

United States of America

Submission to the UN Universal Periodic Review April 2010

Ninth Session of the UPR Working Group of the Human Rights Council

22 November – 3 December 2010

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Organizational Endorsements:

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Executive Summary

This joint submission provides information under sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:

- Under Section B, this submission raises concerns over the failure to enforce domestic legislation to promote the right to decent work for racial and ethnic minorities and women.
- Under Section C, the report highlights issues of concern that result in disproportionately high unemployment and underemployment rates for people of color and women.
- Under Section D, the report makes a number of recommendations for action by the United States government.

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Introduction

This submission focuses on the over-representation of women and racial and ethnic minorities in unemployment, underemployment, and poverty, and calls on the government to take specific steps to create employment opportunities for these groups.

B. Normative and institutional framework of the State

1. Review and amend the institutional framework for promoting the human right to work

Framework has failed a disproportionate number of racial and ethnic minorities and women

The United States government pursues a variety of policies designed to expand employment opportunities and reduce unemployment at the aggregate level. It also enforces a range of statutory and Constitutional protections designed to secure workplace rights, and operates a variety of programs designed to expand employment opportunities and combat poverty among vulnerable population groups. The problem with this institutional framework is that it has failed to achieve any lasting progress in securing either the right to work or the right to income security in the United States over the past several decades. While progress has been achieved in securing some aspects of the rights in question for some population groups, retrogression in other areas has more than counterbalanced these positive trends. Fairly judged, the United States can claim no overall progress since the early 1970s in securing either the right to work or the right to income security. This failure is particularly evident for African Americans and Latinos, as well as for women, and calls into question the adequacy of its institutional framework for achieving compliance with its human rights obligations in this area.

- **Employment promotion measures have not yielded a sufficient number of jobs for jobseekers:** The United States has acknowledged its obligation to strive for “maximum” or “full” employment in the Employment Act of 1946¹, and more explicitly in the Full Employment and Balanced Growth Act of 1978.² Both pieces of legislation highlight the importance of decent work in the promotion of a prosperous economy in which economic stability and well-being may be enjoyed by all. More recently, the American Recovery and Reinvestment Act (ARRA) has created and saved jobs, and extended benefits to vulnerable populations, but did not employ direct employment programs to create new jobs. The chronic job shortage in the United States not only indicates that these measures did not realize their goal of full employment—to create the number of jobs needed to employ all able and willing workers,—but also that the government has failed to meet obligations in the United Nations Charter, and understandings stemming from Article 22-25 of the Universal Declaration of Human Rights, and Articles 6-11 of the International Covenant on

Economic, Social and Cultural Rights. Additionally, the failure of ARRA to target vulnerable populations in job creation does not reflect the government's obligations under articles 1(4) and 2(2) of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) which *inter alia* mandates the use of affirmative programs to improve employment opportunities for disadvantaged racial minorities.

- **Anti-discrimination laws do not fully comply with ICERD:** The United States has a number of laws that protect against discrimination in employment. However, the definition of discrimination in current law does not meet the standard in Article 1 (1) of ICERD, and is inadequate in addressing indirect discrimination resulting from policies and practices that appear neutral but put people of particular racial, ethnic or national origin at a disadvantage compared with other persons in the enjoyment of the right to work. For example, most state laws allow employers to refuse to hire people with a criminal record including people who were arrested but never convicted.³ Given the persistent practice of racial profiling, and disproportionate number of arrests based on race, this practice has a disproportionate negative effect on African Americans and the current laws are insufficient to protect them. Furthermore, Title VII of the Civil Rights Law of 1964, which prohibits employment discrimination, does not apply to employers with less than 15 employees, and thus sectors that tend to have fewer employees are de facto excluded.⁴ This includes domestic workers, the majority of whom are women and racial minorities.
- **Insufficient workplace accommodation for pregnancy and parenting:** The Pregnancy Discrimination Act offers incomplete protection for pregnant women in the workplace. Because federal courts have interpreted the Act narrowly, there are many allowable grounds to fire a pregnant worker.⁵ For example, the Act does not require an employer to accommodate a doctor's order instructing a pregnant worker not to lift heavy objects. The employer can fire the worker instead. Furthermore, the United States is the only industrialized country with no mandated maternity leave policy. The Family and Medical Leave Act guarantees up to 12 weeks unpaid leave for some workers, but because it is unpaid, many workers cannot afford to take advantage of it. Only 6 percent of all employees in firms with fewer than 100 employees receive any paid family leave.⁶ In all, the poor protection and accommodation for pregnant workers and mothers has a disproportionate impact on low-wage workers, and African American and Latina women.⁷
- **Federal labor laws exclude many low-wage workers:** Domestic workers, agricultural workers, and independent contractors—workers who are often low-wage, and predominantly women and racial/ethnic minorities in the case of domestic workers—are unfairly exempt from the full protection of labor laws creating uneven standards across different labor sectors.⁸ The Fair Labor Standards Act (FLSA), which establishes a national minimum wage and overtime pay guidelines, excludes live-in domestic workers, as well as home care workers such as workers who assist elderly and disabled persons with personal and household duties.⁹ As a matter of policy, the Occupational Safety and Health Act (OSHA) also excludes domestic workers, depriving them of the right to a safe and healthy work environment, among other rights.¹⁰ Furthermore, because labor laws assign rights to “employees” —a status that is very narrowly defined— employers often misclassify their

employees as independent contractors or subcontractors denying them workplace protections.¹¹

- **Inadequate protection of the right of association:** The National Labor Relations Act (NLRA) is intended to encourage collective bargaining, however its provisions only apply to the private sector, offer inadequate protection for workers, and are poorly enforced. In violation of obligations in article 22 of the International Covenant on Civil and Political Rights, there are five states—North Carolina, South Carolina, Georgia, Texas and Virginia¹²—that completely prohibit collective bargaining in the public sector. In North Carolina, where the ILO has issued a decision asking the federal government to take steps to repeal the ban on collective bargaining¹³, groups contend that the ban on collective bargaining¹⁴ has made it difficult to combat race and sex discrimination in the workplace. Women and African-Americans are overrepresented in North Carolina’s low-wage state jobs.¹⁵ In one example of workplace harassment at a North Carolina Department of Transportation maintenance shop with African American workers, a noose—which has long been a symbol of racially motivated violence—was hung at the worksite where workers were organizing a union chapter.¹⁶ This is not an isolated incident; however there is no formal, institutionalized process to monitor other occurrences, with some level of anonymity, such as was provided by the U.S. Commission on Civil Rights in the late 1950s with respect to voting rights.

C. Promotion and protection of human rights at the national level

1. Positive Developments

- **Healthcare reform:** Passage of the Patient Protection and Affordability Act in March 2010 marked a historic and laudable moment in the United States. This Act will guarantee access to medical insurance for an estimated 30 million people who now lack such access, including “lawfully present” immigrants. However, even with passage of this Act, millions will still remain uninsured. In particular, undocumented immigrants are excluded from coverage, and many low-income documented immigrants will have delayed access to coverage under the new bill. The bill also fails to treat health care as a right which the government is accountable for fulfilling.
- **Lilly Ledbetter Fair Pay Act:** Signed into law in 2009, this Act was a commendable effort by the government to remedy loopholes in existing legislation regarding pay disparities between men and women. The Act relaxed the statute of limitations, making it easier for workers to seek justice for pay discrimination they have experienced because of their sex.
- **American Recovery and Reinvestment Act (ARRA):** ARRA was estimated to have created 2 million jobs a year after its passage in 2009, and is projected to save or create 3-4 million jobs by the end of 2010. ARRA is a positive step towards filling the need for jobs, but will still generate less than 20 percent of the total jobs needed.¹⁷ Moreover, it does not contain any provisions to target job creation to groups disproportionately represented in unemployment, nor are States and localities that are receiving federal money as a result of

the Act required to collect race or gender disaggregated data on employees in order to assess how effectively funds are alleviating unemployment and underemployment for low-income women and racial and ethnic minorities.

2. Adopt employment policies that address the economy's endemic shortage of jobs

Employment-promotion policies have failed to create sufficient work opportunities

Although productivity and national wealth have steadily increased over the past several decades, unemployment rates and poverty rates have shown no long-term tendency to decline.¹⁸ The current high unemployment rates underscore a severe jobs shortage. In February 2010, the U.S. Bureau of Labor Statistics indicated that there were approximately 13.3 million unemployed job seekers competing for 2.7 million job vacancies in the economy.¹⁹ In other words, the economy lacked over 10 million jobs compared to the number of jobless individuals seeking work. This is a conservative figure and does not include involuntary part-time workers and persons who want a job but are not actively looking for one. ARRA has made some progress in creating employment largely by subsidizing demand for goods and services produced by some industries; but at the same cost of \$787 billion for the ARRA, a direct jobs program could have created 5 times as many good jobs.²⁰

- **Job shortages impact people of color and women disproportionately:** The job shortage has hit groups that are vulnerable to discrimination and social exclusion especially hard, specifically African Americans and Latinos, and women, (as well as immigrants and persons with disabilities). These groups tend to have additional barriers to accessing work such as low-education levels. The unemployment rate for African Americans is roughly double the rate for white Americans. This is the same ratio that Congress deemed unacceptable when the Civil Rights Act of 1964 was enacted. For Latinos and women who are heads of households, the unemployment rate is about two-thirds higher than for white Americans.²¹ The problem is more pronounced among youth. African American youth job seekers between 16 and 19 years have an unemployment rate as high as 43.8 percent (compared to 26.4 percent for all job seekers in that age bracket). In addition, one in four African American and Latino workers is underemployed i.e. they cannot find the amount of work they want, and this number is on the increase even as job loss slows down.²²

Greta Philips of New York City is an African American woman who has been unemployed since September 2008 after losing her job in the healthcare industry. Greta has over ten years of experience in the industry, but has been unable to find employment and is now looking for work in any field. Despite having participated in a job training program and subsequently being hired by the City, she was told after two months that her employment would not be extended due to a lack of funds in the City's budget. Greta has explored many avenues in her job hunt, including searching outside of her field of experience, participating in a job training program, and accepting an unpaid internship. She has depleted all of her personal savings, and is set to exhaust her unemployment benefits by April 2010. Her story represents the reality for so many women and people of color in the United States, groups that are also over-represented in the number of chronically unemployed.²³

3. Ensure that all jobs meet decent work standards

The lack of decent work is a severe problem for racial and ethnic minorities and women

The problem is not simply the unavailability of jobs, but also that many of the jobs available do not meet decent work standards, i.e. they are not “good jobs” that provide a living wage, health and retirement benefits, and guarantee collective bargaining and freedom of association rights. The procurement of a good job is one of the most direct paths out of poverty for most workers.

- **Failure to provide a living wage:** Racial and ethnic minorities and women are overrepresented in low wage occupations, and consequently are disproportionately living in poverty despite being employed.²⁴ In Atlanta, Georgia, Marilyn Winn is a single woman supporting her mother and grandson on minimum wage jobs including temporary work as a driver for an auto auction and cleaning restrooms at a stadium. She does not have guaranteed hours, and works anywhere from 5 to 30 hours per week, with no benefits. As a result of the low wages, she cannot afford to live on her own and is forced to live with a friend. Her story is the same for countless others. Nationally, the percentage of Latino and African American workers earning poverty-level wages is 41.8 and 34 percent respectively, while the rate for White American workers is significantly lower at 21.9 percent.²⁵ Moreover, employees including home health care workers, predominately women are not even guaranteed minimum wage payment.²⁶
- **Lack of healthcare for workers:** Despite the laudable passage of healthcare reform, many United States residents, primarily undocumented immigrants, are excluded from its coverage. Undocumented immigrants, who are mostly ethnic minorities, are not eligible for federal health programs, and are actually prevented from buying health insurance with their own money by the new reform.²⁷
- **Paid sick leave:** Currently there are no state or federal laws requiring employers to provide paid sick days. Many fields that are traditionally staffed by women, such as nursing, retail, child care, office administration, and food service, do not offer workplace protections such as paid sick days. About 50 percent of full-time private sector workers have no sick days and among low wage workers, a disturbing 79 percent have no access to paid sick days.²⁸ Without guaranteed paid sick days, workers are forced to choose between caring for their health and the health of their families, or the economic instability resulting from losing a day’s worth of wages. A minimum standard of paid sick days would ensure economic stability for families in the event of unexpected illness.
- **Retirement benefits:** The government sponsored social security program provides a guaranteed income to eligible retirees, but needs to be supplemented with other savings such as pension plans in order to meet retirement income adequacy. Yet most employers do not offer pension plans. In private firms with fewer than 100 employees, only 37 percent of all employees are offered pension plans.²⁹ Racial and ethnic minorities and single-female headed households are less prepared for retirement than their white male counterparts.³⁰ Single African American and Latina women have a median wealth that is less than 1 percent

of their male counterparts, and even less when compared to white women—the median wealth for African American and Latina single women is \$100 and \$120 respectively, and \$41,000 for single white women.³¹

4. Strengthen and expand the social safety net for workers and people unable to work

The current safety net is inadequate and limited in its coverage

The UDHR's article 23(3) calls on governments to ensure the right to an adequate standard of living by all people, including by supplementing low-wages or providing a safety net in the event of unemployment or incapacity.

- **Welfare reform weakened previously existing safety net programs:** With strict work requirements and time limits tied to receipt of benefits, the 1996 welfare reform effectively eroded the previously existing social safety net for people unable to work or find work. This had a disproportionate effect on mothers and children because the vast majority of parents receiving public assistance—through the Temporary Assistance to Needy Families (TANF) program—are single mothers. While the reforms were intended to incentivize single mothers to find work, they ended up leaving many individuals and families with no safety net to catch them in the event of loss of employment; a pronounced problem in periods of extreme work shortage and extended recession such as the present.³²
- **Limited Unemployment Insurance and Disability Protection:** The unemployment insurance system fails to provide benefits to most victims of unemployment. For example, domestic workers who suddenly fall ill or suffer an injury, often do not qualify for unemployment or disability benefits as they are left out of unemployment and workers compensation insurance in many states.³³ In addition, the level of assistance provided to those who do receive benefits averages only about half of their lost income.

5. Address all forms of discrimination in the labor market

The government has failed to protect against discrimination in employment and economic opportunity

Discrimination in hiring persists across the board in the United States. A 2003 study by the University of Chicago and Harvard University confirmed significant discrimination against African-American names in a range of fields including sales, administrative support, clerical services, and customer service. The study found that white-sounding names like Emily Walsh and Brendan Baker were 50 percent more likely to get called for an initial interview than applicants with African-American-sounding names like Lakisha Washington or Jamal Jones for jobs ranging from cashier at a store to managers at a large firm.³⁴ In addition to more direct forms of bias in employment, there are indirect forms of discrimination or patterns of exclusion that create barriers to the full and equal realization of the human right to decent work.

- **Labor segmentation negatively impacts vulnerable groups:** Historic patterns of discrimination in the labor market have had a significant effect on the kinds of jobs that women and racial and ethnic minorities can access. Unfortunately, programs like ARRA

target industries where women, African Americans and Latinos are under-represented. For example, while construction and manufacturing will experience the highest growth as a result of ARRA, African American and Latino men comprise 6.3 and 10.1 percent respectively of workers in this industry compared to 59.4 percent for White men. Latino men have better representation in construction at 23.7 percent, but barriers that have prevented their access to unions means that they are less likely to have a union job in construction compared to their White counterparts who represent 81.5 percent of men working in construction.³⁵ At 30 percent, women are disproportionately under-represented in ARRA targeted industries. White women comprise 8.7 percent of workers in construction, compared to African-American and Latina women who together make up less than 1 percent of those employed.³⁶ The numbers show that unless job creation policies clearly target the most vulnerable segments of workers, the impact and benefit of these policies will be minimal for workers who are experiencing the highest levels of unemployment and underemployment.

- **Barriers to employment for workers with a criminal history:** Barriers to employment are especially marked for people with a criminal history, and being a racial minority only exacerbates this difficulty. A recent study on the effect of criminal records and race on employment show that while criminal records have a significantly negative impact on the ability to gain employment, this effect is even more pronounced for African-American candidates. When deciding between two equally qualified candidates vying for the same position, employers are more likely to choose a white candidate with a criminal record than a black candidate with no record.³⁷ With racial stigmas already putting black candidates at a disadvantage, having a criminal record compounds the issue. This is especially alarming considering that black men are six times more likely to be incarcerated than white men and so are overrepresented among formerly incarcerated persons.³⁸
- **Economic development policies that fail to respect work in communities of color:** Many economic development policies, though well intentioned, end up having a damaging effect on the communities in which they are implemented, often displacing residents, disrupting small businesses, and the livelihood of the employees of those businesses. The victims of poorly designed development policies are residents, workers, and entrepreneurs in communities of color.

New York City has seen its share of poorly designed development policies resulting in job losses for workers of color without compensation or relocation. In 2007, a thriving shopping center known as the Albee Square Mall, in downtown Brooklyn, New York, a primarily working class community of color, was demolished in favor of developing new luxury residences, retail space, and office areas. The destruction of the shopping center resulted in the displacement of 100-200 workers and 50 businesses (along with their economic opportunity) with little eviction notice, no relocation assistance, and arbitrarily distributed compensation. Furthermore, the project will actually result in a net loss of jobs in the area, and the jobs created by the proposed construction will be primarily part-time, low wage retail work. The demolished site has remained a giant hole in the ground for three years as construction on the project stalled. Construction has recently been revived with federal

assistance—a \$20 million tax-exempt Recovery Zone Facility Bond authorized under ARRA.³⁹

Similarly, in the Willets Point area of Queens, New York, a redevelopment plan authorized in November 2008 is resulting in the displacement of low-income, immigrant, Latino workers and small business owners from what used to be a thriving commercial area. The area had thrived for decades despite the lack of vital infrastructure and services from the city government including paved roads, gutters, storm and sanitary sewers, fire hydrants, and snow or municipal trash removal.⁴⁰ The Willets Point redevelopment plan has already resulted in the closing of 15 businesses (11 from direct problems with the city government), and will ultimately displace 250 businesses, 95 percent of which are Latino-owned, and an estimated 1700 workers who are overwhelmingly immigrants, with no compensation and grossly insufficient relocation assistance.⁴¹

D. Recommendations for Action by the United States Government

1. **Set up job creation programs aimed at eliminating the economy’s job shortage and targeting groups with high rates of unemployment and underemployment, in particular communities of color and women. Any job creation program should at a minimum:**
 - a. Provide direct employment particularly in the short-term.
 - b. Create good jobs. Jobs created should pay a living wage, provide health benefits, paid sick leave, and provision for retirement benefit.
 - c. Create employment in distressed communities to employ people in new work that will benefit their communities including restoring the environment, providing child care and tutoring, and cleaning up abandoned houses. Passage of the “Local Jobs for America” Act would be a step in the right direction.
 - d. Ensure gender and racial equity by giving equal priority to sectors that typically hire women, and racial and ethnic minorities.
 - e. Increase the number of transitional jobs for formerly incarcerated.
 - f. Include effective education and job training programs targeting communities of color and women—that connect workers to good jobs.

2. **Ensure a proper social support system is available for workers so that an adequate standard of living may be maintained by low-wage workers and in the event of unexpected unemployment or incapacity by taking steps to:**
 - a. Improve existing social supports by increasing benefit amounts, relaxing eligibility requirements, expanding coverage, and providing full funding for TANF, Supplemental Nutrition Assistance Program, Section VIII housing benefits, child-care benefits, and disability insurance. TANF eligibility requirements should be relaxed to allow for education and training opportunities to recipients.
 - b. Provide a lifeline for jobless workers by extending supplemental unemployment benefits and COBRA health care benefits for as long as it takes to ensure the availability of decent jobs for everyone who wants to work.

- 3. Strengthen administrative infrastructure to eliminate institutional barriers that have traditionally limited racial and ethnic minorities and women from accessing good jobs, and to ensure equal realization of the human right to work.**
 - a. Adopt a Plan of Action for meaningful compliance with ICERD and adopt the same principle in remedying employment discrimination against women and other disadvantaged population groups.
 - b. Strengthen domestic human rights accountability mechanisms by transforming and strengthening of the U.S. Commission on Civil Rights into a human rights institution and improving federal, state, and local government coordination in support of human rights.
 - c. Institute limits on length of time certain criminal offenses stay on an offender's record.
 - d. Issue clear Equal Employment Opportunity Commission (EEOC) guidelines should be issued on the rights of undocumented workers.
 - e. Protect and invest in women and minority owned businesses by redirecting leftover funds from the Troubled Asset Relief Program (TARP) to community banks to lend money to women and minority owned businesses, particularly small- and medium-size businesses in distressed communities.
 - f. Issue new ARRA guidelines that require fund recipients to report employee level data disaggregated by race and gender, and stipulate that federal funding cannot be used directly or indirectly for development projects that displace workers.
 - g. Issue federal guidelines protecting small business and residents in communities slated for development from displacement, and in accordance with the United Nations Guiding Principles on Internal Displacement.
 - h. Extend the coverage of labor protective legislation to all workers by eliminating eligibility-restricting provisions in the NLRA, OSHA, and FFSA, and ensuring specific inclusion of domestic workers, agricultural workers, and independent contractors.

- 4. Expand the legal and legislative framework to protect and ensure employment for groups most vulnerable to employment discrimination including racial and ethnic minorities and women**
 - a. Pass the Civil Rights Act of 2009 as a step towards full implementation of ICERD.
 - b. Institute a national maternity leave policy and strengthen Pregnancy Discrimination Act.
 - c. Pass paid sick leave law.
 - d. Pass the Employee Free Choice Act to enable low-wage workers to bargain for better wages, benefits, and working conditions.
 - e. Pass the Domestic Workers Bill of Rights as precedent setting legislation that would amend existing labor laws to ensure basic benefits and protections for low-wage workers.

Endnotes

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- ⁵ U.S. House. 2009. Education and Labor Committee, Subcommittee on Workforce Protections. Testimony of Ann M. O'Leary, Executive Director of the Berkeley Center on Health, Economic & Family Security at UC Berkeley School of Law: Hearing on The Impact of Women's Growing Participation in the Workforce: "The Shriver Report: A Woman's Nation Changes Everything." 111th Congress, 1st sess., 13 November.
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- ¹⁶ "UE 150 Launches Movement to Win Collective Bargaining Rights for NC's 641,000 Public Sector Workers!" *International Worker Justice Campaign Bulletin*, Vol. 1, Issue 1.
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- ²⁰ Philip Harvey, *Learning from the New Deal* (Presented at the Human Rights in the USA Conference, University of Connecticut, 2009)
- ²¹ U.S. Dept. of Labor, Bureau of Labor Statistics, <http://www.bls.gov/news.release/empsit.nr0.htm> . In February 2010, the national unemployment rate was 9.7%, while it was 15.8% for blacks and 12.4% for Hispanics. For women who are heads of households, the unemployment rate is 12.9%. Bhargava et al., 15
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- ³⁹ Families United for Racial and Economic Equality, information from staff., March 2010
- ⁴⁰ Off Point: The Destruction of Immigrant-Owned Small Businesses and Low-Wage Jobs in the Willets Point Section of Queens. Urban Justice Center. September 2009.
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