauses of the 14th and 15th Amendments to the US Constitution.¹⁰ However, the United States’ current constitutional jurisprudence leaves protections against sex discrimination extremely vulnerable.

The record shows that when the Supreme Court of the United States (SCOTUS) has ruled on cases involving gender and sex discrimination, they often fail because the existing constitutional provisions do not provide sufficient protection. In 2000, for example, SCOTUS struck down the provision of the Violence Against Women Act (VAWA) that gave victims a civil rights remedy for gender-based violence in federal court, holding that Congress did not have the authority under the equal protection clause to include such a remedy in the legislation.¹¹ Likewise, SCOTUS ruled out protection under the 14th Amendment in another gender-based violence case, *Castle Rock v. Gonzales* (holding that a domestic abuse survivor had no constitutional right under the due process clause to police enforcement of a restraining order).¹² As a result of these decisions, survivors in the US still have no constitutional or federal-level statutory remedy for gender-based violence, a pervasive and widely-recognized form of sex discrimination.



8 The ERA Coalition, *The Power of Equality, Why it Matters in America*, online at: <https://eracoalition.blog/2023/05/11/the-power-of-equality-why-it-matters-in-america/>

9 UN Women, *Why and how constitutions matter for advancing gender equality: Gains, gaps and policy implications*, 2017, online at: <https://www.unwomen.org/en/digital-library/publications/2017/2/why-and-how-constitutions-matter-for-advancing-gender-equality>. Also see: WORLD Policy Analysis Centre, *Fact-sheet: Constitutional Equal Rights Across Gender and Sex*, online at: <https://www.worldpolicycenter.org/constitutional-equal-rights-across-gender-and-sex>; Also see: <https://www.worldpolicycenter.org/events-launches/advancing-equality-how-constitutional-rights-can-make-a-difference-worldwide>

10 Human Rights Committee, State Party Report, par. 102, U.N. Doc. CCPR/C/81/Add.4 (Aug. 24, 1994), online at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolNo=CCPR%2FC%2F81%2FAdd.4&Lang=en; Human Rights Committee, State Party Report, par. 114, U.N. Doc CCPR/C/USA/4 (May 22, 2012), online at: <https://www.refworld.org/docid/5146fe622.html>

*This sentence contained an error in the original submission and has since been corrected.

11 United States v. Morrison, 529 U.S. 598 (2000). See also, Ms. Magazine, Victoria V. Nourse, *A Devastating Supreme Court Decision on Sexual Assault Shows Why the U.S. Needs the ERA Now*, 10 November, 2021, Online at: <https://msmagazine.com/2021/10/21/equal-rights-amendment-supreme-court-sexual-assault-era-violence-against-women-vawa-united-states-v-morrison-christy-brzonkala/>

12 *Castle Rock v. Gonzales*, 545 U.S. 748 (2005) online at: <https://www.loc.gov/item/usrep545748/>

Future protection of all human rights

The ERA, by contrast, could have a transformative impact in eliminating gender-based violence such as child marriage in the US, detailed further below. Due to the sex-discriminatory nature of child marriage which predominately impacts girls because the practice is deeply rooted in patriarchal conceptions about female sexuality, agency, and autonomy, the ERA would be a critical tool in prohibiting the practice at the federal level, which would bring the United States into compliance with international law.¹³

In 2022, the Supreme Court of the US in *Dobbs v. Jackson Women's Health Organization*¹⁴ overruled its previous decision in *Roe v. Wade*¹⁵ and held that the right to abortion does not have a basis in the US Constitution. Using an "originalist" approach to constitutional interpretation, the majority opinion stated that the Constitution (14th Amendment) only protects those rights that were intended to be protected by the framers of the Constitution and/or 14th Amendment when written, or rights "deeply rooted in the Nation's history and traditions." This devastating decision has not only had a harmful impact on pregnant women's and girls' lives, it also threatens all previous SCOTUS decisions that rely on a constitutional right to privacy.¹⁶ Without this constitutional basis, precedents granting rights to birth control, same-sex marriage or the prohibition of discrimination on the basis of sexual orientation and gender identity are - like *Roe* - all open for review.¹⁷ By grounding these rights in sex and gender equality, rather than privacy, the ERA's incorporation into the Constitution would help protect these fundamental human rights from being overruled.

In the *Dobbs* decision, SCOTUS also undermined prior 14th Amendment jurisprudence by summarily dismissing the idea that denying abortion access violates women's constitutional equality rights. Citing the outdated and controversial 1974 case *Geduldig v. Aiello* (holding that discrimination based on pregnancy is not sex-based discrimination), the Court found that "[a] State's regulation of abortion is not a sex-based classification." In doing so, the majority ignored subsequent decisions by the Court prohibiting discrimination based on sex stereotypes, therefore potentially leading to further erosion of protections for women and LGBTQ+.

ERA at the state level

The US government has also previously asserted that it is sufficient that states address sex discrimination in their own constitutions.¹⁸ Although 22 out of 50 states, according to the Brennan Center for Justice, have added equal rights amendments to their state constitutions,¹⁹ state-level efforts do not satisfy the US obligations as a nation under the ICCPR. Even if every state in the US had an ERA in their state constitution, the federal and state courts could continue to be inconsistent in their rulings regarding claims of sex discrimination.²⁰

Additionally, the ERA would give Congress authority to pass legislation to advance and enforce equality based on sex. The ERA would make it harder for courts to find that the Congress lacks the constitutional authority to pass such laws, helping to prevent future rollbacks of laws that protect the human rights of women and girls and ensuring that women and girls don't have to rely on an incomplete patchwork of state legislations.

¹³ If the Constitution included the ERA then laws permitting children to be married would likely be struck down as unconstitutional because such laws have a disproportionately negative impact on girls, preventing them from equally enjoying their rights and participating fully in society. See Equality Now, *I need the ERA*., online at: <https://www.equalitynow.org/we-need-the-equal-rights-amendment/>

¹⁴ *Dobbs v. Women's Health Organization*, 945 F.3d 265 (2022), online at: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

¹⁵ *Roe v. Wade*, 410 U.S. 113 (1973) online at: <https://www.law.cornell.edu/supremecourt/text/410/113>

¹⁶ The Northwestern Undergraduate Online Journal, *First Abortion, then What*, January 2023, online at: <https://www.thenulj.com/nuljforum/humanitarian-fshsh>

¹⁷ Equality Now, *I need the ERA..LGBTQ+ rights are human rights*, online at: <https://www.equalitynow.org/resource/i-need-the-era-because-lgbtq-rights-are-human-rights/>; Also see: Columbia Law School Columbia University, *ERA Project*, online at: <https://gender-sexuality.law.columbia.edu/sites/default/files/content/Images/ERA%20Project%20Memo%20-%20ERA%20and%20LGBTQ%20Rights.pdf>

¹⁸ Human Rights Committee, State Party Report, par. 102, U.N. Doc. CCPR/C/81/Add.4 (Aug. 24, 1994), online at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F81%2FAdd.4&Lang=en [US State Party Report, 1994]

¹⁹ Brennan Centre for Justice, *State-Level Equal Rights Amendments*, online at: <https://www.brennancenter.org/our-work/research-reports/state-level-equal-rights-amendments>

²⁰ ERA, Alice Paul Institute, *Why do we need the ERA*, online at: <https://www.equalrightsamendment.org/why>



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Appeal to the United States Court of Appeals for the District of Columbia

In 2020, three states²¹ filed a case in the US District Court for the District of Columbia, and then appealed to the United States Court of Appeals for the District of Columbia,²² pleading that the federal government, through the actions of the Federal Archivist, must be compelled to certify and publish the ERA into the US Constitution.²³ However, on February 28, 2023, the Court of Appeals issued an adverse decision finding that the states were not able to demonstrate “indisputably” that the Federal Archivist had a duty to certify and publish the ERA²⁴ or that the Congress lacked the authority to place a time limit in the proposing clause of the ERA.²⁵ The decision did not resolve the issue, but in fact left the issue in the hands of the US Congress to act and call for the incorporation and recognition of the ERA.

Joint resolution in the Senate

As the US Government has not taken further action to incorporate the ERA on its own, a joint resolution S.J. Res. 4²⁶ was introduced in the 118th Congress in January 2023 to recognize the ERA as the 28th amendment. The US Senate Judiciary Committee held a hearing in February 2023, to discuss the resolution which declares that the ERA, having been ratified by the required number of states, is constitutionally valid and in effect. The resolution states that the ERA, which prohibits discrimination on the basis of sex, was ratified by three-fourths of the states and is therefore a valid constitutional amendment, regardless of any time limit that was in the original proposal.²⁷ In April 2023, the joint resolution was voted on and received more than 50% of the votes in the Senate, although it fell short of the 60% of the votes needed to end the debate and bring the resolution to the floor for a vote. A motion to reconsider has been filed, and the companion bill in the House of Representatives, H.J. Res. 25, is still pending. Despite the US President’s public support of the ERA,²⁸ the amendment has yet to take effect.

21 Virginia, Illinois, and Nevada brought a case to compel the National Archivist (David Ferriero) to recognize the 28th Amendment (ERA) in the US Constitution. These states were the latest states to ratify the ERA. online at: <https://www.oag.state.va.us/files/2022/Brief-of-Appellants-ERA.pdf?e-Type=EmailBlastContent&eld=c103c103-96f8-4674-8440-5675b658a192>

22 Following the March 5th, 2021 decision in the lower court.

23 Virginia v. Ferriero, 466 F. Supp. 3d 253 (D.D.C. 2020)

24 Supra note 7

25 State of Illinois v. David Ferriero, 21-5096 (D.C. Cir. 2023), online at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/0/1D7BCC9C5AF-51F968525896400549E2C/\\$file/21-5096-1987839.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/0/1D7BCC9C5AF-51F968525896400549E2C/$file/21-5096-1987839.pdf)

26 S.J. Res. 4 — 118th Congress: A joint resolution removing the deadline for the ratification of the Equal Rights Amendment.” www.GovTrack.us. 2023, online at: <https://www.govtrack.us/congress/bills/118/sjres4>

27 Ibid.

28 Executive Office of the President, *Statement of Administration Policy*, online at: <https://www.whitehouse.gov/wp-content/uploads/2023/04/SJRes-4-SAP.pdf>; Also see: Statement from President Biden 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/27/statement-from-president-biden-on-the-equal-rights-amendment/>

Obligation under the ICCPR to incorporate the ERA

Multiple avenues of ensuring equal rights for women and girls in the country are being deployed and require meaningful support and concrete action by the US federal government. The ICCPR requires the US to ensure equal enjoyment of civil and political rights and to prevent sex discrimination and gender-based violence to ensure equal enjoyment of those rights under Article 2, 3 and 26. Additionally, the Committee's General Comment No. 28 requires State Parties to "take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions."²⁹ Together, these provisions require the United States to adopt a constitutional sex equality amendment.

This Committee has commented in its previous recommendations that many federal laws which address sex-discrimination are limited in scope and restricted in implementation and that the Committee is especially concerned about the reported persistence of employment discrimination against women enshrined in articles 3 and 7 of the ICCPR. The lacunae in laws at all levels are impacted by the lack of constitutional protection for sex-based equality. The Committee has recommended that the US government "should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex."³⁰ The Committee thus recommended to the United States that it bring itself into compliance with the ICCPR by taking all steps "to ensure the equality of women before the law and equal protection of the law."³¹

For the US to be able to implement the provisions of the ICCPR and the recommendations of this Committee, it is essential that it provides fundamental constitutional protection from sex and gender-based discrimination and for the US Congress to be able to enact laws that uphold equality on account of sex.

Therefore, we respectfully urge the Committee to make the following recommendation and urge the following with the Government of the United States of America:

To take every step necessary, including publication by the Federal Archivist, to recognize and incorporate the Equal Rights Amendment as the 28th amendment to the US Constitution guaranteeing equality on the basis of sex.

²⁹ UN Human Rights Committee (HRC), *CCPR General Comment No. 28: Article 3*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, online at: <https://www.ref-world.org/docid/45139c9b4.html>

³⁰ CCPR/C/USA/CO/3/Rev.1, 18 December 2006, online at: <https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2FUSA%2FCO%2F3%-2FRev.1&Language=E&DeviceType=Desktop&LangRequested=False>

³¹ *Ibid*

II. Lack of Protection against Child Marriage

Child marriage, a marriage where one or both parties are under the age of 18, is legally permitted in the vast majority of states³² in the US.³³ Only 9 out of 50 states in the country have set the minimum age at 18 and eliminated all exceptions, and five US states do not even require any minimum age for marriage, with a parental or judicial waiver.³⁴ States with a specified minimum age to get married in the law can go as low as 15 years of age.³⁵

In the US, at least 300,000 minors, under the age of 18, were legally married between 2000 and 2018. A few were as young as 10, though nearly all were aged 16 or 17.³⁶

Girls are disproportionately impacted by child marriage and are not protected without any explicit constitutional prohibition against sex-based discrimination. As mentioned above, the laws in most states also allow child marriage. 86% of the children who married between 2000 and 2018 were girls and most were wed to adult men. Further, when girls married, their average spousal age difference was four years, whereas when boys married, their average spousal age difference was less than half that at 1.5 years.³⁷

Child marriage as defense to statutory rape

In most of the US states, child marriage is considered a valid defense to statutory rape. The marital defense to statutory rape also used to be permitted under federal law in 18 U.S.C. Section 2243(c)(2). Alarming, at least 60,000 marriages since 2000 occurred at an age or spousal age difference that should have been considered statutory rape.³⁸ These federal and state laws which provide a marital exception to statutory rape serve to condone and promote child marriage in cases where the act itself is criminal, especially according to universal human rights standards. Additionally, there are other federal laws that contain legal loopholes and exceptions that encourage child marriage. For instance, under the Uniform Code of Military Justice, 10 U.S. Code § 920b Article 120b., the law prohibits sex with a child aged 12 to 15 but specifically exempts those who are married to the child. This encourages both child marriage and child rape. Unlike the identical section in the federal criminal code that was repealed with the VAWA 2022 reauthorization, this section was not repealed and is still in force.

“...at least 60,000 marriages since 2000 occurred at an age or spousal age difference that should have been considered statutory rape.”

³² At the time of this submission, the Michigan House of Representatives and the Senate have passed a package of bills to outlaw child marriage in the state. However, due to 2023 summer recess for the state legislature all the bill have not been signed as of September 7th, 2023. Enactment of the bills will make the state of Michigan the 10th state to prohibit child marriage in the US.

³³ In some cases and states there are exceptions such as parental consent and/or judicial approval, emancipation, pregnancy, and enlisting in the military. See here: Unchained at Last, United States has a Child Marriage Problem, April 2021, online at: <https://www.unchainedatlast.org/united-states-child-marriage-problem-study-findings-april-2021/>; Also see: Emancipation procedures, <https://www.cga.ct.gov/2002/olrdata/jud/rpt/2002-r-0008.htm>

³⁴ Unchained At Last, About Child Marriage in the U.S, online at: <https://www.unchainedatlast.org/laws-to-end-child-marriage/>

³⁵ Ibid, See Kansas state law

³⁶ Reiss, Fraidy, *Child Marriage in the United States: Prevalence and Implications*, online at: [https://www.jahonline.org/article/S1054-139X\(21\)00341-4/full-text](https://www.jahonline.org/article/S1054-139X(21)00341-4/full-text)

³⁷ Unchained at Last, United States has a Child Marriage Problem, April 2021, online at: <https://www.unchainedatlast.org/united-states-child-marriage-problem-study-findings-april-2021/>

³⁸ Rape by an adult of a minor under the age of consent. In some US states, sex under the age of consent may be called something other than statutory rape.

Child marriage in the US is a form of violence and sex-based discrimination

According to international law, child marriage is a profound manifestation of gender inequality and gender-based violence.³⁹ It has far greater effects on girls than on boys, thereby violating articles of equality and non-discrimination under the ICCPR. The deeply negative consequences of child marriage for women and girls are well documented,⁴⁰ including in the United States. Like their counterparts in other countries, girls in the United States who are married before the age of 18 experience detrimental consequences even as adults. Child brides report high rates of physical, sexual, financial, and/or emotional abuse during their marriages, as well as early and/or unplanned pregnancies and poor mental and physical health.⁴¹ Child marriage disrupts education and limits economic attainment, trapping girls in a cycle of poverty with little chance of becoming economically independent or secure.⁴² Girls who marry are more likely to drop out of high school, earn less over their lifetimes, and live in poverty than their peers who marry at later ages.⁴³

“Child brides report high rates of physical, sexual, financial, and/or emotional abuse during their marriages.”

Lack of access to justice

Girls in child marriages have limited access to justice due to their status as a minor. Unless legally emancipated, minors are not able to enter into a contract to retain a lawyer, initiate legal proceedings against the husband, or file for divorce unless it is done through a legal guardian. Considering that it is often the legal guardians or parents of the girl who have forced her into marriage, obtaining their consent can be challenging. Further, girls under the age of 18 typically may not be able to access safe domestic violence shelters without the shelters informing the parents of the child.⁴⁴ Moreover, the age of majority, as determined by state law, ranges from 18-21. This means that those under the age of 18, who do not yet have the capacity to give their consent to enter into contracts, are being allowed or forced to enter into marriage, which is a legally binding relationship that is contractual in nature.

Further, the lack of access to justice during marriage and at its dissolution for minor girls is also a violation of the ICCPR under Article 24, which recognizes the right of every child, without any discrimination, to receive from their family, society and the State the protection required by their status as a minor. This right is elaborated in General Comment No. 17 (Rights of the Child), which states that the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under Article 2 to ensure that everyone enjoys the rights provided for in the Covenant.⁴⁵

39 Girls Not Brides, *Gender-based violence and child marriage*, online at:

<https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health/gender-based-violence-and-child-marriage/>

40 See, Banyan Global, & International Center for Research on Women. (2015). Child, early, and forced marriage resource guide. Online at: https://banyanglobal.com/wp-content/uploads/2017/05/USAID_CEFM_Resource-Guide.pdf at 9-13 ; see also, Rachel Kidman, Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries, *International Journal of Epidemiology* (April 2017), <https://academic.oup.com/ije/article/46/2/662/2417355>.

41 See, M. Steinhaus and Thompson, L. (2020). No Exceptions: A Synthesis of Evidence on the Prevalence and Impact of Child and Early Marriage in the United States and How This Compares to Existing Global Evidence, Washington, DC: International Center for Research on Women, available at <https://www.icrw.org/publications/child-marriage-in-the-united-states-a-synthesis-of-evidence-on-the-prevalence-impact/>; Aditi Wahi et al., The Lived Experience of Child Marriage in the United States, *Social Work Public Health* (12 February 2019), <https://pubmed.ncbi.nlm.nih.gov/30747055/>;

42 See, e.g., Dahl, G. B. (2010). Early Teen Marriage and Future Poverty. *Demography*, 47(3), 689–718. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000061/>

43 Steinhaus and Thompson, *supra* at note 40.

44 *Supra* note 35, Unchained at Last found that most domestic violence shelters do not accept unaccompanied minors. Youth shelters typically notify parents their children are there, and house children only for about 21 days while they work on a reunification plan.

45 CCPR General Comment No. 17: Article 24 (Rights of the child), online at: <https://www.refworld.org/pdfid/45139b464.pdf>

Lack of a domestic strategy and public awareness

These expert bodies and international human rights standards protect and promote the human rights of women and girls globally, yet the US is one of the very few countries lagging behind in meeting even the formal standards required to end child marriage, let alone achieving effective implementation. As part of its foreign policy, the US has presented comprehensive strategies for other countries to address child, early and forced marriage,⁴⁶ yet it has done little to meaningfully address these issues domestically. The US State Department has declared that child marriage is a human rights abuse that contributes to economic hardship and leads to under-investment in girls' educational and healthcare needs, fosters conditions that enable or exacerbate violence and insecurity, and produces devastating repercussions for a girl's life, effectively ending her childhood.⁴⁷ Yet the vast majority of states in the US allow minors to be subjected to and/or forced to get married before they reach 18 years of age.

Additionally, there is a lack of awareness and knowledge on the prevalence of child marriage in the US.⁴⁸ A recent survey found that nearly half of Americans polled believe that child marriage is already illegal in all of the US states.⁴⁹ Increasing public education on the prevalence and impacts of child marriage for key stakeholders such as elected officials, parents, and others is critical to eliminating child marriage in the US.⁵⁰

The lack of prohibition on child marriage without exceptions, the lack of consistent and clear legal standards on child marriage across the country, and the contradictions of family law with criminal law is a serious failure of the US government to comply with its obligations under the Article 2, 3, 23, 24, and 26 of the ICCPR and fundamental international human rights standards and rights.⁵¹

Therefore, we respectfully urge the Committee to make the following recommendations to the Government of the United States of America:

- a. Enact laws that set the minimum age of marriage within the United States at 18, without any exceptions, at the federal level and encourage every state to do so as well.**
- b. Ensure the repeal of all marital exceptions or defences to the crime of statutory rape at the federal and state levels.**
- c. Amend all federal laws that encourage, condone, or incentivize marriage before the age of 18.**
- d. Collect nationwide, disaggregated statistical data on the prevalence of child marriage in the United States.**
- e. Provide public education and increase awareness on the prevalence and impact of child marriage in the United States and its obligation to protect children.**

46 U.S. State Dept et al, *Global Strategy to Empower Adolescent Girls*, online at: <https://2009-2017.state.gov/documents/organization/254904.pdf>

47 U.S. Department of State, *United Global Strategy to Empower Adolescent Girls*, March 2016, online at <https://www.state.gov/u-s-global-strategy-to-empower-adolescent-girls/>

48 Child Marriage in the U.S, Where is the Outrage, online at: <https://populationmatters.org/news/2021/04/child-marriage-in-the-us-where-is-the-outrage/> ; Also see: The Guardian, The Hidden Scandal of the US Child Marriage, online at: <https://www.theguardian.com/inequality/2018/feb/06/it-put-an-end-to-my-childhood-the-hidden-scandal-of-us-child-marriage>

49 Lawson DW, Lynes R, Morris A, Schaffnit SB (2020) *What does the American public know about child marriage?* PLoS ONE 15(9): e0238346. <https://doi.org/10.1371/journal.pone.0238346>

50 UNICEF USA, *The Fight Continues To End Child Marriage In The U.S* online at: <https://www.unicefusa.org/stories/fight-continues-end-child-marriage-us>

51 UN OHCHR, *Recommendation for actions against Child and Forced Marriage*, online at: <https://www.ohchr.org/sites/default/files/Recommendations-ForActionEbook.pdf>

III. Lack of Comprehensive Protections against Female Genital Mutilation/Cutting

Female genital mutilation/Cutting (FGM/C) is recognized in the US and internationally as a human rights violation and an extreme form of gender-based violence.⁵² According to UNICEF, at least 200 million women and girls alive today have undergone FGM around the world.⁵³

In the US, approximately 513,000 women and girls have undergone or are at risk of FGM/C⁵⁴. Women and girls living in the US, including citizens, may be subjected to and continue to be at-risk of FGM. They may be subject to FGM/C on US land, or taken to neighbouring states or to their families' countries of origin — a practice known as “vacation cutting.”

Implementation of federal laws on FGM/C

FGM/C was first outlawed under US federal law in 1996. Under the *Strengthening the Opposition to Female Genital Mutilation Act of 2020*, also known as the *Stop FGM Act 2020*, it is illegal to perform FGM on a girl under the age of 18, or for the parent, caretaker, or guardian of a girl under the age of 18 to facilitate or consent to FGM being performed on her. The act of transporting a girl for the purpose of FGM/C is also a punishable offence.⁵⁵

In a federal case, *U.S. v. Nagarwala*⁵⁶ a US.-licensed doctor was charged with performing FGM/C on nine girls, aged 7-13, at a Detroit, Michigan clinic. In November 2018, a federal judge in Detroit dismissed six of the eight charges on the grounds that the 1996 law was unconstitutional because Congress did not have the right to criminalize the practice, claiming the law did not explicitly document how FGM/C substantially affects interstate commerce and lacked jurisdictional elements in relation to interstate commerce. The *Stop FGM Act 2020*, while expressly noting that the District Court of Michigan erred in declaring the law unconstitutional, addressed this concern and is now in effect. In 2021, a woman in Texas was indicted under the new law for transporting a minor from the US to a foreign country for the purpose of FGM/C. This case is still ongoing and overall progress in enforcing the *Stop FGM Act* has been egregiously slow. As of February 2023, the Texas case is the only prosecution the US government has reported since the new law came into effect.⁵⁷

In addition to the criminal law provisions, the *Stop FGM Act* requires the Attorney General to submit an annual report to Congress containing (1) an estimate of the number of women and girls in the United States at risk of or who have been subjected to female genital mutilation; (2) the protections available and actions taken, if any, by federal, state, and local agencies to protect such women and girls; and (3) the actions taken by Federal agencies to educate and assist communities and key stakeholders about female genital mutilation. Yet implementation of the reporting provision has been weak to date. The first report was released in 2022 for the year 2021⁵⁸ and was not made public or easily accessible immediately after its release. The report shared FGM prevalence data from the Centers for Disease Control and Prevention (CDC) and other information from 2016, which was collected many years prior to enacting the new law in 2020. The report did not share any new or substantive information addressing the prevalence of FGM/C and/or the prosecution of FGM/C cases, indicating that the government's current programs and actions on FGM are not nearly enough to address a problem of this scale.

The 2021 report briefly describes training for law enforcement by the Federal Bureau of Investigation (FBI) as “robust training programs designed to educate new and existing staff across the country about investigating and responding to allegations of FGM/C.” However, the report provides no information on whether the training is mandatory or if the training program was developed and implemented in consultation with subject-matter experts, such as leading national FGM Networks of experts, civil society organizations, and survivors.

52 Eliminating Female genital mutilation, *An Interagency Statement*, OHCHR et al, online at: https://www.un.org/womenwatch/daw/csw/csw52/state-ments_missions/Interagency_Statement_on_Eliminating_FGM.pdf

53 UNICEF, *Female Genital Mutilation*, online at: <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

54 Centre for Disease Control and Prevention, *Female Genital Mutilation/Cutting*, online at: <https://www.cdc.gov/reproductivehealth/womensrh/female-genital-mutilation.html>

55 Strengthening the Opposition Female Genital Mutilation Act of 2020, online at: <https://www.congress.gov/116/plaws/publ309/PLAW-116publ309.pdf>

56 438 F. Supp. 3d 821 (E.D. Mich. 2020), online at: <https://casetext.com/case/united-states-v-nagarwala-1>

57 Department of Justice, Department of Public Affairs, *Justice Department and Federal Partners Recognize Zero Tolerance Day for Female Genital Mutilation*, February 6, 2023, online at: <https://www.justice.gov/opa/pr/justice-department-and-federal-partners-recognize-zero-tolerance-day-female-genital>

58 STOP FGM Act 2021, Annual Report of the Attorney General, online at: <https://endfgmnetwork.org/wp-content/uploads/2022/11/DOJ-Report-on-Federal-Agency-Responses-to-Female-Genital-Mutilation-CLEARED.pdf>

The 2022 mandatory government reports on FGM/C are now due and have not been released. The 2022 report, if submitted to Congress, has again not been made available to the public. A January 2023 media release by the US Department of Justice on International Day of Zero Tolerance for FGM only refers to the 2021 report and shares no new information.⁵⁹ This lack of information from the government about its FGM/C policies and programs inhibits meaningful assessment of US progress on this issue.

State-level laws on FGM/C

At the state level, only 41 US states have specific laws against FGM/C. The other nine states do not. Further, in the states that have a penal code statute outlawing FGM/C, not all have enacted comprehensive legislation or taken a multi-sectoral approach. Research shows that comprehensive approaches are required to respond effectively to FGM/C.⁶⁰ In addition to prohibiting FGM/C, state-level laws should include provisions and funding for sustained outreach and education, prevention, survivor services and multi-sectoral stakeholder training. Statutes must also prohibit the transport of women and girls for the purpose of FGM/C or “vacation-cutting.”⁶¹

Lack of institutional and financial support

Civil society organizations and coalitions in the US have developed resources⁶² for survivors and often provide training and education on best practices for stakeholders. These programs require strong institutional and financial support. The US government must provide core and project-based funding to organizations that advocate for better laws, conduct research and develop tools for addressing FGM/C, and provide services to survivors and people at risk. Without financial support, a core component of effective change, i.e., civil society, will continue to be hindered by the lack of resources. The federal government has made some grant funding available to support anti-FGM/C projects by civil society, but these are not nearly enough to meaningfully address the urgent needs of the sector.⁶³

Need for a data-driven and multi-sectoral approach

In the US, FGM/C is often considered and systemically dealt with as an issue practiced by specific diaspora communities. Indeed, the prevalence estimates published by the CDC were determined based on the prevalence rate of FGM in the countries where women and girls in the US were born, or where their parents were born.⁶⁴ However, this does not accurately represent the full picture. FGM is also practiced in the US by local US-born communities and people from other diaspora communities whose countries of origin are not countries with a high prevalence of FGM/C. For instance, there are reports and evidence of FGM/C being practiced by white, Christian communities in midwest US states⁶⁵ and within the Bohra community,⁶⁶ amongst others. Despite the growing evidence that FGM/C affects a broad diversity of people in the US, including in communities outside those where the practice has traditionally occurred,

“At the state level, only 41 US states have specific laws against FGM/C.”

59 Ibid

60 UNICEF, *Technical Guidance: A Comprehensive Approach to Accelerating the Elimination of Female Genital Mutilation*, online at: <https://www.unicef.org/documents/technical-guidance-comprehensive-approach-accelerating-elimination-female-genital>

61 Equality Now, *US laws against FGM - State by State*, online at: https://www.equalitynow.org/us_laws_against_fgm_state_by_state/

62 The End FGM US Network, *Resources*, online at: <https://endfgmnetwork.org/resources/> ; Also See: Sahiyo, *Resources*, online at: <https://sahiyo.org/resources/sahiyo-resources.html>

63 The Office for Victims of Crime, *The Office for Victims of Crime has funded the first Department of Justice program to address the needs victims of female genital mutilation or cutting*, online at: <https://ovc.ojp.gov/news/announcements/ovc-awards-nearly-3-million-help-victims-female-genital-mutilation-or-cutting>

64 *Supra*, note 60.

65 ‘The Guardian, *‘FGM happened to me in white, midwest America’*, Dec 2016, online at: <https://www.theguardian.com/us-news/2016/dec/02/fgm-happened-to-me-in-white-midwest-america>; Also see, https://www.youtube.com/watch?v=sb_YPFrWtyo

66 Hindustan Times, *India's Dark Secret*, online at: <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

reliable, disaggregated data on actual prevalence rates in the US is sorely lacking.⁶⁷ Lack of data impacts all aspects of the approach the government takes to tackle the issue effectively. Moreover, targeting of certain ethnic groups or nationalities in the context of FGM/C can cause further secrecy in practice, increase stigmatization, and lead to systemic discrimination in law and policy.⁶⁸ Accurate and sensitive data gathering on FGM/C must therefore be undertaken and shared publicly.

FGM/C is deeply rooted in discriminatory social norms that are present in nearly all cultures, religions, and communities across the world in order to control and suppress the freedom and sexuality of women and girls. To meaningfully eradicate the practice, it is well-established that a multi-sectoral approach is necessary, which addresses the issue in multiple ways, including through training law enforcement officials and providing education⁶⁹ for teachers, parents, faith-based leaders and at-risk communities; developing prevention-based methods, and addressing FGM/C in healthcare systems; providing financial support to the sector; and increasing awareness among various stakeholders.⁷⁰ In General Comment No. 28, this Committee established that “[I]nequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history, and culture, including religious attitudes. States parties should ensure that traditional, historical, religious, or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”⁷¹

Therefore, we respectfully urge the Committee to make recommendations and urge the following with the Government of the United States of America:

- a. Effectively implement the federal law on FGM/C, especially with regard to training, public and stakeholder education, and awareness building.**
- b. Collect comprehensive, accurate, disaggregated, and reliable data on the prevalence of FGM/C in the US.**
- c. Provide funding, resources, and state support to community-based organizations and organizations with expertise and experience in addressing FGM/C.**
- d. Release the Department of Justice report on FGM/C under federal law, including from previous years, and make it widely available, especially to civil society organizations.**
- e. Encourage state governments to pass comprehensive state-level laws that explicitly:**
 - i. Define, prohibit, and criminalize all forms of FGM/C in the state.**
 - ii. Prohibit transporting women and girls to another country or state for the purpose of FGM/C, also known as ‘vacation-cutting.’**
 - iii. Provide education and awareness-building to the public and key stakeholders on FGM/C in the US and prevention mechanisms.**
 - iv. Provide appropriate, mandatory, and integrated training and education to public institutions and officials such as public safety personnel, medical professionals, and educational institutions to address FGM/C.**
 - v. Allocate earmarked funding for education and awareness-building on FGM/C for public institutions and civil society organizations that engage directly with survivors and provide necessary resources.**

67 See, e.g. supra note 60. “Scientifically valid information regarding whether women or their daughters have actually undergone FGM/C and related information that can contribute to efforts to prevent the practice in the United States and provide needed health services to women who have undergone FGM/C are needed.”

68 End FGM EU, *FGM, Anti-Racism, and Intersectionality*, online at: <https://www.endfgm.eu/content/documents/reports/FGM%20antiracism%20paper%20Web-version.pdf>

69 UNICEF, *The Power of Education to End Female Genital Mutilation*, online at: <https://data.unicef.org/resources/the-power-of-education-to-end-female-genital-mutilation/>

70 UNICEF, *The UNICEF Approach to the Elimination of Female Genital Mutilation*, online at: <https://www.unicef.org/media/88751/file/FGM-Factsheet-2020.pdf>; Also see, Equality Now, online at: <https://www.equalitynow.org/resource/use-of-the-multi-sectoral-approach-to-ending-gender-based-violence-and-female-genital-mutilation-in-africa/>; Also see: AIDOS et al, *Gender Transformative Approaches To Ending Female Genital Mutilation*, online at: https://www.endfgm.eu/content/documents/reports/ISD-2021-Report_Gender-Transformative-Approaches-to-Ending-FGM.pdf

71 Supra note 27



IV. Lack of Protection from Online Sexual Exploitation and Abuse (OSEA)

This Committee, in the List of Issues prior to the current review, asked the US government to report on the steps that have been taken “to strengthen preventative measures against trafficking in persons, increase victim identification, systematically and vigorously investigate allegations of trafficking, prosecute and punish those responsible, and provide effective remedies to victims.” In addition, the Committee asked the State to “indicate what steps the State party has taken to prevent the criminalization of victims of sex trafficking, including child victims.”

We welcome and acknowledge the steps that the US government has taken to address some of the issues raised with regard to trafficking in person and which are mentioned in the State party report. However, we submit that there is a need for concrete action and attention to address online sexual exploitation and abuse (OSEA) in the US in addition to, and in relation to in-person sex trafficking.

Sexual exploitation and abuse in the physical and digital realms operate together in a continuum. They are a part of the same structure of violence rooted in gender-based inequality and systemic misogyny. We submit that the international human rights standards and obligations enshrined in the ICCPR and other instruments are indivisible, interconnected and interdependent. To be able to fully and effectively address OSEA, it is important that women and girls in the US are able to realize and access the full array of human rights - the right to education, the right to health including sexual and reproductive rights and bodily autonomy, the right to housing, economic security, and other rights enshrined in international law. The realization of these rights reduces their vulnerability to sexual exploitation and abuse, in both physical and digital realms.

The US is a key player in the fight against OSEA and its role in this fight is especially important because the US is a global hub of technological development and business interest. Many digital service providers and platforms are domiciled in the US. Over 90% of Americans have access to the internet, and that number is likely to increase to 94% by 2025.⁷² Traffickers operate online too. According to the US Department of Justice, data shows that in the US, approximately 40% of sex trafficking victims are recruited online, making the internet the most common place where victim recruitment takes place. Further, online advertising has been the main tactic used by traffickers to solicit buyers for commercial sex. In 2020, over 80% of the US Department of Justice sex trafficking prosecutions involved online advertising.⁷³

⁷² STATISTA, Internet usage penetration in the United States from 2019 to 2028, online at: <https://www.statista.com/statistics/590800/internet-us-age-reach-usa/>

⁷³ UN News, “Traffickers abusing online technology, UN crime prevention agency warns,” online at: <https://news.un.org/en/story/2021/10/1104392#:~:text=E2%80%9CDData%20shows%20that%20in%20the,solicit%20buyers%20for%20commercial%20sex>

The Covid-19 pandemic made matters worse. For example, the helpline for the Cyber Civil Crisis Initiative, a Florida-based group focused on image-based sexual abuse, recorded sexual assault, and online sexual coercion and extortion, logged almost 39% more calls related to online sexual abuse in 2020.⁷⁴ The National Center for Missing and Exploited Children (NCMEC), also experienced a significant increase in reports of online enticement, from 11,658 in 2019 to 22,751 in 2020.⁷⁵

Although the US has passed federal and state laws that address certain aspects of OSEA, there remain significant gaps in the current laws to fully address the human rights of women and girls. One glaring gap is that of AI-generated or manipulated OSEA – images or videos depicting or resembling the victim – which is not adequately provided for under US Law, especially as it relates to adults. The US Federal Bureau of Investigations (FBI) in 2023 warned of the increase in reports of bad actors manipulating images and videos using AI to create sexually explicit content and to extort and harass victims.⁷⁶

While there are US federal statutes preventing sexual abuse and exploitation, the references to digital technology are limited and have not kept up with the reality of the fast-paced development of the internet and technology. The fragmentation of cloud data makes tracking the source of that data very difficult especially if victims, exploiters, and the evidence are located in multiple jurisdictions, and the law on

this issue is still evolving.⁷⁷ Many factors are at play in the gathering of e-evidence, such as those around determining jurisdiction, cooperation between governments and the technology sector, and whether the specific acts of OSEA are criminal offences across the different countries involved in a case. More clarity is required in the law to enable women and girls who have experienced OSEA to access justice and redress.

In addition, the structure of US law results in gaps and inconsistencies across different state laws. Not all states have enacted laws relating to all forms and aspects of OSEA, and not all state laws remediate these harms in the same way. Also, legal challenges to existing OSEA laws may set back progress. For example, US courts are still to determine the constitutionality of the Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA). Among other things, FOSTA-SESTA amends the “safe harbor rule” clause under Section 230 of the Communications Decency Act (CDA) to clarify that the clause does not prohibit the enforcement of federal and state criminal and civil laws that penalize the providers and users of interactive computer services which knowingly facilitate, assist, or support sexual exploitation for sex trafficking, prostitution, and for other purposes. Victims can now sue entities that helped advertise and traffic them online. However, FOSTA-SESTA is being challenged on the grounds that it infringes on freedom of expression notwithstanding ongoing debates on reforming the Communications Decency Act and holding digital platforms and service providers accountable for OSEA material on their platforms.



Credit: Bruce Mars / unsplash

74 JAMA Netw Open. 2022;5(10):e2234471. doi:10.1001/jamanetworkopen.2022.34471 Online at: <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2797339#zo220985t2>

75 NetClean, We have seen a definite increase in child sexual abuse during the covid-19 pandemic, online at: <https://respect.international/netclean-report-on-child-sexual-abuse-crime/>

76 FBI, Public Service Announcement, online at: <https://www.ic3.gov/Media/Y2023/PSA230605>

77 See US v. Microsoft Corporation, 138 S. Ct. 1186, 200 L. Ed. 2d 610 (2018)

Online grooming and solicitation for OSEA

Some US states prohibit the online solicitation of children. In Illinois⁷⁸ and Florida,⁷⁹ for example, the use of the internet to solicit sexual conduct and grooming is illegal by state law. However, the US laws around online grooming and solicitation for sexual abuse mostly provide protection for children and not adults who may also be vulnerable to online grooming. In addition, by failing to extend protections to exploited children once they become adults, the law fails to appreciate the long-term nature of some online grooming.

Online sexual coercion and extortion

The US has criminalized the transmission, in interstate or foreign commerce, of any communication containing any threat to injure the property or reputation of the addressee or of another.⁸⁰ While this law criminalizes extortion, it does not provide specific protection from online sexual coercion and extortion. Laws that address the sexual nature of this crime are necessary and should take into account the gendered nature of online sexual coercion and extortion, recognizing it is a part of the continuum of gender-based violence, rooted in sex, gender and intersecting inequalities and abuse of power that perpetuates women and girls' subordination in society.

Child sexual abuse material

US federal law prohibits using an interactive computer service to send a child any comment, request, suggestion, proposal, image, or other communication that is obscene or constitutes Child Sexual Abuse Material (CSAM).⁸¹ State law provides additional protection in some jurisdictions, however there are differences between these states with respect to what qualifies as obscene material when a child minor is involved.

Online sex trafficking

The US law criminalizes trafficking for sexual exploitation⁸² and prohibits the sex trafficking of children by force, fraud, or coercion.⁸³ This federal statute makes it illegal to knowingly recruit, entice, harbor, transport, provide, obtain, or maintain a minor. It also makes it a criminal offense to participate in a business venture that causes minors to engage in commercial sex acts. The US is making significant efforts to legislate around the online and digital technological aspects of sex trafficking. In response to the growing crisis of online sex trafficking across the country, the US passed the Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA). However, as mentioned above, FOSTA-SESTA is being challenged on the grounds that it infringes on freedom of expression.

Image-based sexual abuse

In the US, 48 states have laws that criminalize image-based sexual abuse. For example, New Jersey state law prohibits the non-consensual recording of someone's intimate body parts and the non-consensual distribution or sharing of that recording.⁸⁴ California's Penal Code makes it an offense to post explicit images of someone online without their consent.⁸⁵

However, some state laws are flawed or include unnecessarily burdensome requirements that create roadblocks for victims to be protected from image-based sexual abuse. For example, Arizona law requires an "intent to harm or harass" or for the offender and victim to be in a domestic relationship.⁸⁶

⁷⁸ 720 Ill. Comp. Stat. Ann. 5/11-25

⁷⁹ Fla. Stat. Ann. § 847.0135

⁸⁰ 18 U.S.C. § 875(d)

⁸¹ 18 U.S.C. § 1470

⁸² The Trafficking Victims Protection Act, 22 U.S.C. § 7101-7114

⁸³ 8 U.S.C. § 1591

⁸⁴ NJSA 2C:14-9

⁸⁵ Cal. Penal Code § 647(j)(4)

⁸⁶ Ariz. Rev. Stat. Ann. § 13-1425

Therefore, we respectfully urge the Committee to make recommendations and urge the following with the Government of the United States of America:

- a. Enact and implement laws that address the root causes of OSEA, in particular gender and sex-based discrimination and intersecting inequalities and the proliferation of misogyny and abuse of power online and through the use of digital technologies.
- b. Ensure that laws and policies that address all forms and aspects of OSEA are enacted and implemented, and aligned with international standards, where they exist, including providing for the protection of vulnerable people. Laws should also take into account the gendered, technological, and multi-jurisdictional nature and dimensions of OSEA.
- c. Ensure that legal protections offer support to victims and survivors to prevent further exploitation.
- d. Provide adequate resources to investigate and prosecute OSEA cases, and support victims' access to the legal system, including through providing adequate funding to key institutions including law enforcement, child protection services, and women's rights departments, and civil society organizations, towards investigating and prosecution of cases, and support to victims and survivors of OSEA.
- e. Mandate digital platforms and service providers to implement easy-to-use, clear and efficient policies and procedures relating to posting, sharing, publication and takedown of OSEA material on their platforms, and mandate penalties when they fail to comply with the law.
- f. Require digital platforms and service providers to adopt human rights-based approaches to their business activities and encourage them to collaborate with the US government.
- g. Support civil society initiatives to raise understanding of OSEA including information on how to identify violations and report to law enforcement and digital service providers and platforms.
- h. Promote and support efforts for a global response to OSEA including the development of mechanisms to enhance international cooperation.
- i. Establish oversight and independent regulatory authority to oversee the implementation of laws and regulations.
- j. Fund support institutions and access to legal systems. Fund law enforcement, the judiciary, child protective services, and women's rights groups.



CONCLUSION

In conclusion, we note that the US remains one of only six countries in the world that has not yet ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which affirms principles of fundamental human rights and equality for women around the world; and is the *only country* which is yet to ratify the Convention on the Rights of the Child (CRC). The US government has also not signed the American Convention on Human Rights and the *Belém do Pará* Convention, formally known as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. **We emphasize the importance of the US signing and ratifying international and regional treaties that provide comprehensive protections and create State obligations for the implementation of women's and girls' human rights and is essential for accountability. These international mechanisms would also provide an opportunity for the US to engage in a systematic review of gender-based discrimination and inequality in the country and to engage in dialogues with other treaty bodies.**

We reiterate and affirm the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) on the US especially, “Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Covenant on Economic, Social and Cultural Rights.” **By failing to ratify and commit to a domestic mechanism for the implementation of its treaty and other international obligations, the US has demonstrated a lack of meaningful and serious commitment to realize and implement international human rights standards and agreements domestically, including, for example, the 2030 Agenda for Sustainable Development (the SDGs) and the Beijing Platform for Action, in addition to the above-named treaties.**

The period under review has involved drastic setbacks for women in the US, particularly with respect to sexual and reproductive rights as embodied by the *Dobbs* decision,⁸⁷ as well as the subsequent enactment by state governments of extreme abortion bans and restrictions in dozens of US states. This has caused significant harm to women, girls and other pregnant people in the US, particularly people of color, low-income people, and people from other marginalized communities. Yet women and girls in the US lack the international scrutiny, effective mechanisms, and **constitutional protection** they need in order to advocate for and achieve transformative change. In the past, this Committee has expressed concerns regarding US compliance with the ICCPR, to no avail. We submit that it is time for the US to further demonstrate that it takes its international human rights commitments seriously. **As this submission highlights, current US laws fall short of addressing urgent human rights concerns and there are many outstanding recommendations that need to be effectively implemented if the Covenant is to be fully realized in the lives of all women and girls in the US, to the benefit of themselves, their families and communities, and the world.**

⁸⁷ Supra note 13

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