

Testimony on Behalf of the U.S. Gender Working Group
Report on Women's Human Rights in the United States Under the International Covenant
on Civil and Political Rights
In Response to the Second and Third Periodic Report of the United States of America

July, 2006

My name is Jan Erickson and I am the Director of Programs for the National Organization for Women Foundation, the non-profit arm of the oldest and largest women's rights activist organization in the U.S. I am speaking today on behalf of the eight non-governmental organizations—including my own—that have submitted a report on sex-based discrimination in the U.S. that is in violation of various provisions of the International Covenant on Civil and Political Rights (ICCPR). That report appears as Section 5 in the U.S. Human Rights Network Coalition report to this committee. I should note that our report is endorsed by the National Council of Women's Organizations, with 200 member organizations and more than 10 million members.

It is important, we believe, for the committee members to recognize that the 150 million women and girls in the United States do not have a constitutional guarantee of equal protection. Although several decisions of the U.S. Supreme Court have overturned particular gender-biased laws based on the Constitution, sex discrimination *per se* is not explicitly unconstitutional in the making, interpretation, and enforcing of U.S. law. A 60-year campaign to add a sex equality amendment to the Constitution came close to ratification, but ultimately failed in 1982. Many federal laws that address sex discrimination are limited in scope and restricted in implementation. Under both indifferent and hostile national administrations and an increasingly conservative judiciary, women's legal status continues to be poorly defined and subject to frequent challenges to laws and programs intended to promote sex equality.

A second critical factor to be emphasized is that the U.S. has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). For more than 26 years, the U.S. Senate has delayed, considered, wavered and retreated from this critically important treaty that would advance the cause of women's equality. Without CEDAW and with no clear constitutional prohibition against sex discrimination, women in the U.S. have little legal recourse to assert their rights. Continuing sex inequality in the U.S. has multiple and varied consequences—the most important relating to increased poverty among women and enhanced health risks to low-income, elderly and disabled women and their families.

Women's human rights progress in the United States is in a serious reversal and women rights leaders are sounding the call for help. We urge that a fuller examination by the U.N. Human Rights Committee of U.S. women's human rights under the ICCPR be made at this time.

The most aggressive assault on women's human rights in the U.S. lies in the area of reproductive health care and we commend the Center for Reproductive Rights' Shadow Report for its accurate portrayal of what is a dire situation. All women of child-bearing age now face dramatically reduced access to abortion services in most states. Adolescents and low-income women

(especially low income women of color) have fewer opportunities to obtain affordable reproductive health services—including abortion and contraception. Nearly all women of child-bearing age who desire to control their reproductive lives are denied access to emergency contraception—thanks to a refusal by a federal government agency to approve its non-prescription sale—though this safe medication is widely available in scores of countries.

Further, there is the federal government's distribution of scientifically-inaccurate information about sexuality which is harmful to adolescents, including the government's promotion of "abstinence-only unless married" sex education programs for consumption at home and abroad. This latter policy is promoted by the U.S. in developing countries where HIV-AIDS spread is threatening the economic and political stability of those nations. Finally, there is now a severe funding reduction in the most important government health care program, Medicaid, which serves about 15 million women and which is the *sole source* of reproductive health care for low-income, elderly and disabled women. Not to be overlooked is the estimated 45 million persons in the U.S. without health insurance, the vast majority being women and children.

We support a strong statement from the Committee urging that the U.S. bring its laws and policies on reproductive health care into accordance with the relevant ICCPR provisions.

The Committee has stated its interest to review the treatment of women in prison and we would note the discussion of correctional departments' practices that appear in our Gender Shadow Report. The denial of incarcerated women's reproductive rights violates ICCPR Articles 2.1, 2.2, 2.3a, 2.3b, 2.6, 7 and 10.1. Policies and laws governing prisoners in the U.S. are often poorly implemented, subjecting women to the whims of jail and prison authorities and corrections officers. Rape and exploitation of women prisoners by correctional officials occurs frequently. Shackling of women during pregnancy and delivery is undoubtedly cruel treatment and unnecessary. The Gender Shadow Report shows that courts have not been consistent in protecting women prisoners' abortion rights and need for medical care. Loss of parental rights due to inadequate legal notice and fair hearing is also a serious problem.

A number of carefully crafted recommendations, such as mandating that all states comply with international standards for treatment of incarcerated women, appear in the Gender Shadow Report, pp. 11 through 23.

U.S. asylum law and practice do not adequately consider or recognize the protection needs of women fleeing gender-specific persecution. Because of this, the U.S. frequently violates ICCPR Article 13 protections for asylum-seekers who are women. In addition, harsh provisions of U.S. immigration law and procedure, made worse since 9/11, are gender-neutral as written, but in daily practice the interpretation and application disproportionately harms women and girls. A rigid lack of discretion under the law strips them of the protections guaranteed them by the ICCPR as persons in pursuit of protection from persecution and unfairly exposes them to expulsion by and from the United States.

The Gender Shadow Report highlights specific U.S. laws that ultimately deprive women of protection from expulsion and makes a series of recommendations for resolving immigration and asylum issues for women fleeing gender-based persecution, pp. 23-30.

ICCPR Article 3 requires States to provide for equality between men and women and contrary to the assertion of the United States in its Second and Third Period Report, item # 60, the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution *do not* provide consistent protection against sex discrimination as can be demonstrated in even a cursory review of case law. The Equal Protection provision has *not* been interpreted to require strict scrutiny of gender-based classifications. Instead the standard ranges from requiring a "rational basis" for gender-based distinctions to requiring an "exceedingly persuasive" justification. The Fourteenth Amendment has not been interpreted to apply to sexual orientation or gender identity discrimination. Nor does it protect women from discrimination on the basis of pregnancy or childbirth. Additionally, the amendment has been interpreted to require a demonstration of discriminatory intent—it is not sufficient that a law or policy has a disproportionate impact on one gender. In sum, reliance on judicial interpretation of the Fourteenth Amendment to accord sex the recognition as a protected class that is accorded to race and national origin is not realistic.

General Comment No. 28 points out that Articles 2 and 3 of the ICCPR mandate that States parties take all steps necessary, including prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both the public and private sectors, which impair the equal enjoyment of rights.

The substantive equality guaranteed by the ICCPR can be achieved only if governments are aware of, and take steps to remedy, sex-based discrimination. In recent years, the U.S. government has taken virtually *no* steps to remedy sex-based discrimination and has even undertaken a dismantling of numerous policies and programs once meant to reduce and prohibit sex-based discrimination. Women's offices in various governmental departments have been closed; the remaining women's offices, such as the Women's Bureau in the U.S. Department of Labor, have seen their agendas narrowed. Important information about women's wages and employment have been eliminated from collection and posting on government websites. A commission charged with implementing employment anti-discrimination law has been hobbled by hostile commission members, the loss of experienced attorneys and severe budget cutbacks.

Legislation that would more effectively deal with sex-based wage discrimination has been introduced in Congress numerous times since the U.S. ratified the ICCPR, yet these bills have never been taken up, regardless of which political party is in the majority. Government monitoring of education institutions' compliance with a core equal education law, Title IX, is completely lacking. Affirmative action programs which have benefited millions of women seeking university admissions, employment and promotion are being challenged in court and substantially trimmed. A new effort to sex-segregate public schools has been launched and threatens to turn the clock back to when girls and young women were provided an inferior education.

The vast majority of women continue to be economically disadvantaged due to a substantial difference in wages from what men are paid an average of 23 cents and ranging as high as 29 cents. For women of color, the wage difference is even more dramatic. The gap can be found in nearly all occupational categories, including clerical and sales as well as managerial and

professional. The wage and salary difference exists even when education and experience qualifications for women compared to men are the same or similar. A large number of women work in occupations which because these occupational categories have historically employed mainly women simply pay less. There is no federal law that effectively addresses sex-based wage discrimination in comparable settings across occupational categories and existing law is limited, resulting in a cumbersome complaint, investigatory and resolution process that cannot rectify systemic, industry-wide patterns of sex discrimination in employment.

A pervasive barrier to higher ranking university faculty positions in science, engineering, information technology and mathematics has meant that few women and people of color receive promotion to tenured associate and full professorships. Because of enduring gender and race bias, they are restricted in laboratory access, research support and professional recognition. The same salary differences that have been identified in other employment sectors afflict women academics.

The lack of adequate family support policies, including affordable child care and paid family leave, create unfriendly employment conditions that make it difficult, if not impossible, for women to attain workplace equality. The U.S. lags far behind nearly all developed nations and even some developing nations in this regard. The simple fact is that women in the U.S. are not making progress towards equality and, in fact, are losing ground.

Census data in recent years reveal that the number of women in poverty has increased; by 2004 the number had reached 14.3 million. Poverty among adult women reached 12.7 percent, 37 percent higher than men's poverty rate (9.3 percent). The total for women and girls in that year came to 20.5 million. Women in female-headed households with no spouse had a 24.4 percent poverty rate (2003), three times as high as a men's rate in male single-headed households. Women's median earnings have declined in recent years as well. Women's poverty rates are due, in large part, to the government's refusal over nine years to increase the federal minimum wage (currently \$5.15 an hour, putting minimum wage workers below the poverty level); to a failure to adopt stronger laws against sex-based wage discrimination; to a refusal to aggressively pursue systemic sex discrimination (including sexual harassment) in low-wage occupational categories; to underfund non-traditional skill-building and vocational education programs for girls and women; and, a failure to provide adequate educational and skill building opportunities for women in the welfare-to-work process.

We therefore request the Committee to note the fundamental lack of a national human rights institution or any other department or bureau with responsibility for monitoring and promoting women's human rights. We further recommend that the Committee urge the United States to undertake a comprehensive review with the intent to repeal and modify laws and policies which limit or deny equal protection for women. Specific recommendations that should be taken to reform government laws and policies that deny or undermine women's equal rights can be found throughout the Gender Shadow Report.

Organizations that made contributions to the Gender Shadow Report include the National Organization for Women Foundation, Human Rights Advocates International (New York), the International Gender Organization, the International Women's Human Rights Law Clinic of

Queens College at the City University of New York, the International Women's Rights Action Watch of the Human Rights Center at the University of Minnesota, Legal Momentum, MASSCEDAW and Prof. Martha Davis of Northeastern University College of Law and Minnesota Advocates for Human Rights.