

1. Promotion and Protection of Human Rights

1.1 General Remarks

From 1794 until 1899 Prussian law allowed for persons who would today be described as intersex to freely choose their gender upon turning eighteen. However, as Germany updated its legal code at the turn of the 20th century, it took away this option, even as attitudes toward sex and gender diversity began to soften within German society. Furthermore, Prussian and then German law maintained a ban on homosexual behavior among men, which the Nazi regime intensified.

Among the victims of World War II were not only gay men but also lesbians and people who today would be called intersex, transgender, and/or non-binary. The motivation for persecuting these people lay in the nonconformity of their gender expression vs. prevailing norms. Beginning in 1933, these people (especially gay men and straight trans women) were systematically arrested (Penitentiaries in Hamburg, Bremen ...), convicted, deported, subjected to medical experiments (especially intersex people in Auschwitz), castrated, and murdered at concentration camps such as Mauthausen, Dachau, etc., or through euthanasia campaigns. This is the situation discovered by the Allied soldiers who liberated these camps in 1945.

In response to these conditions, a committee headed by Mrs. Eleanor Roosevelt, the wife of US President Franklin D. Roosevelt, wrote the Universal Declaration of Human Rights:

Article 2.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

The United States of America is one of the founding Members of the United Nations (October 24, 1945).

- 1.1a Following the liberation of the concentration camps and founding of the UN in 1945, inmates convicted of homosexual activity were (in general) reimprisoned and forced to carry out the rest of their sentences. Furthermore, as American soldiers returned home after the war, they witnessed further discrimination on account of race, sexual orientation, sex/gender, etc. As the liberator of a large part of the world from oppression, the United States has a special responsibility to raise the bar with respect to individual liberties and civil rights, and the United States made much progress during the Civil Rights movement and later, especially with respect to equal protection for women, the removal of many discriminatory anti-LGBTIQ+ laws, and improved treatment of racial minorities. Nonetheless, the United States has continued to fall short or even regressed in several key areas related to sex/gender (including equal treatment for LGBTIQ+ persons), ensuring equal access to medical care, ensuring the rule of law in criminal cases, ensuring freedom of travel or movement, and living up to its promise as the land of opportunity for immigrants and native-born Americans.

1.2 Implementation of International Human Rights Obligations

1.2a Ratified

CCPR - International Covenant on Civil and Political Rights

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

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1.2b Signed but so far not ratified

CRC - Convention on the Rights of the Child

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CRPD - Convention on the Rights of Persons with Disabilities

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2.0 Challenges and Recommendations

2.1 Equal protection

Since the last UPR process, the US federal government has seen significant backsliding on its enforcement of equal protection for sex/gender minorities, racial minorities, and others. The federal government and individual officials have deprioritized enforcing existing civil rights laws and has issued new directives such as so-called 'religious freedom' exemptions to civil rights laws, the ban on transgender people in the military, guidance to discriminate against transgender students, and hateful rhetoric against transgender people, racial minorities, religious minorities, and immigrants. This environment has led to an apparent increase in hate crimes—while consistent data for the whole US do not exist, data for individual cities such as Seattle report a 400% increase in hate crimes from 2012-2018, and there have been several high-profile terrorist incidents targeting religious and racial minorities (e.g. the burning of Jehovahs' Witness Halls in the Puget Sound region, the Pittsburgh and Poway Synagogue Massacres, the El Paso shootings).

To restore progress on equal protection, we recommend that the US government

- 2.1a Implement a federal law (the Equality Act) protecting LGBTIQ+, non-binary, and gender nonconforming people from discrimination in employment, housing, education, and business.
- 2.1b Ensure that this federal law guarantee equal protection (following the 14th amendment of the US constitution) also for minors, parents, refugees, detainees, migrants, persons of all racial and ethnic backgrounds, and persons with disabilities.
- 2.1c Investigate and prosecute all types of hate crime against LGBTIQ+ people, including setting up a special commission within the FBI to coordinate efforts with state, local, and law enforcement.
- 2.1d Fully fund the investigation of Missing and Murdered Indigenous Women (MMIW), including setting up a special commission within the FBI to coordinate efforts with state, local, and tribal law enforcement.
- 2.1e Reinstate the Voting Rights Act and instate universal voter registration, to ensure equal access to voting rights, and specifically to ensure that the 15th Amendment is enforced.
- 2.1f Reverse the newly-imposed ban on transgender people serving in the US military.
- 2.1g Pardon all persons who were punished under Don't Ask Don't Tell, UCMJ Article 125, or DOD Directive 1332.14, and reclassify their discharges, when there is no other impediment to doing so, as honorable discharges.
- 2.1h Support athletes of all ages, sexes, and genders (including intersex, trans, and non-binary persons) in sports.
- 2.1i Ensure full access and recognition also for minors, students, and persons with disabilities.
- 2.1j In the United States Census 2020 and in future censuses and surveys, allow for 4 choices of sex (gender): female, male, diverse (X) and undeclared (empty space), and allow for these choices to be nonexclusive.
- 2.1k Reverse so-called 'religious freedom' exceptions to nondiscrimination laws.

2.2 Documentation and travel

In the United States, the individual states control the issuance of IDs and related documentation, while the federal government enforces a set of standards through the Real ID Act, in addition to issuing passports. At the state level, some states (such as California) allow for a third-gender option on IDs and birth certificates based on the simple attestation of the applicant, while Ohio and Texas do not allow birth certificates to be changed at all, and other states have unclear or stricter policies for amending gender markers on drivers' licenses. In addition, the US federal government has different requirements to amend gender markers depending on the situation (Social Security cards, passports, etc.) and does not recognize genders outside of the binary. This inconsistency also pervades the government's treatment of citizens in everyday situations, especially in security screenings (airports, federal offices, etc.).

To ensure consistently high standards throughout the US and to make it easier to travel, we recommend that the US government

- 2.2a Institute a third and fourth gender designation on all US passport and identification documents, namely an X and empty option, in line with the requirements of the ICAO (the international air traffic organization). The choice of sex or gender designation shall in all cases be made through self-attestation without the need for further documentation.
- 2.2b Modify the Real ID act to mandate a third and fourth gender option for all state IDs that are to be accepted as federal IDs. [f/m/x/]
- 2.2c Pass antidiscrimination legislation requiring states to modify birth certificates and identity documents according to attested gender.
- 2.2d Pass legislation to remove gender or sex from all documents where gender or sex is not strictly necessary.
- 2.2e Implement changes to security procedures at airports, border crossings, etc., to ensure privacy for all people no matter what their sex or gender. This includes ensuring that metal detectors, scanners, etc. can operate equally effectively on bodies of all shapes and sizes.
- 2.2f Invest in continuing education on reducing bias and improving mechanisms to accommodate gender diversity, for the TSA and third parties.

2.3 Criminal justice reform

Since the last UPR, the US has made mixed progress on criminal justice reform, including the prioritization of violent vs. nonviolent crimes. Nonetheless, it has continued to engage in practices that represent significant violations of constitutional and international norms, and it has continued to victimize populations such as those engaged in sex work. Furthermore, progress at the federal level has stalled with respect to raising nationwide standards for police-community relations (de-escalation training, police accountability, and policies to combat the unequal treatment of racial minorities).

To improve the rule of law and ensure the equal protection of all persons under the law, we recommend that the US government

- 2.3a Close all privately owned and/or operated prisons.
- 2.3b End the practice of solitary confinement, which represents cruel and unusual punishment (Amendment 8 of the US Constitution).
- 2.3c Ensure that all persons in federal, state, or local custody receive all necessary medical care, including treatment for HIV, gender dysphoria, or hormone replacement therapy.
- 2.3d House incarcerated prisoners by the gender with which the prisoner identifies.
- 2.3e Institute strict policies to eliminate prison rape, both by other prisoners and by persons in authority.
- 2.3f Decriminalize sex work on the part of sex workers.
- 2.3g Substantially increase the investment made in investigating and prosecuting violent crime, particularly homicides and assaults committed against racial and ethnic minorities, LGBTIQ+ persons, and women.
- 2.3h Invest in de-escalation training and policies for police officers.
- 2.3i Institute credible mechanisms to review cases of misconduct by police officers, to remove low-performing officers from duty, and to prosecute crimes committed by police officers.

2.4 **Medicine and health care**

Since the last UPR, the federal government and individual state governments have attempted to remove access to health care for people with preexisting conditions, reduce access for transgender people and people seeking family planning services, and remove federal aid for health care for low-income people (the attempted repeal of the ACA). These actions threaten to reverse improvements in the quantity and quality of health care coverage across the US, particularly for vulnerable populations such as transgender people and people with HIV.

To ensure consistent and high-quality access to health care, we recommend that the US government

- 2.4a Ensure that comprehensive zero-deductible health care is available to all residents, through some combination of public and private insurance, where the cost of a policy is capped at a specific percent of income.
- 2.4b Ensure that all health insurance policies cover reproductive health, mental health, sexual health, HIV, and gender-related health, including but not limited to access to counseling, hormone therapy, and surgeries according to the self-determined wishes of the patient.
- 2.4c Ensure that all health care providers are educated about applicable nondiscrimination law, including laws that prohibit the refusal of health care to persons because of actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.
- 2.4d Support the depathologization of sex and gender diversity (“Disorders of Sex Development“, DSD) within the DSM, in line with changes being made to the ICD 11.
- 2.4e Ban nonconsensual sex reassignment surgeries or the sterilization of infants and minors (“Intersex Genital Mutilation“ (IGM)).
- 2.4f Educate health care providers, families, and educational institutions on gender diversity, including but not limited to, the lived realities of Intersex, Transgender, and non-binary people. This education includes education about applicable nondiscrimination laws.
- 2.4g Ban all advertising and provision of “conversion therapies“ intended to influence a person's sexual orientation, gender identity or gender expression, under relevant statutes related to mail and wire fraud.

2.5 **Employment and unemployment**

Since the last UPR, the US economy has continued to recover from the Great Recession. Nonetheless, there are still gaps that keep LGBTIQ+ people and immigrants from realizing their full economic potential.

To close these gaps, we recommend that the US government

- 2.5a Develop a pilot project for educating, retraining, and reintegrating LGBTIQ+ people who have experienced long-term unemployment, to reduce unemployment rates and increase the level of economic stability in this community.
- 2.5b Implement a federal law to recognize international occupational qualifications, based on ISCED 2011, to ensure that occupational qualifications are transferrable across states and countries.

2.6 Immigration and due process

Since the last UPR, the new administration has adopted a hostile tone toward immigrants, from deploying hateful language to reducing the numbers of asylees and legal immigrants (such as H1Bs) and closing down USCIS offices. In addition, the administration has adopted a cruel policy of separating immigrant families, which has lasting traumatic effects on parents and children alike. The US government has also increased its enforcement activities throughout the US, and it has erected concentration camps for children and those seeking asylum. These camps are characterized by overcrowding, a lack of access to adequate nutrition, sanitary facilities, and medicine, and the breakdown of due process and the rule of law. This policy of calculated cruelty and lawlessness toward immigrants, particularly non-white immigrants, represents a human rights emergency.

To restore its standing among the community of civilized nations, we recommend that the US government

- 2.6a Adhere to the Convention Relating to the Status of Refugees and to existing US law in the processing and treatment of refugees, in particular, by accepting refugee applications under any situation in which such an application is legal, and adjudicating these applications in a speedy and efficient manner, with due process.
- 2.6b Immediately end the family separation policy at the southern US border; immediately reunite all families separated by this policy; and prosecute those responsible for the continuing defiance of the June 26, 2018 order *Ms. L., et al. v. U.S. immigration & Customs Enforcement, et al.*, Case No. 18-cv-0428 (S.D. Cal. June 26, 2018).
- 2.6c Immediately close all immigration detention/concentration camps that are not directly administered by the federal government as part of the federal prison system, such as privately-owned detention centers.
- 2.6d Immediately release all persons from federal custody (including immigrants) who are not charged with a federal felony.
- 2.6e Implement comprehensive immigration reform to ensure that persons already legally living and working in the United States may continue to legally do so, and to regularize the status of persons living in the United States without documentation over a longer period of time, particularly the so-called DREAMers.
- 2.6f Stopping the process of closing international USCIS offices, and re-open the ones that haven closed. Open additional offices across the US to clear existing and future backlogs, within no more than one hour's travel for each applicant.