



UNITED NATIONS ASSOCIATION
OF THE UNITED STATES OF AMERICA
Saint Louis Chapter



UNITED NATIONS ASSOCIATION
OF THE UNITED STATES OF AMERICA
Southern New York State Division

UN Universal Periodic Review Stakeholder Report:

United States of America

“Race, Gender, and Criminal Justice Reform”

Submitted: September 21, 2019

The United Nations Association-Saint Louis Chapter
Saint Louis, MO
438 N Skinker Blvd.
Saint Louis, MO 63130
www.una-stl.org

E-mail: Luz Rooney, Vice President, [lzdroyney@gmail.com](mailto:lzdrooney@gmail.com)

The United Nations Association-Southern New York State Division
New York, NY
49 Stone Avenue
Ossining, NY 10562-3713
www.unasny.org

E-mail: George Garland, President, george@unasny.org

UNA-St. Louis is a not-for-profit membership organization dedicated to building understanding of and support for the ideals and vital work of the United Nations among the Saint Louis community and American people. We are dedicated to educating, inspiring and mobilizing Americans to support the principles and vital work of the United Nations, strengthening the United Nations system, promoting constructive United States leadership in that system and achieving the goals of the United Nations Charter.

UNA-SNY is dedicated to building a strong network of global citizens in support of the United Nations. We work hard to inform, inspire and mobilize members of the community to engage with critical global issues central to the work and mission of the United Nations. We include the New York, Brooklyn, Queens, Bronx, Long Island, Mid-Hudson Valley, and Westchester UNA Chapters and groups. The goal of the division is to foster dialogue and awareness in the region, as well as to coordinate with our chapters and the broader UNA-USA network.

A. INTRODUCTION: RACE, GENDER, AND CRIMINAL JUSTICE REFORM

(A1) This joint UPR shadow report submitted from the United Nations Association of Saint Louis (UNA-St. Louis) and the United Nations Association Southern New York Division (UNA-SNY) consultations assessed current standards, gaps, and needs on seven different issues affecting women who are incarcerated:

- Drug Addiction and Treatment
- Reentry and Recidivism
- Children/Teen issues of Incarcerated Mothers
- Parenting from Prison (Expectant Inmates Rights)
- Education and Training Opportunities for Female Inmates
- Incarceration of Girls

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B. METHODOLOGY

(B1) The UNA-Saint Louis Chapter held a UPR Consultation on Race, Gender, and Criminal Justice Reform on August 31, 2019. We invited experts and community partners with firsthand experience on the topic of imprisonment of women, including five community partners of formerly incarcerated women who came out of prison to earn higher education degrees. Many of these women founded non-profit organizations to serve the needs of women facing similar obstacles they themselves faced while in prison. For example, Shawntelle L. Fisher, who became a convicted felon at the age of seventeen for writing bad checks, is Founder/CEO of *The SoulFisher Ministries*, a non-profit organization that provides STEM based after school programs for children with an incarcerated parent. The organization also offers reentry support



for women involved with the criminal justice system. The Consultation included 10 experts, five of whom gave an overview of issues affecting incarcerated women.

(B2) The UNA-Saint Louis consultation included seven community partners that collaborated in six discussion groups to facilitate conversations on the topics listed above. It also included a diverse group of high school and college students, community leaders, non-profit leaders, legal professionals, and members of the general public. Each discussion group included a rapporteur who recorded insights by topic and presented recommendations to the floor.

(B3) UNA-SNYS held its sixth consultation on race, criminal justice, and human rights on July 8, 2019. Forty-four invited experts and community members came together to contribute to a civil society discussion focused on race and criminal justice. Representatives with experience in state and local government along with rights defenders from civil society briefed the participants prior to the discussion. Key topics covered during the consultation included the incarceration of girls and women; mental health and public assistance; and skillsets needed to thrive.

C. Legal Context

(C1) The Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); Convention Against Torture (CAT); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities are human rights treaties with standards that apply to those in prison. The U.S. has ratified the CERD, CAT, and ICCPR. During its second UPR, the U.S. accepted a recommendation to “Take further steps to improve the current conditions of its prisons.” In its first UPR the U.S. accepted a recommendation to “Take appropriate legislative and practical measures to improve living conditions through its prisons systems, in particular with regard to access to health care and education (1).

(C2) There is an extensive international legal framework specifically governing the treatment of persons in detention centers. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955) adopted a Standard Minimum Rules for the Treatment of Prisoners. These rules highlight the medical rights of prisoners, including special populations such as pregnant inmates and inmates with psychiatric medical needs. They provide special provisions for female inmates as well as specific procedures for detaining pre-trial inmates. The rules emphasize the promotion of the social health of inmates, including facilitating prisoners maintaining and improving relationships with their family members. Prisons are expected to offer opportunities for inmates to pursue relevant

educational and vocational training programs. Most importantly, the rules specify that all minimum standards shall be administered without discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (2)

(C3) Prisoners in the United States are protected by the Eighth Amendment of the United States Constitution which prohibits cruel and unusual punishment. Insufficient medical care, racial discrimination, social isolation, overcrowding, and unsanitary prison conditions have the potential to cause undue harm to inmates and may constitute cruel and unusual punishment. Additionally, the Equal Protection Clause of the Fourteenth Amendment applies to prison inmates, protecting them against unequal treatment on the basis of race, sex, and creed. The Model Sentencing and Corrections Act provides that a confined person has a protected interest in freedom from discrimination on the basis of race, religion, national origin, or sex. (3) Our consultations have found that these freedoms from discrimination are not being universally upheld for persons in the U.S. criminal justice system.

D. DRUG ADDICTION & TREATMENT

*Article 27 of The Universal Declaration of Human Rights declares that **Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.***

(D1) In the U.S. the overcriminalization of drug use and possession contributes to 1 million arrests each year. Women are more likely than men to be convicted for drug related offenses with 48% of women reporting drug use before their incarceration.

(D2) Article 25 of the Universal Declaration of Human Rights declares that “Everyone has the right to ...medical care and necessary social services” for the “health and wellbeing of himself and of his family.” (4) Studies conducted by the National Institute of Justice have found that more than half of both male and female arrestees have tested positive for drug use, with cocaine being

the main drug of abuse. Despite the availability of effective drug treatments in prisons, very few of these programs are available to large number of offenders. (5) This practice that affects more than two million inmates constitutes a violation of human rights. Furthermore, prison medical treatments are not free, and they come at a cost to inmates who are too poor to afford it or who have no health insurance.

(D3) Recommendations to the United States:

- Decriminalize drug addiction in order to treat it as a public health issue rather than a criminal issue.



- Evaluate decriminalization programs that have worked in other parts of the world (e.g. Portugal Decriminalization program) (6) to offer rehabilitation treatment and counseling rather than jail time, bail penalties, and criminal records.
- Take steps to eliminate the for-profit system of the American prison system.

E. REENTRY & RECIDIVISM

(E1) The U.S. jails 2.9 million women each year. (7) Most of these women are charged with nonviolent offenses related to either property or drugs. Trauma (80% women have reported some form abuse in their lives), mental health issues, poverty, lack of education, and single parenthood are factors that contribute to women's incarceration in the first place. There are also more than one million women under the supervision of the U.S. criminal justice system. (8) Many of them face significant struggles after incarceration, specifically access to employment, housing, education, and readiness to acclimate back to their families and society. The criminal justice system has rehabilitation programs that were developed for male inmates. Without programs that are gender specific, these women have increased risk of getting caught in the vicious cycle of reoffending and reconviction once they are released. Furthermore, in the U.S., recent jurisprudence has indicated that the Thirteenth Amendment allows for forced labor at low or no wages as a form of punishment for prisoners. This is an obstacle that contributes to the cycle of incarceration, as employment after release is critical for successful reentry into society. According to the Sentencing Project, "The United States is the world's leader in incarceration. There are 2.2 million people in the nation's prisons and jails – a 500% increase over the last 40 years." (9)

(E2) UN standards and norms, "Mandela Rules", related to crime prevention recommend rehabilitation programs for offenders to ensure successful reintegration into society. The Mandela Rules recommend that rehabilitation programs need to include education, vocational training, work, and treatments based on individual needs with the objective of reducing recidivism and improving public safety. (10)

*"It is said that no one truly knows a nation until one has been inside its jails.
A nation should not be judged by how it treats its highest citizens, but its lowest ones."*

- Nelson Mandela

(E3) Professor Beth Huebner from the Department of Criminology and Criminal Justice at the University of Missouri-St. Louis raised the issue that women in the U.S. are being incarcerated before they are found guilty. Many of them remain in jail

because they cannot afford to pay bail. The median income for women in detention is \$11,071 (nearly 30% less than men), and the median bail amount for felonies is \$10,000. This disparity makes it impossible for women to stay out of system. The Bail Project, a national revolving fund designed to help people await trial from their own homes, presents an alternative to this flawed system. (11)

(E4) Recommendations to the United States:

- Support skill-based assessment of inmates in order to ensure each individual is placed in an education or training program that is relevant to their abilities.
- Provide adequate resources for skills training that is applicable to the job market and prepares inmates for jobs with higher wages.
- Implement nationwide standards raising employment standards and wages in prison facilities.
- Partner with civil society to raise public awareness of the bail crisis.

F. CHILDREN/TEEN ISSUES OF INCARCERATED MOTHERS

(F1) Women are the fastest growing segment in the U.S. prison population. Estimates indicate that 80% of incarcerated women are mothers to children under age 18. Parenting for incarcerated mothers is very difficult as most jails do not have policies that encourage visits. Prisons and jails have limited visiting hours that usually fall at times when children are in school or when their caregivers are at work. Jails are usually located far away from a mother's nearest family member making it even more difficult for a mother and her children to stay connected. The jail environment and restrictions during visits, usually through a glass and with an armed guard present, makes it difficult for a mother and child to interact. In addition, mothers experience stress related to the violation of privacy they faced as they are physically patted down or strip searched before they meet with their visitors.

(F2) Parental incarceration has a negative effect not just on the children left behind but on the entire family unit. Between 1991 and 2007, the number of children with incarcerated parents increased by 80%. Today there are 1.7 million children that have a parent in prison. Incarcerated parents reported living in households that received public assistance (40%), and where there was a family member who had been incarcerated before (58%). With 52% of incarcerated mothers reporting that they were the primary financial support for their children prior to incarceration, it is not hard to imagine how disruptive the incarceration of a mother is to her children's wellbeing and future success. (12)

(F3) The Committee on the Rights of the Child recommends that the rights of a child during arrest and pre-trial of a parent and/or a primary caregiver need to be considered to avoid trauma, and to respect the child's dignity. The Committee on the Rights of the Child has protocols and recommendations for the rights of children of incarcerated parents. This includes visiting rights, the right to know the whereabouts



of their parents, the right to privacy for child-parent interaction, and the right to social services to help them cope with the trauma of having a parent incarcerated.

(F4) To evaluate firsthand experience on the issue, we heard the testimony of Michaela Sanders, a 20-year old woman whose mother is serving a 15-year prison sentence. Michaela reported receiving transportation assistance from the Girl Scouts Beyond Bars Program which helped her stay connected with her mother with regular visits as a girl. This program supported her psychologically and emotionally to deal with the trauma and the shame of having her mother in a prison.

(F5) Recommendations to the United States:

- Support and collaborate with civil society programs that allow children to stay connected to their mothers or grandmothers when they are incarcerated and that mentor them with education needs.
- Institute nationwide standards that allow more visiting hours, free phone calls, and partnerships with school programs and non-profit organizations that can support the children of incarcerated mothers.
- Implement national standards that assess the location of the mother’s family during jail placement so that she can stay in contact with her children.
- Institute a federal grant program to fund transportation needs of many families that can’t afford the trip to visit a mother who is in prison.

G. PARENTING FROM PRISON (EXPECTANT INMATES RIGHTS)

(G1) The topic of the rights of expectant inmates was discussed by Missouri State Senator Jamilah Nasheed at the UPR consultation in St. Louis. She denounced the shackling of pregnant incarcerated women saying, “No pregnant woman should ever be shackled, even if she is incarcerated. It needlessly threatens her life and is a form of slavery. This horrible practice must end now.” (13) This practice which has long been used for inmates while being transported for medical care and during medical care has not taken into consideration the needs of female prisoners nor the harmful consequences to pregnant inmates who are shackled before labor, during labor, and immediately after labor. (14)

“No pregnant women should ever be shackled ...

[it] is a form of **slavery...**

This horrible practice must end now.”

Missouri State Senator,
Jamilah Nasheed,
September 12, 2019

(G2) Shackling is defined as “any physical restraint or mechanical device to control the movement of a prisoner’s body or limbs, including handcuffs, leg shackles, and belly chains.” This practice has been condemned by the American College of

Obstetricians and Gynecologists (15), and it is a violation of the Eighth Amendment, “...the right to freedom from cruel and unusual punishment.” It also violates the UN Bangkok Rules on Women Offenders and Prisoners, which prohibits the restraining of pregnant women, requires that women be treated with dignity, and prohibits solitary confinement for pregnant women. (16)

(G3) In the U.S., 22 states prohibit the practice of shackling pregnant prisoners, but the practice continues in most correctional facilities, even though studies have found that most incarcerated women are nonviolent offenders (63% at the state level, and 96% at the federal level. (17) The practice is inhumane and unnecessarily dangerous for both mother and child. This is clearly a violation of human rights.

(G4) Recommendations to the United States:

- Institute a full ban on the shackling of female inmates, especially during labor, a practice which threatens the safe delivery of a baby and interferes with medical emergency situations such as a Cesarean Section.
- Ensure correctional facilities are equipped to assist with the special needs of pregnant women in prison and their babies.
- Implement a universal ban on solitary confinement of pregnant inmates.

H. EDUCATION & TRAINING OPPORTUNITIES FOR FEMALE INMATES

(H1) Article 26 of the Universal Declaration of Human Rights states that “Everyone has the right to education” and that “Education shall be directed to the full development of the human personality” (18). Article 77 of the UN Minimum Rules for the treatment of Prisoners specifically calls for “education of all prisoners,” making “compulsory” the “education of illiterates and young prisoners.” (19).

(H2) In 2013, the U.S. Department of Corrections partnered with the U.S. Department of Labor which offers apprenticeship programs for offenders in federal and state correctional institutions. The program combines paid work in a structured on-the-job training with classroom-based technical instruction. However, these programs have limited applicability to the labor market. Such programs also have limitations because inmates can only perform certain jobs within prison facilities. Also, they are designed with the male population in mind. Of the 64% of women who enter prison without a high school diploma, only 16% received a GED diploma while incarcerated. In Missouri, the St. Louis University Prison Program is the only program that offers college preparatory opportunities for women. Studies have shown that inmates who participate in correctional education programs have 43% less chance of recidivating and are better equipped to reenter society.

(H3) With nearly 10 million adults entering their communities from federal and state prisons in the U.S., programs like the federal Pell Grant would benefit women and society in general by helping individuals secure better paying jobs, which is critical



for recovery. However, the Pell Grant was banned for such populations in 1994. In 2015, President Obama introduced the pilot program, Second Chance program for Pell grants. In its third year of implementation, the program has reached about 10,000 students through 64 participating colleges. The problem, however, is that every year the budget for this program needs to be approved, and pilot programs are not evaluated in time for Congress and the public to understand the impact this federal grant is making in prisoners' lives and the community at large.

(H4) Recommendations to the United States:

- Ensure financial aid for college courses for incarcerated individuals on a permanent basis.
- Support education, vocational training, and other programs designed for incarcerated women.
- Form partnerships with other grassroots organizations, health service providers, and universities to work on education, reentry processes, and programs that better equip formerly incarcerated women to successfully reintegrate with their families, their communities, and society at large.
- Reevaluate the occupational licensing laws that block female ex-offenders from securing employment.

I. BIAS IN INCARCERATION OF GIRLS

(J1) Studies indicate that incarceration rates for girls of color are higher than incarceration rates for white girls. For example, African American girls are more than three times as likely to be incarcerated as white girls (20).

(J2) Recommendations to the United States:

- Support research into social issues behind the increased incarceration of girls of color, including cases pertaining to sex-trafficking.
- Establish girls' courts and therapeutic courts to address issues from a rehabilitative, not punitive, perspective.

Endnotes

1. UPR-info.org. Database of Recommendations. See recommendations from Japan (Cycle 2) and Austria (Cycle 1).
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8. The Sentencing Project in 2019, "Incarcerated Women and Girls." <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>
9. The Sentencing Project in 2019, "Criminal Justice Facts," <https://www.sentencingproject.org/criminal-justice-facts/>
10. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)(General Assembly resolution 70/175, annex), preliminary observation 1 and rule 4
11. May T. Kate, "The Hidden Victims of the Bail Crisis? Women," April 12, 2019 (<https://youtu.be/3B24RaqA33k?t=857>)
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13. Senator Jamilah Nasheed (5th Senatorial District), "Quote Approval: Letter to UNA-St. Louis, September 12, 2019. An official letter confirming this quotation from Senator Nasheed has been included as an annex to our joint UPR report.
14. Dignam, Brett, and Eli Y. Adashi. "Health Rights in the Balance: The Case Against Perinatal Shackling of Women Behind Bars." *Health and Human Rights* 16, no. 2 (2014):13:23
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17. Carson E. Ann, Prisoners in 2016. Washington D.C. Bureau of Justice Statistics, 2018
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