



GENDER POLICY JOURNAL

**A Harvard Kennedy School
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EDITORIAL WELCOME

THIS INAUGURAL EDITION of the *Gender Policy Journal*, the successor of the *Women's Policy Journal*, originally founded in 2001, is an affirmation of our editorial team's approach to gender policy. It is intended as a statement of recognition that the discourse on gender policy in institutionalized spaces, like the John F. Kennedy School of Government at Harvard University (HKS), has lagged behind that of progressive gender advocates. Gender policy today must look beyond the binary of gender identity to not just acknowledge but actively uplift the experiences and voices of those most vulnerable to gender-based oppression. Our new mission statement centers systemic gender-based oppression, including patriarchy and white supremacy, and the need to interrogate gender's intersections with other marginalized identities, including but not limited to race, sexual orientation, class, caste, and disability.

For this edition, our editorial team came together to map areas of gender policy and dimensions of identity that we feel are important to interrogate. The themes that resulted from that process include (1) reproductive, sexual, and mental health; (2) incarceration and state violence; and (3) differential values of labor. Some of these themes are undercovered in gender policy more broadly—while others are discussed prominently but often from the perspectives of wealthy, White, and cisgender women. It is important to us, in service of our new mission, to include a range of perspectives and narratives that are not typically highlighted in gender policy discussions.

We are excited to share this journal with our readers and are grateful for the dedicated work of the featured authors and the editorial team. We hope to set a precedent for future editions of the journal and for gender policy discourse at HKS—to center marginalized voices and think critically about how gender policy can continue to evolve and interrogate itself, with the aim of uplifting the experiences of those most vulnerable to oppression.

Thank you,
Leslie Grueber & Merrit Stüven
Editors-in-Chief, *Gender Policy Journal*





**REPRODUCTIVE,
SEXUAL, AND
MENTAL HEALTH**

EMBRYO DONATION:

PROSPECTIVE PARENTHOOD, FETAL PERSONHOOD, AND THE REPRODUCTIVE JUSTICE FRAMEWORK

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INTRODUCTION

ASSISTED REPRODUCTIVE TECHNOLOGY

(ART) has become a common part of modern American life. A third of American adults have either undergone some form of fertility treatment or know someone who has.¹ While few Americans bat an eye at the idea of a child born as a result of sperm donations or in vitro fertilization (IVF), the idea of a child born as a result of an embryo donation is still unusual to many Americans.² Children born as a result of embryo donations have no genetic ties to the person who gives birth to them, but typically that person (and their partner or spouse, if applicable) intends to parent the child. The number of children born as a result of embryo donations is increasing.³ Between 2007 and 2016, the number of ART cycles performed using donated embryos more than doubled.⁴ Similarly, the number of live births resulting from embryo donations more than doubled from 2004 to 2014.⁵ In spite of this trend, few states have laws that regulate embryo donations; fewer still have laws that permit any flexibility in establishing a relationship between donors, prospective parents, and potential children. Many states use the broad language of the Uniform Parentage Act,⁶ which simply states that “a donor is not a parent of a child conceived by means of assisted reproduc-

tion.”⁷ The state statutes that do exist often reflect their origins in the anti-abortion movement by using the language of embryo “adoption,”^{8,9,10} lending personhood to the embryo. They restrict embryo recipients to married couples¹¹ or use the language of “husband and wife,”¹² and these states have default provisions stating that donors give up all parental rights^{13,14,15,16} and disallow negotiations or contracts between donors and recipients. The most restrictive state statute is in Louisiana, which confers juridical personhood onto embryos, severely limiting the choices that people who have created an embryo through IVF can make about what to do with that embryo.¹⁷ In each of these states, the anti-reproductive justice movement has been years and in some cases decades ahead of state legislatures. They have used embryo donation laws to promote fetal personhood and an anti-abortion view of conception, pregnancy, and fetal life.

States that care about reproductive justice need to take a proactive, not a reactive approach to embryo donation laws. Rather than wait to address the issue of embryo donation through a patchwork of caselaw and judicial decisions, they must pass statutes that establish a holistic, reproductive justice-oriented framework governing embryo donation. The ideal statute should center reproductive autonomy, balancing the interests of donors and

the wishes of prospective parents, with the best interests of any children born as a result of the embryo donations.

Part I of this article will cover the background of embryo donations, briefly explaining how excess embryos come to exist and the different options people have for the disposition of excess embryos. This section will also look into the Christian underpinnings of the embryo donation movement and how it continues to influence clinics, agencies, and lawmakers to this day.

Part II will explore current laws governing embryo donations, comparing their passage over time. While all of these laws are in “red” states, or states that tend to be conservative and oppose abortion access, some of them are more respectful of the reproductive autonomy of donors and recipients with respect to embryo donation. I hypothesize that as embryo donation has become distanced from its Christian roots and been seen more as a form of ART, laws that have been passed have conformed more with ART norms rather than the Christian religious norms of the earlier laws.

Part III of this article examines the American Bar Association’s 2019 Model Act Governing Assisted Reproductive Technology, which contains only a sparse section governing embryo donation. The article then considers whether these proposals truly address the issues raised by the current laws on embryo donation or instead exacerbate the uncertainties of the existing piecemeal state laws.

Finally, in part IV, I propose model law governing embryo donations. I suggest that, while embryo donation should in no way convey personhood onto the embryos, these donations do sit on a spectrum between traditional gamete donations and adoptions. Laws governing embryo donations should borrow from laws governing both traditional gamete donations and open adoptions to allow more flexibility for embryo donors and recipients to negotiate for the parties’ wishes in a way that will be legally enforceable.

I. BACKGROUND

MEDICAL INFORMATION

In the second half of the 20th century, scientific advancements expanded the options for conception available to prospective parents.¹⁸ One of the most significant advancements was IVF, in which multiple eggs are harvested and fertilized outside of the body to create embryos (sometimes also called “pre-embryos” at this stage). These embryos can be implanted in a prepared uterus or cryogenically frozen for later use.¹⁹ IVF is now the most prevalent form of ART, which the Center for Disease Control and Prevention defines as any fertility treatment where eggs or embryos are handled in a lab (a definition that excludes sperm donation).²⁰ IVF allows prospective parents additional control over conception and childbirth. Prospective parents are able to test the embryos for genetic conditions or diseases, to undergo necessary health procedures such as chemotherapy without sacrificing the potential to become a parent, or to choose when to become pregnant. LGBTQ+ people, people who are otherwise unable to conceive without assistance, and single people are able to have children through IVF. However, IVF can also produce excess embryos. Due to the risk that some IVF cycles might not be successful and the high cost of multiple IVF cycles,²¹ clinics often fertilize far more embryos than a prospective parent would ever transfer to their uterus.^{22,23,24} In addition, early IVF techniques often called for the transfer of multiple embryos to a prospective parent’s uterus, which led to increased rates of multifetal pregnancies, preterm birth, and the use of selective reduction.²⁵ However, recent technological advances have led to increased IVF success rates with fewer embryos transferred.²⁶ These technological advances, without a change in the number of harvested eggs and fertilized embryos, has led to a growing number of unused embryos.^{27,28} The possessors of these em-

bryos have options: freeze and store the embryos for as long as the clinics will allow—theoretically, many clinics will allow indefinite storage, at a cost averaging \$500 to \$1,000 per year²⁹; destroy the embryos; donate them for research (in most but not all states); or transfer possession of the frozen embryos to other prospective parents as an “embryo donation.”³⁰ People choose different options for the disposition of excess embryos based on religious, moral, emotional, and financial factors. However, embryo donation received significant financial and structural support from anti-abortion politicians and religious communities in the early 2000s, contributing to the passage of state laws governing “embryo adoption.”

CHRISTIANITY AND EMBRYO “ADOPTION”

The embryo “adoption” movement was heavily promoted in the 2000s by the Christian anti-abortion movement, which believes that life begins at conception and that embryos are persons.^{31,32,33} It rose in popularity due to religious objections to destroying embryos, donating them to research, or letting the embryos remain in storage indefinitely.³⁴ President George W. Bush, a staunchly anti-abortion politician, allocated one million dollars per year in US Department of Health and Human Services (HHS) grants to promote “embryo adoption” in 2002^{35,36}; in 2006, he vetoed a bill to expand stem cell research and promoted embryo “adoption” once again, saying that embryo donation is “life-affirming” and “[e]very embryo is unique and genetically complete, like every other human being.”³⁷ These quotes show the clear connection between the language of “embryo adoption” and the movement for “fetal personhood,” which argues that fetuses—and embryos—are full persons with equal rights to life. Carried to its logical conclusion, this movement would mean that no pregnant person has a right to an abortion under any circumstances; that any person who has a miscarriage could be prosecuted if they put the fetus “at risk of harm,” a standard that is already being applied to marginal-

ized pregnant people with devastating consequences³⁸; that a third party who causes harm to a fetus could be prosecuted not under specific fetal endangerment or fetal homicide laws but under general homicide laws that carry prison sentences of life without parole and even capital punishment; and that any fertility clinic could be liable not just for property damage but for criminal charges if technological malfunctions lead to the loss of embryos.³⁹ This conferral of personhood onto an embryo has far-reaching implications and is clearly part of the anti-abortion movement. The terminology of “adoption” poses the threat of additional screenings or interactions with the state through the family regulatory system.⁴⁰ Classifying embryos as persons and embryo donation as a form of adoption could subject prospective parents to potentially intrusive state interventions.

That said, some donors and prospective parents prefer the term “embryo adoption.” Donors might prefer it as a way to imply the possibility of an ongoing relationship between the donors and any potential children.⁴¹ Some donors or prospective parents might prefer it as a result of religious beliefs about when life begins.⁴² Others may not have specific religious beliefs but simply find the term “donor” to be impersonal.

Fertility practitioners have expressed ethical quandaries about the growing number of excess cryopreserved embryos.⁴³ While reproductive health practitioners reject the anti-abortion “personhood” framework, they do acknowledge the potentiality of the embryos to become persons⁴⁴—a potentiality that courts have likewise acknowledged in recent years.⁴⁵ Some clinicians, recognizing the number of excess embryos that remain in storage or are destroyed due to changing IVF practices, have worked to promote embryo donation.⁴⁶ These doctors’ embryo donation programs often work to expand embryo donation beyond the Christian anti-abortion communities, but they still exist within the context of federal funding programs and state laws enacted largely as part of a conservative movement.⁴⁷

Beyond the semantics of “adoption” versus “donation” and the underlying meaning they convey, the religious history of embryo donation continues to play an important role. Embryo donors are able to place conditions on their donations, often selecting prospective parents based on specific traits in an attempt to find a “good fit.”⁴⁸ Embryo donors who work with Christian “embryo adoption agencies” are able to restrict their adoptions based on discriminatory factors like sexuality, religion, marital status, or race.⁴⁹ Some fertility clinics that receive federal funding facilitate embryo donations and likewise allow donors to place conditions on recipients as a way to encourage donations.^{50,51} These clinics and agencies tend to encourage donations by allowing donor preferences, which leads to increased discrimination. There are no statutes or case laws limiting the ability of embryo donation agencies or clinics to permit discriminatory donations. Instead, most state statutes—like the federal government policies on embryo donation—seem to have emerged from the context of Christian anti-abortion promotion of “embryo adoption.”

II. STATE LAWS GOVERNING EMBRYO DONATION

Few states have passed laws governing embryo donation. Although embryo donations are treated as property transactions, courts have recognized embryos as “occupy[ing] an interim category that entitles them to special respect because of their potential for human life.”⁵² All of the state laws that exist focus on this potential for human life, governing the future parental rights of donors and recipients with respect to children born as a result of embryo donations. In addition, some embryo donation laws explicitly or implicitly limit who can receive embryo donations, whether excess embryos can be donated to research or only to other prospective parents, and whether excess embryos can be destroyed. All of the states that have passed laws governing embryo donation are states that also limit rights and access to abortion.⁵³ In fact, every one of them will ban abortion if *Roe v. Wade* is overturned.⁵⁴ The existing embryo donation laws primarily reflect a

conservative anti-abortion, pro-fetal personhood movement rather than a true reproductive justice movement that prioritizes the interests of embryo donors, recipients, and any children who may be born as a result of the donations. Embryo donation laws that have been passed recently, with the background of an increasing number of children being born as a result of embryo donations, reflect those interests more fully than laws passed earlier.

The earliest—and most restrictive—law governing embryo donation is Louisiana’s embryonic personhood statute, which first and foremost conveys juridical personhood onto embryos prior to implantation into the uterus.⁵⁵ The statute further forbids the destruction of embryos, including cryopreserved embryos,⁵⁶ or the use of embryos in research.⁵⁷ Finally, the Louisiana statute states that “[a]n in vitro fertilized human ovum is a juridical person which cannot be owned by the in vitro patients,” rejecting the property framework of embryo possession.⁵⁸ Instead, the Louisiana statute establishes “parental rights for in utero implantation,” which can be renounced through a notarized document.⁵⁹ In that event, the embryos automatically become available for “adoptive implantation in accordance with written procedures of the facility where [the embryos are] housed or stored.”⁶⁰ The donors can “renounce their parental rights in favor of another married couple, but only if the other couple is willing and able to receive” the donated embryo.⁶¹ The donation is completed through a “notarial act of adoption and birth.”⁶² Notably, the statute only permits parental rights to an embryo to be renounced in favor of another married couple, which, when the statute was passed, would necessarily have been a heterosexual married couple. This statute promotes a Christian view of life beginning at conception, where the embryo is legally enshrined as a juridical person requiring an adoption by a heterosexual married couple. The Louisiana law was passed in 1986, before IVF was particularly common and certainly before excess embryos were a common phenomenon. It was drafted and promoted by a law student at the Catholic Loyola University School of Law,⁶³ who continued to de-

fend the law as protecting embryos from “great atrocities [that] have been committed in this century upon human persons with rights” “[u]nder the guise of medical research.”⁶⁴

Other state laws are less pronounced in their anti-reproductive justice rhetoric but still rely on the language of adoption and on heterosexual norms. For example, Oklahoma refers to donors and recipients as “husband and wife” throughout its embryo donation statute; it also requires execution of a written agreement by a judge of a court that has adoption jurisdiction, which indicates that the interaction is in some way categorized as an adoption.⁶⁵ The execution of such a written agreement transfers all legal parental rights and obligations for any children born as a result of the embryo donation from the donors to the recipients, without any provisions for negotiations or contracts between the parties.⁶⁶

Likewise, Georgia’s embryo donation law categorizes embryo donations as “adoptions”—it does so more explicitly, with the article on embryo donations included in the chapter of the Georgia Code on adoption proceedings.⁶⁷ However, in spite of this official designation as an “adoption” law, Georgia’s embryo donation law, passed in 2009, makes significant progress toward a reproductive justice model.⁶⁸ It allows the donor and the recipient to enter into a written contract prior to the implantation of the embryos relinquishing future parental rights and responsibilities; if donors and recipients do not enter into such an agreement, then recipients can file for a petition for adoption or parentage following the birth of a child as a result of an embryo donation, at which point a donor’s parental rights and responsibilities will be terminated.⁶⁹ The statutory provisions for a written contract and the permissive language, which provides for either anonymous or non-anonymous donations, might allow donors and recipients to negotiate relationships of their own choosing that could then be legally enforceable. This would be more similar to an open adoption than a traditional gamete donation. At a minimum, the statutory allowance for donors

and recipients to choose anonymous or non-anonymous donations and to choose whether to terminate donor parental rights and obligations prior to or following the birth of any children allows for greater reproductive autonomy.

Tennessee’s embryo donation law, passed only a few years after Georgia’s, similarly provides the option for donors to relinquish parental rights and responsibilities to recipients prior to implantation through a written contract; it also provides the option of anonymity or non-anonymity.⁷⁰ It explicitly allows for donors to transfer their legal rights to a clinic, rather than directly to recipients, who can then transfer rights to recipients in the future.⁷¹ This reflects the rise in embryo donation clinics during the 2000s. The statute’s provision for a written contract creates a number of default rules and presumptions, including that the donors have no rights or responsibilities for any children born as a result of the embryo donation.⁷² While the statute does not explicitly state that the parties can contract around those default rules in the written agreement, the fact that the default rules are not simply provided by law implies the possibility for contracting for more open relationships between donors and recipients. The stated legislative intent is “to promote the interests of children who may be born as a result of donated embryo transfer” so that no adoption or parentage action “shall be required to create parentage in recipient intended parent.”⁷³ This prioritizes the interests of recipients, but it does not eliminate the possibility of a legally enforceable contract with more flexibility between donors and recipients.

Embryo donation in Florida is governed by an interesting amalgamation of an early gamete donation law from the 1990s and a later adoption law from the 2010s. The first law provides that “the donor of any egg, sperm, or pre-embryo, other than the commissioning couple or a father who has executed a pre-planned adoption agreement . . . shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children.” The second law, which embryo

donation clinics and agencies within Florida apply to embryo donation proceedings,^{74,75} provides an option of a pre-planned adoption agreement.⁷⁶ In this case, the donor's parental rights and responsibilities are automatically revoked unless there is a pre-planned written agreement to the contrary; any pre-planned adoption agreements would go into effect 48 hours after the birth of any children born as a result of an embryo donation.⁷⁷ While the default rules established in the donation law assume that parental rights and obligations will rest with the recipients of the embryo, the pre-planned adoption agreement gives the flexibility to deviate from those default rules. It allows donors and recipients the reproductive autonomy to shape the relationship they want between the donors, recipients, and any children that may be born as a result of the embryo donations. In addition, since the pre-planned adoption agreement does not go into effect until after any children are born, it allows this reproductive autonomy without conveying personhood onto the embryos. While Florida's statutory regime is fragmented, it is well-aligned with reproductive justice norms.

With the exception of Florida's cobbled-together embryo donation regime, current state laws governing embryo donations are largely contrary to reproductive justice goals. They label embryo donation as "adoption," connoting personhood. They indicate that recipients must be heterosexual married couples. Louisiana even limits what individuals can do with excess embryos. Reproductive justice-minded states must therefore look elsewhere for models of statutory regimes.

III. THE ABA MODEL ACT GOVERNING ASSISTED REPRODUCTION

The American Bar Association (ABA) released a Model Act Governing Assisted Reproduction in 2019,⁷⁸ replacing the previous 2008 ABA Model Act Governing Assisted Reproductive Technology,⁷⁹ which did not include any guidelines for embryo donations. Both of the model acts did include short sections stating that donors (gamete and embryo

donors) are not the parents of children conceived via assisted reproduction.^{80,81} The 2019 Model Act expanded on the parental status of donors, saying that a donor and an intended parent can enter into a written agreement stating that "the Donor . . . has no property, parental, or other rights, responsibilities and claims with respect to any . . . Embryos . . . and any Child born as a result of the gamete donation"; "any Embryos . . . shall be the sole property and responsibility of the Intended Parent(s), subject to the terms of the Donor Agreement;" and that "the Donor is not a Parent of any Child conceived through Assisted Reproduction using the Donor's gamete(s), and the Intended Parent(s) shall be the Child's Parent(s) with all the rights and responsibilities resulting therefrom."⁸² This conforms with most of the state laws examined above, which state that the embryo donation leads to the transfer from the donor to the recipient all property rights and responsibilities for the embryo and parental rights and responsibilities for any resulting children.⁸³ However, as in many of those laws, the model act intends to protect donors from potential child support claims and to protect against potential custody or visitation claims from donors than it does to provide for the potential for ongoing relationships between donors and children born as a result of embryo donations. While many donors and recipients will not wish to have an ongoing relationship, the reproductive justice framework should ensure the possibility to create an agreement that allows for an ongoing relationship. Modern views of adoption understand that it's important to allow adoptees the possibility for an open adoption and the potential to remain connected to their birth families and cultures^{84,85}; to a certain extent, the same may be true of children born through embryo donations. While the ABA Model Act does avoid the pitfalls of the state laws detailed above—describing embryo donation as "adoption" or discriminating against single or LGBTQ+ prospective parents—it does not fully subscribe to a reproductive justice model to govern embryo donations.

IV. A REPRODUCTIVE JUSTICE MODEL FOR EMBRYO DONATION

We have now looked at state statutes governing embryo donations, many of which emerged from a Christian ethos of fetal personhood; we have also looked at the 2019 ABA Model Act that is largely responding to these laws. None of these were designed with reproductive justice as their core. What, then, would a state statutory regime governing embryo donation built around a reproductive justice framework look like? First, we have to remember the key tenets of reproductive justice: (1) reproductive bodily autonomy; (2) the right to choose whether to have or not have children; and (3) the right to raise those children that we have in safe and sustainable communities.⁸⁶ Second, we need to ask whose rights are at issue in laws governing embryo donations. The key stakeholders here are the recipients, the donors, and the potential children who may be born as a result of the embryo donation. Finally, we have to ask whether it is possible to balance those rights among those stakeholders and if not, whose rights predominate.

States seem to have prioritized the autonomy of recipients, their choice to have children, and their ability to raise any children born as a result of embryo donations in the exact same manner that they would raise children born from “traditional” biological conception. For recipients, one of the benefits of embryo donation may be the ability to have a gestational child that they nurture not only throughout that child’s life but also throughout the pregnancy preceding the birth of the child. The thought of sharing the child with another parent or set of parents may be contrary to the recipients’ parental wishes. An “open” embryo donation should not be default law; the written contract governing parental rights and obligations, custody, and visitation should be something donors and recipients are statutorily required to negotiate and sign. While donors giving up parental rights and

obligations in favor of recipients may remain the default, the option to negotiate should be included in the law.

At the same time, states seem to have assumed that donors will wish to terminate all parental rights and obligations. They assume that donors do not wish to have the emotional contact with biological children or risk having to pay some form of child support payments; in this, states may be entirely correct in their assumptions. If donors’ identities were disclosed against their will, or if they were not allowed to terminate their parental rights and obligations, donors’ reproductive autonomy would be violated. In the age of rapid DNA testing and commercial databases, though, the ability to remain completely anonymous is a fleeting possibility. Given that reality, more donors might prioritize the potential to maintain a relationship with any children born as a result of embryo donations on their own terms, rather than through a commercial DNA database at a random point in time.

From the perspective of a child born as a result of an embryo donation, the potential to maintain a connection to their donors can be important. The trend toward open adoptions in the adoption context has been driven by the belief that it is better for the children involved to maintain some contact with their birth parents.⁸⁷ Children born of embryo donations might likewise benefit from ongoing connections to their donors, with whom they likewise share a biological tie. From a reproductive justice perspective, then, the ability to negotiate for a possible open, ongoing relationship with any children born as result of embryo donations seems like a crucial component to include in a law governing embryo adoption.

An ideal embryo donation law, from a reproductive justice standpoint, would not coerce donors to donate by restricting their choices of what to do with excess embryos; it would allow them to choose whether to use their embryos, store them, destroy them, donate them to research, or donate them to prospective parents. If they did choose to donate their embryos to other prospective parents,

an ideal embryo donation law would continue to treat embryo donation as a property transaction, without conveying personhood to the embryos. It would be written in a way that respected the dignity of the donors, the recipients, and any beliefs they may hold. It would require a signed written contract between the donors and recipients, which would be legally binding and enforceable as long as it conformed with contract norms. The statute would contain a default presumption that the transfer of frozen embryos also transferred all rights and responsibilities for those embryos to the recipients, and it would include a presumption that the gestational carrier of a child born as a result of an embryo donation is the legal parent of that child, with all the rights, obligations, and responsibilities associated.⁸⁸ Likewise, the gestational carrier's spouse would be presumed to be the legal parent of the child. However, the required written contract between the donors and recipients would allow the parties to negotiate for a more open relationship among the parties. This could include clearly delineated rights like visitation or more nuanced rights like notification if a child is born. This could be modelled on open adoption agreements.

The potential downside to this proposed statute is the possibility of increased legal costs for donors and recipients who do choose to negotiate and draft detailed written agreements providing for visitation rights. However, those legal costs will still be substantially lower than the costs of a potential lawsuit over custody or visitation. For donors and recipients who choose to use the default provisions, the costs should not increase.

An ideal embryo donation law would also create a provision requiring all fertility clinics that perform IVF and cryopreserve embryos to allow donations to be performed through their clinics. This provision could allow for complete anonymity on the part of donors who do wish to remain entirely anonymous (although they cannot, of course, prevent future DNA testing). In addition, the proposed law could and should regulate clin-

ics and "embryo adoption agencies" to prevent discrimination based on the prospective parents' marital status, sexuality, or religion.

This proposed statute bridges the gap between traditional gamete donation laws and traditional adoption laws. It attempts to balance the rights of donors and recipients while bearing in mind the interests of children who may be born through the embryo donation. It also attempts to respect the reproductive autonomy of all parties, while respecting their right to have or not have children. It allows them to raise those children in safe and sustainable communities, while encouraging the possible creation of a community of donors and recipients themselves.

CONCLUSION

Embryo donations still make up only a small percentage of the assisted reproductive technology (ART) procedures performed in the United States each year, and children born as a result of embryo donations make up an even smaller percentage of children born in the United States. The number of ART cycles performed with donated embryos is increasing steadily, as is the number of children born as a result of embryo donations. Rather than respond as legal issues arise over the donation of cryopreserved embryos or the custody of children born as a result of those donations, states should enact laws proactively. Specifically, states should enact laws that preserve reproductive autonomy of donors and recipients while promoting the best interests of children born as a result of embryo donations. Lawmakers who care about reproductive justice have spent the last several decades on the defensive. Embryo donation laws are an opening for those who care about reproductive justice. They give legislators the chance to take proactive measures to uphold compassionate opportunities for parenthood without enabling the fetal personhood movement. State lawmakers who care about avoiding fetal personhood laws, who care about reproductive autonomy, who care about the ability of people to become parents through assisted reproductive technology, must take affirmative

steps to enact embryo donation laws that fit into a reproductive justice framework. This article provides guidance for a reproductive justice-oriented embryo donation law.

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EXPANDING POSTPARTUM MEDICAID COVERAGE:

A RACIAL AND GENDER JUSTICE IMPERATIVE

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Maya Shashoua (she/her) is a master's in public health student in the health policy concentration at the Harvard T.H. Chan School of Public Health. Maya's previous experience is in community health programs, primary care transformation, health delivery system reforms, and implementation of innovative health care payment models. Maya's interests center on state health policy, public insurance programs, and health policy as a tool for advancing equity.

AMERICAN SOCIETY WAS NOT built for birthing people to thrive—or at times even to survive. The United States lacks paid parental leave and universal childcare policies and has the highest rate of maternal mortality among all industrialized countries. There are stark racial disparities in the maternal mortality rate in the United States: Black mothers die at over three times the rate of White mothers.^{1,2} Ensuring consistent prenatal, delivery, and postpartum health insurance coverage for birthing persons is a critical step in tackling severe rates of maternal mortality. As federal legislation expanding health insurance coverage to low-income birthing people has stalled, individual states can and should utilize state plan amendments to extend these benefits in order to address these disparities.

While maternal mortality—and specifically Black maternal mortality—has garnered increasing media attention in recent years, championed

by activists, academics, and even the vice president, concrete action to support birthing people has been inadequate to address this crisis. The absence of tangible change on this matter is not due to lack of options, especially when it comes to ensuring that vulnerable populations have consistent access to health insurance for the year after birth. While access to health insurance does not guarantee access to care, uninsured individuals are generally less likely to obtain preventive care services and more likely to delay needed care, resulting in worse health outcomes.^{3,4}

The Medicaid program was established in 1965 as a public health insurance program jointly administered by the federal government and states. Over time, Medicaid has become a broad insurance program for low-income individuals in the United States. While federal statutes and regulations set certain standards that all states must follow, states have significant discretion in the design of their Medicaid program. Medicaid coverage is particularly relevant for birthing people and in-

ants: nearly half of all births in the United States are paid for by Medicaid.⁵ This proportion is highest among people of color: 65 percent of births amongst Black people and 59 percent of all births among Latinx people are Medicaid-financed.⁶ Currently, federal law only requires that Medicaid coverage be maintained for 60 days postpartum.⁷

While many assume that health care for birthing people is most important during prenatal care and delivery, one in three pregnancy-related deaths actually happens between one week and one year after delivery. In this postpartum period, Black and Native American women are three times more likely to die than White women.⁸ Severe maternal morbidity events—such as hemorrhage or postpartum mental health crises—that happen after hospital discharge are more common among the Medicaid-insured population than those with private health insurance.⁹

Despite the relevance of consistent postpartum coverage for the Medicaid-insured population, expansions in the scope of the Medicaid program in the past decade have not fully addressed this issue, and significant gaps for vulnerable populations remain. In 2010, the Patient Protection and Affordable Care Act (ACA) broadened Medicaid eligibility to all Americans at or below 138 percent of the federal poverty level (FPL).¹⁰ However, a Supreme Court ruling in 2012 made this expansion optional rather than mandatory for all states.¹¹ Currently, 12 states concentrated in the South and Midwest still have not expanded their Medicaid program eligibility, largely due to political considerations among conservative politicians.¹² In 2020, 17.8 percent of the US population was insured by Medicaid, a slight increase from previous years.¹³

While babies born to a Medicaid-enrolled birthing person are automatically covered by Medicaid for their first year of life, many birthing people lose Medicaid coverage at 60 days postpartum.¹⁴ Some birthing people may re-qualify for Medicaid based on state income thresholds; however, if a birthing person does not re-qualify based

on income, they must purchase private insurance from a marketplace, obtain employer-based insurance, or become uninsured. Prior to the passage of the ACA, over half of all birthing people with Medicaid coverage at delivery experienced a gap in their postpartum coverage.¹⁵ The ACA significantly improved access to care in states that expanded Medicaid, where all individuals with household incomes at or below 138 percent of the FPL can retain coverage beyond 60 days due to their income.

Birthing people in states that have not expanded Medicaid are currently most vulnerable to losing their health insurance: eligibility levels for parents are far lower than eligibility levels for pregnant people in most states. For example, in Texas (a state that has not expanded Medicaid), pregnant individuals are eligible for Medicaid with an income at or below 203 percent FPL. However, parents of a child under 18 are only eligible with an income at or below 17 percent FPL.¹⁶ The American College of Obstetricians and Gynecologists recommends postpartum visits at 3 weeks after birth to address acute issues, ongoing care as needed, and a comprehensive visit no later than 12 weeks after birth. If Medicaid coverage lapses at 60 days, comprehensive visits and ongoing care are no longer accessible.¹⁷

Expanding postpartum Medicaid coverage for the entire year after childbirth is an achievable pathway to combat the epidemic of maternal mortality and severe maternal morbidity in the United States, particularly among vulnerable populations. Federal legislation could extend postpartum Medicaid across the country but thus far has been unsuccessful. The Build Back Better Act, which passed the House in November 2021 and has stalled in the Senate, includes a mandatory and permanent expansion of postpartum Medicaid coverage to 12 months after birth.^{18,19} Expansion of postpartum Medicaid eligibility in all 50 states would provide an additional 720,000 individuals with coverage in the year after birth. This expan-

sion would be most significant in the 12 states yet to expand Medicaid that have far stricter income limits for parental Medicaid eligibility than for pregnant people. Currently, only 35 percent of pregnant people qualify for Medicaid postpartum in non-expansion states; full coverage for the year postpartum would expand access for 350,000 individuals in those states.²⁰

With action stalled at the federal level, expansion of Medicaid eligibility for birthing people is up to individual states. Two key pathways exist for states to expand postpartum Medicaid coverage: 1115 Medicaid research and demonstration waivers, and state plan amendments.

Prior to 2021, states looking to expand postpartum Medicaid coverage could submit a 1115 waiver to the Centers for Medicare and Medicaid Services (CMS). These waivers allow states to test new approaches to Medicaid, diverging from federal requirements for the program.²¹ Five states have used this pathway to expand postpartum Medicaid eligibility both generally and to small subsets of the population, like substance users. However, changes to state Medicaid programs using 1115 waivers are significantly limited by a requirement of budget neutrality: the changes they propose may not cause increased costs to the federal government beyond what would have been spent if the waiver was not implemented.²²

In March 2021, the passage of the American Rescue Plan Act created a new, streamlined pathway for states to expand postpartum Medicaid coverage universally for a year after birth via a state plan amendment. This option takes effect in April 2022 and is available to states for five years. State plan amendments have financial advantages for states because they do not require budget neutrality, as 1115 waivers do. In addition, states using a state plan amendment will receive their regular federal matching rate of funds to financial support this expansion of Medicaid coverage.²³

While this expansion will cost additional state

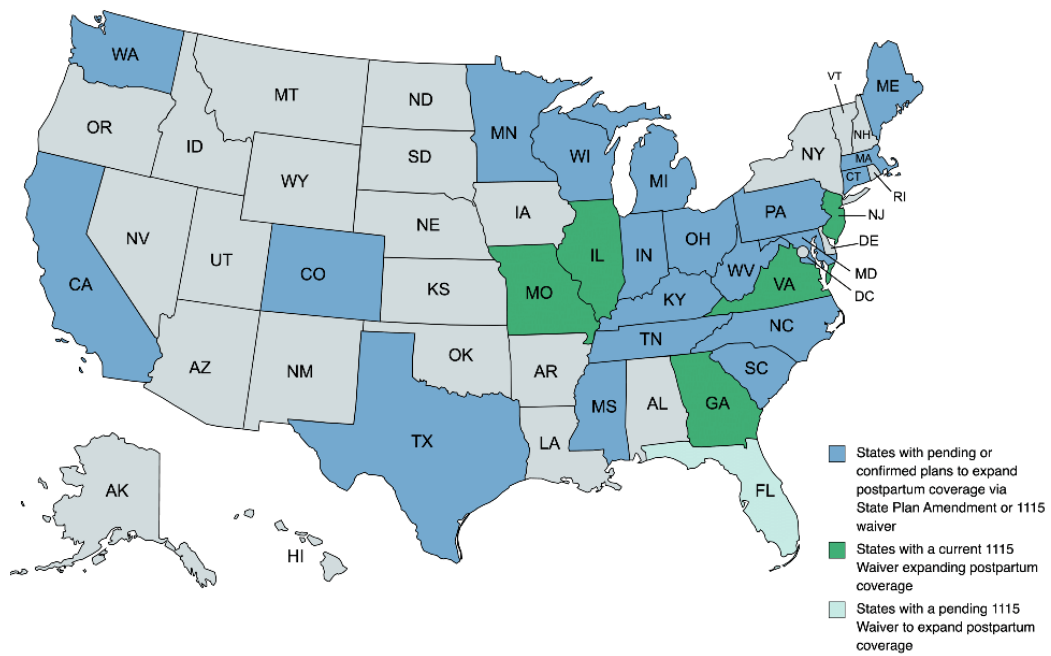
and federal dollars, maternal mortality and severe maternal morbidity are incredibly costly now. A literature review by the Commonwealth Fund estimates that total maternal morbidity costs in 2019 were \$32.3 billion, an additional \$8,624 cost for each birth.²⁴ These figures fail to quantify the profound emotional and psychological toll that maternal morbidity and mortality take on affected birthing people, family members, and their communities. Using a state plan amendment enables states to expand postpartum Medicaid coverage and potentially avert devastating and costly maternal mortality- or morbidity-related medical crises that fall heaviest upon Black and Latinx birthing people in America.

In addition to the 5 states with existing partial or full postpartum coverage expansions based on 1115 waivers, as of February 2022, 22 states across the nation and across the political spectrum have indicated plans to expand postpartum Medicaid coverage via a state plan amendment or 1115 waiver. States that have not yet taken action must do so as soon as possible to take advantage of funding beginning in April 2022.

Reversing severe rates of maternal mortality and morbidity is a critical racial and gender justice issue of this era. Expanding Medicaid to the full year postpartum in every state would impact more than half a million individuals, enabling continuity of care after birth and alleviating financial and emotional stressors in the postpartum period. Funding for postpartum coverage state plan amendments will expire in 2027, highlighting the need for a nationwide, permanent expansion of coverage. Additional legislative solutions beyond postpartum Medicaid expansion, like the Black Maternal Health Momnibus bill, are also needed to address this crisis. The Momnibus bill, introduced by the Black Maternal Health Caucus, focuses on workforce diversification, funding for community based organizations, and direct investments in maternal health care.²⁵ Making an impact on maternal health equity will undoubtedly take multi-

pronged efforts on both the state, federal, and community level, but there are few causes more worthy of that significant investment.

FIGURE 1. STATE EFFORTS TO EXPAND POSTPARTUM MEDICAID COVERAGE, FEBRUARY 2022²⁶



Created with mapchart.net

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A BRIEF REVIEW OF US POLICY FOR TRANSGENDER SERVICE MEMBERS AND THE IMPACT ON HEALTH CARE

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IN 1964, THE CIVIL RIGHTS ACT prohibited discrimination based on race, color, religion, sex, and national origin.¹ Title VII of the act applies this to equal employment opportunity, which has been a source of legal disputes since its inception. Due to discrepant interpretation of the law in this area, executive orders are often utilized to create policy. Frequent changes in executive orders regarding transgender service members have prevented continuous legal protection from discrimination and created health disparities. The effect of executive orders on the transgender population in particular highlights the need for formal legislation regarding the interpretation of “sex” in the Civil Rights Act.

Prior to the 2015, transgender individuals were universally disqualified from military service.² However, in 2015, President Barack Obama initiated an executive order stating that “no service member shall be involuntarily separated or denied reenlistment or continuation of active service on the basis of their gender identity.”³ This came five years after President Obama repealed the Clinton-era military policy of “Don’t

Ask, Don't Tell," which prevented homosexual individuals from openly serving.⁴ In response to this order, in June 2016, official policy permitted service members with a diagnosis of gender dysphoria to serve in their preferred gender upon completion of transition (including both hormone and/or surgical treatment); those without a diagnosis or history of gender dysphoria could only serve in their sex assigned at birth but were not disqualified (see Table 1). In the official memorandum, Secretary of Defense Ashton Carter concluded that "open service by transgender service members . . . is consistent with military readiness and with strength through diversity."⁵ The 2016 policy also established that service members could transition gender while serving.⁶ This drastically changed the health care that transgender service members could receive and enabled military medical teams to provide both hormonal and surgical gender-affirming treatment. According to the Military Health System Management Analysis and Reporting Tool, M2, prior to 2016, only 169 service members held a

diagnosis of gender dysphoria, and 30 total gender-affirming surgeries had been performed. In contrast, within one year of the establishment that service members could transition gender while serving, 753 service members received a diagnosis of gender dysphoria, and 246 gender affirmation surgeries were performed.⁷

This momentum reversed in 2017 when President Donald Trump announced that "after consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow . . . Transgender individuals to serve in any capacity in the US Military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail."⁸ A month later, a formal directive was issued by the White House, calling for an immediate return to the "longstanding policy and practice" for military transgender service members that existed prior to 2016.⁹ This policy,

Military Status	Presence of Diagnosis	Pre-2016	2016–2019	2019–2021	2021–present
Service Members	– gender dysphoria	Disqualified	May serve in biological sex	May serve in biological sex	May serve in biological sex
	+ gender dysphoria	Disqualified	May serve in preferred gender upon completing transition	Unless exempt, may serve in biological sex; if unable or unwilling to serve in biological sex, separation procedure may apply	May service in preferred gender upon completing transition
New Applicants	– gender dysphoria	Disqualified	May serve in biological sex	May serve in biological sex	May service in biological sex
	+ gender dysphoria	Disqualified	Disqualified unless stable for 18 months in preferred gender or biological sex	Disqualified unless stable for 36 months, may serve in biological sex	Disqualified unless stable for 18 months in preferred gender or biological sex
	+ history of gender-confirming treatment	Disqualified	Disqualified unless stable for 18 months in preferred gender or biological sex	Disqualified	Disqualified unless stable for 18 months in preferred gender or biological sex

TABLE 1. Policy regarding transgender individuals in the military and seeking enlistment or commissioning by timeframe

established in January 2018, halted accession of transgender individuals into service and prohibited any Department of Defense funding of gender-affirming surgery, except in cases in which the individual had already started treatment. The policy, written by secretary James Mattis in February 2018, stated that transgender persons with a diagnosis of gender dysphoria be disqualified from continued or new military service except under the following conditions: “1) they have been stable for 36 consecutive months in their biological sex prior to accession, 2) they are diagnosed with gender dysphoria after entering into service but do not change their gender and remain deployable, or 3) if they were diagnosed and begun treatment under the previous administration’s policy, they may continue to serve in their preferred gender and receive medically necessary treatment” (see Table 1).¹⁰

In practice, this policy prohibited many transgender service members from living in their preferred gender, forcing them to remain closeted for fear of discharge. The policy was not formally implemented until April 2019; this delay occurred due to a plethora of discrimination lawsuits that were filed in response to the initial announcement of return to pre-2016 policy. During this time (2018–2019), Obama-era policy continued for those with an existing diagnosis who had initiated treatment prior to the Trump administration policy. This created an era in which gender-affirming treatment could only be provided to those who were “grandfathered” in. Because of this, from April 2019 to January 2021, 487 service members received a new diagnosis of gender dysphoria, but only 14 gender-affirming surgeries were performed.¹¹ The 487 service members with a new diagnosis were not eligible for care.

On 25 January 2021, five days after his inauguration, President Biden signed an executive order entitled “Enabling All Qualified Americans to Serve Their Country in Uniform,” which established that all Americans, including transgen-

der individuals, who desired to serve could do so “openly and free from discrimination.”¹² On 30 April 2021, the policy was officially implemented. This political move worked promptly to prevent discrimination but, again, did not ensure any long-term protection under the law.¹³

In the United States, the military is one of the few employers that offers universal, single-payer health care coverage. Yet access to these services has been limited, disrupted, and ever-changing for transgender individuals due to a lack of formal legislation that clearly outlines their inclusion. In June 2020, the Supreme Court heard *Bostock vs Clayton County, Georgia* and ruled that “sex” as referred to in Title VII of the Civil Rights Act includes sexual orientation and identity.¹⁴ While this ruling further advances the interpretation of the law, it does not rewrite it. Transgender service members have suffered from fragmented care due to transient policy and political tug-of-war. This is illustrated by the drastic differences in surgical care performed for transgender service members under each policy. Further research evaluating the effect on health is required and may assist in combatting discrimination. This overview of policy regarding US service members is only one example of the broad impact and far-reaching consequences of policy not subjected to the scrutiny of formal legislation.

NOTES

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SAFEGUARDING AND IMPROVING GENDER-AFFIRMING POLICIES FOR TRANS YOUTH

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Note on terminology: I use “TGD,” “trans,” and “transgender” to include a spectrum of non-cisgender gender identities in the United States, including but not limited to those who identify as two-spirit, third gender, nonbinary, transmasculine (transmasc), transfeminine (transfem), gender nonconforming, agender, intergender, bigender, queer, genderfluid, medically transitioning, and not medically transitioning. In discussions of historical documents, I have replaced outdated terms with “transgender.”

INTRODUCTION

TRANSGENDER AND GENDER DIVERSE (TGD) youth are among the most underserved and marginalized populations in the United States. Despite some recent progress, many Americans remain openly hostile toward protections for children and adolescents who identify along the spectrum of TGD identities. TGD youth report that academic and medical policies and practices in the United States, compounded with lack of familial support, either directly harm them or, at best, do not adequately protect them. This paper will summarize existing systems that

directly harm or fail to protect TGD youth and provide policy proposals that can help fill these gaps.

HISTORY OF PROTECTIONS FOR TGD PEOPLE

Despite a recent surge in media coverage of people with TGD identities, genderfluid people have existed as long as the social construct of gender has existed.¹ From ancient Persia to Southeast Asia to Edo period Japan, our archeological and written record shows evidence of people of all ages living outside of the gender binary worldwide.^{2,3,4} Modern-day intolerance and violence toward non-cisgender expression is largely the result of European racist imperialism and the spread of Abrahamic religions, primarily Christianity.⁵ As a consequence of this, there were no internationally recognized protocols for treating the physical and mental health of trans and gender-nonconforming people until the 1970s, when the Harry Benjamin Standards of Care were drafted and published.⁶ An endocrinologist, Dr. Benjamin was the first Western doctor to discern the differences between TGD identities

and same-gender attraction and to recognize that TGD people have unique medical needs.⁷

Over the following four decades, leaders in the American legal, medical, and educational communities have become more proactive about protecting the rights of TGD people, including children. After a long legal battle fought by TGD activists, the State Department updated its policies in 2010 to allow passport holders to change their name and pronouns to fit their gender identity.⁸ In the most recent landmark ruling, *Bostock v. Clayton County, Georgia*, the Supreme Court ruled in 2020 that private-sector employees of all gender identities are protected from discrimination by the 1964 Civil Rights Act.⁹ Recent legislation also protects TGD people from housing discrimination.¹⁰ Despite this progress, American conservatives often use protectionist claims to rally support for anti-trans legislation or to oppose legislation that protects TGD youth.¹¹

Over the past year, legislators in many states have introduced bills that discriminate against or directly harm TGD youth, including bills banning gender-affirming medical care for children. Lawmakers claim that these bills will protect kids from dangerous and unnecessary medical intervention, despite evidence that these interventions are nearly always lifesaving. Lawmakers in over 20 states proposed bills that would ban trans girls from participating in girls' sports under the guise of protecting cisgender girls from athletes who were assigned male at birth, though we lack evidence that this protection is necessary.¹² Despite the "19 jurisdictions (18 states plus Washington, D.C.) [that have] adopted laws prohibiting discrimination against transgender individuals in employment, housing, and public accommodations," legislators nationwide are passing laws that actively prohibit TGD people from accessing the resources and services they need.¹³

Due to the intersectionally oppressive effects of structural racism and transphobia, trans girls

of color experience disproportionately poor health outcomes, violence, and discrimination compared to their White counterparts.^{14,15,16,17} Often, family members of TGD children who have been socialized to behave with hostility toward non-cisgender people make it unsafe for TGD kids to live at home, and many leave for their own safety.¹⁸ As a result, rates of depression, suicide, and homelessness are untenably high among TGD youth.¹⁹ Repairing centuries of systemic discrimination will ultimately require a massive social movement in the United States, including an initiative that informs and instructs those in the education and health care sectors on best practices when serving this heterogeneous community.

MENTAL HEALTH CARE

When children are assumed to identify with the gender they are assigned at birth, children who do not identify that way experience gender dysphoria: a state of mental distress resulting from being misgendered. Gender dysphoria is a psychological diagnosis, and it is treated with care that affirms the patient's gender identity. According to the American Psychiatric Association (APA)'s diagnostic manual (DSM-5), for children and adolescents to be diagnosed with gender dysphoria, they must exhibit "a marked incongruence between one's experienced/expressed gender and their assigned gender, lasting at least 6 months."²⁰ Access to appropriate and holistic mental health care is crucial for TGD youth, as they are subjected to increased social isolation and abuse in relation to their peers.

Intersectional identities like "race, gender identity, and sexual orientation do not operate as mutually exclusive categories; rather, they operate as reciprocally constructing phenomena that in turn shape complex social inequalities."²¹ Poor mental health and well-being among TGD youth

is a direct response to hostile societal structures designed to privilege White cisgender children and disadvantage those with minority racial and gender identities (the minority stress model), particularly those with intersectional marginalized identities.²²

In a survey of 15 studies on the health outcomes of TGD people, clinicians Kerry Drabish and Laurie A. Theeke find that societal hostility “leads to decreased psychological health, including increased harmful behaviors such as substance abuse and eating disorders, reduced relationship quality, ineffective coping and lower levels of self-esteem, and increased risk of attempted suicide.”²³ A 2015 study supports this conclusion in the adolescent age group, finding that “a higher proportion of transgender [youth] (compared to cisgender LGBQ [youth]) had histories of harassment and bullying, intimate partner violence, family rejection, physical, sexual, or emotional abuse, mental health issues, sexual exploitation, and alcohol or substance abuse.”^{24,25}

American adolescents of all genders are already under-treated; a 2021 US survey found that three in five children with major depressive disorder do not receive treatment, and in low-access states like Texas, nearly 75 percent of children experiencing depression go untreated.²⁶ TGD youth who feel misunderstood by and have a distrust of the adults in their lives have an even lower likelihood than their peers to seek counseling.²⁷ Thus, a population that could benefit greatly from mental health treatment faces increased barriers to access.

When TGD youth are able to access mental health services, providers are often insensitive to the needs of the child, “using incorrect pronouns . . . poorly wording questions and comments about the patient’s gender identity . . . commenting on how well the patient was passing [appearing in congruence with their gender identity] . . . and/or attempting to dissuade the patient from transitioning,” all of which are highly inappropriate and

counterproductive to improving a child’s mental well-being.²⁸

These interactions compound on one another and can have serious adverse effects on the mental health of TGD children, who are already extremely at risk for mental distress resulting from stigmatization. Horrifically, after the recent wave of anti-trans legislation and isolation resulting from the COVID-19 pandemic, “52% of all transgender and nonbinary young people in the U.S. seriously contemplated killing themselves” in 2020.²⁹ In a survey of over 30,000 queer youth, “77% of trans/nonbinary youth [reported that they] have generalized anxiety disorder, and 70% experience depression.”³⁰ Rates of suicide, anxiety, and depression are highest among members of the youngest age group (13–17) and the Indigenous demographic group.³¹

MEDICAL CARE

Drabish and Theeke find that internalized stigma resulting from societal hostility toward TGD people not only negatively impacts mental health but “also leads to decreased physical health outcomes stemming from healthcare avoidance, reduced healthcare utilization, decreased screenings, and delayed treatment.”³² Decreased physical health can in turn further decrease an individual’s mental health, and chronic physical conditions resulting from health care avoidance can negatively impact one’s mental health.³³ Health care access for TGD youth is particularly crucial, as each child has a uniquely gendered relationship with their body.

Gender-affirming medical care includes services and treatments that help TGD people feel safe and comfortable in their bodies. This can include hormone replacement therapy (HRT), surgery, voice coaching, and guidance on safe chest binding and tucking.³⁴ In tandem with proper mental health care and a healthy social environment, gender-affirming treatments can help turn gender dysphoria into gender euphoria—a state

of increased contentment with one's gendered physical features. However, there are many access barriers for children who might benefit from this type of care. TGD people requiring gender-affirming genital surgery cannot access it in 53 percent of US states, and laws in six states criminalize parents who help their kids access gender-affirming treatments.^{35,36}

In states where gender-affirming care is legal, TGD youth report “numerous barriers to health care, including limited availability of gender affirming care,³⁷ logistical challenges such as gatekeeping and cost, concerns about confidentiality in relation to sexual behavior and gender identity, and inadequate cultural competency among providers regarding gender-affirming care.” In this case, cultural competency refers to the degree to which medical staff understand and respect the needs, values, and beliefs of the TGD people they serve. In another survey of trans patients,

“71% of the sample reported at least 1 instance of mistreatment in health care contexts, and 23% chose to describe >1 instance. Participants recounted negative interactions with various health professionals, including doctors, nurses, and emergency medical technicians, and framed particular provider behaviors as problematic: (1) gender insensitivity; (2) displays of discomfort; (3) denial of services; (4) substandard care; (5) verbal abuse; and (6) forced care.”³⁸

These problematic behaviors (all manifestations of the gender minority stress model) range from neglectful to hostile and abusive, and all contribute to adverse patient experiences and distrust of medical professionals, which can exacerbate a patient's comorbid medical concerns.

American TGD youth are further marginalized by the fragmented US health insurance system, as many public and private health insurers do not cover costs associated with gender-affirming care. Medicaid, a public insurance program administered at the state level for individuals with low incomes, is the largest insurer in the United

States. As of February 2021, Medicaid policies in 22 of 51 states (including Washington, D.C.) and three of five territories do not cover any costs associated with gender-affirming genital surgery, and in nine states and two territories they do not cover gender-affirming hormone treatments for all age groups.³⁹

Some insurers will cover a portion of the costs associated with gender-affirming care, but often this is insufficient, as a singular surgical procedure can cost upwards of \$100,000 out of pocket in the United States.⁴⁰ This is a problem, as TGD youth and young adults are uninsured and underinsured at a higher rates than their cisgender counterparts, which is likely due largely to the fact that TGD people also experience poverty and unemployment at higher rates, often due to employment discrimination.⁴¹

HOUSING

Many rural TGD youth in the United States migrate to cities in search of safety and gender-affirming care. With few to no social ties in these urban areas, they are at an increased risk of experiencing racism, unemployment, and homelessness—a risk that TGD youth report is preferable to the structural hostility of their home communities.⁴² In a 2018 study, most of the TGD youth surveyed were experiencing homelessness as a direct result of being kicked out of their family's home or after fleeing abusive home environments.⁴³ TGD youth of color are significantly more likely than their White peers to experience homelessness resulting from their gender identity.^{44,45}

There is a lack of high-quality data on all US populations experiencing homelessness, particularly for TGD youth. It is estimated that one in five trans people experience homelessness, which is greater than twice the rate of homelessness in the general population. Homelessness duration is also higher among TGD youth (compared to the gay cisgender population). This is important, as

longer durations of homelessness are linked with decreases in mental and physical health and increases in risky sexual behaviors, including commercial sexual exploitation.⁴⁶ TGD youth experiencing homelessness are further marginalized by overextended shelter and street outreach staff, many of whom are not specifically trained to adequately protect and care for TGD people experiencing homelessness.⁴⁷

EDUCATION

TGD students experience “proximal stressors, such as concealment and expectations of rejection,” which reinforce feelings of social isolation.⁴⁸ In the California Student Survey (CSS), “transgender youth were more likely [than cisgender peers] to be truant from school, to experience victimization and bias-based bullying, and to report more negative perceptions of school climate.”⁴⁹ Another study revealed that “school harassment due to transgender identity was pervasive, and this harassment was negatively associated with feelings of safety. When schools took action to reduce harassment, students reported greater connections to school personnel.”⁵⁰

Legislators in three states, however, are taking action to ensure that school employees further marginalize rather than protect TGD children. If the bills pass, these states will “prohibit school employees from withholding information about a child being transgender from their parents.”⁵¹ In other words, teachers and school administrators will be legally required to out TGD children to their potentially hostile families, endangering the students they are supposed to support.

Since 2019, there has also been a sharp increase in legislation banning trans girls from competing on girls’ athletic teams in public schools. At time of writing, 13 such bills have been filed across 13 US states in the 2022 legislative session.⁵² This was an increase from 2021, which was nicknamed “the worst year . . . for trans rights” in the Unit-

ed States by major news outlets.⁵³ According to a 2021 Gallup poll, a majority of American adults feel that TGD children should not be allowed to play on sports teams that match their gender identity.⁵⁴ The assumption underlying these bills and opinions is that trans girls have more testosterone than cisgender girls, which gives them a physical advantage. There is no evidence to suggest that this is true.

While elevated testosterone levels can increase muscle and bone size and strength, which could provide an athletic advantage, transgender girls do not necessarily have more testosterone than cisgender girls. All cisgender girls naturally produce testosterone at varying levels. While natural puberty can lead to increased production of testosterone in trans girls, many trans girls with access to HRT choose to delay or halt puberty, which prevents the development of male secondary sex characteristics (including increased testosterone and muscle mass).

POLICY RECOMMENDATIONS

EDUCATORS, SCHOOL ADMINISTRATORS, AND ACADEMIC POLICY MAKERS

Every state that has proposed laws banning hormone replacement therapy for teenagers has also proposed and/or passed laws banning trans girls from competing in girls’ sports. This creates a self-fulfilling prophecy: trans girls in these states who might otherwise benefit from gender-affirming HRT cannot access it, so they develop male secondary sex characteristics, which policymakers then use as evidence that trans girls should not compete alongside cisgender girls. Increasing access to HRT and lifting trans sports bans will have immense positive health impacts for TGD youth and for our communities.

It is also important to recognize that young TGD athletes are not a homogenous group. Each child has a unique array of biological and environ-

mental characteristics that make them more athletically competitive. Hormone levels alone are not an indicator of athleticism, and invasive hormone level blood tests should never be conducted at non-professional levels, as they are unnecessary and potentially traumatizing. Higher-stakes professional-level athletic organizations, like the International Olympic Committee and National Collegiate Athletic Organization, permit the participation of TGD athletes. Children's sports organizations, including public schools, should do the same.⁵⁵ TGD youth already feel more socially isolated than their cisgender peers; athletic bans only serve to further alienate them.

As long as anti-trans legislation (like public school sports bans, bathroom bans, and outing requirements) continues to be drafted by state legislators and upheld by federal courts, it will be difficult for school administrators to make the classroom more trans-inclusive. In a 2021 nationwide survey, parents of TGD children “overwhelmingly expressed fear that the proposed [transphobic] legislation will lead to worsening mental health and increased suicidal ideation for their TGD [children]. They implored lawmakers to hear their stories and to leave critical decisions about gender-affirming medical interventions to families and their medical providers.”⁵⁶ Teachers and parents must continue openly communicating about transphobic policies and the harm they cause TGD youth to help community members better understand the alienating effects of these policies. This may empower students and other community members to engage in civil resistance (walk-outs, protests, letter campaigns, signage around the school, etc.), demanding gender inclusivity. Teachers, administrators, and coaches may also choose to openly defy anti-trans legislation by making athletic teams and other school communities more trans-inclusive, although in many states, they would do so at the risk of losing their jobs.

At minimum, it is crucial for school staff to

honor the name and pronouns with which a student identifies. The Trevor Project reports that “transgender and nonbinary youth who reported having pronouns respected by all of the people they lived with attempted suicide at half the rate of those who did not have their pronouns respected by anyone with whom they lived.”⁵⁷ It is thus imperative for parents and teachers to respect TGD kids' disclosed identities and to help children feel safe disclosing their identities. According to Michelle Johns et al., “creating safe and supportive environments at school for transgender youth is an attainable goal, as all identified barriers to inclusivity and connection [are] modifiable. By considering the needs of transgender youth in policies and programming, schools may improve climate for and wellbeing of transgender students.”⁵⁸

HOUSING SERVICE PROVIDERS

Those working with populations experiencing homelessness should conduct basic online research or undergo trans cultural competency training to better serve the TGD people with whom they work. Improvements will depend on the particular population served, but general best practices include asking people about their pronouns, providing genderless bathroom options, and making gendered clothing and sanitary products available to all (and not just those believed to have certain sex characteristics). Gendered shelters should be open to all TGD people who identify with the gender served by a shelter. Trans girls and women, for example, should be welcome in shelters designated for unhoused girls and women. Shelters for mothers should be open to all mothers and birthing parents.

RESEARCHERS

Without gender-inclusive data collection, the experiences and needs of TGD populations are rendered invisible to policy makers.⁵⁹ To better serve TGD youth, it is crucial that we generate more

robust intersectional data on their experiences—particularly the experiences of TGD children of color and those experiencing homelessness. Social epidemiologist Madina Agénor calls on population health researchers to adopt “critical qualitative, multidisciplinary, and community-based participatory research approaches . . . to more fully incorporate the core ideas of intersectionality—including social inequality, relationality, complexity, power, social context, and social justice—into quantitative population health research studies or programs.”⁶⁰ These data will allow us to better understand the needs of TGD children and better advocate for their needs.

One way to generate these data will be to add inclusive gender categories to existing statewide public school surveys of student well-being in every US state and territory. The Youth Risk Behavior Surveillance System (YRBSS), for example, is a system of surveys developed by the Centers for Disease Control and Prevention (CDC) and individual states to monitor crisis behaviors among American adolescents.⁶¹ The survey added gender-inclusive modules in 2019, though these modules have not yet been adopted in every state. The CSS also collects robust data on the “substance use, school safety, harassment and violence, youth resilience factors, and health-related behaviors” of California’s middle and high school students.⁶² Survey administrators recently added questions specifically designed for TGD students, and it has become the largest database of TGD youth resilience in the United States (though it may soon be eclipsed by the YRBSS).

Andrzejewski et al. also highlight the need for more research on parents’ roles in helping TGD youth feel safe and supported at home. “Transgender youth are more likely than cisgender youth to report health risks related to violence victimization, substance use, mental health, and sexual health,” and many of these risk factors can

be assuaged with more inclusive parenting.⁶³

INSURERS

Private insurance companies must not exclude gender-affirming procedures from coverage plans. The World Professional Association for Transgender Health (WPATH), described by medical sociologist Stef Shuster as “the oldest association that specializes in outlining the provision of trans health and education of the medical and mental health community about recommended care options,” publishes standards of care that include guidelines for insurers.⁶⁴ The most recent iteration of these standards urges “health insurance companies and other third-party payers to cover the medically necessary treatments to alleviate gender dysphoria” and recommends 52 aspects of gender-affirming treatment that should be covered by insurers.^{65,66,67} For TGD youth interested in accessing gender-affirming care, treatment can be a matter of life or death. As a society, we expect insurers to at least partially cover costs associated with lifesaving medical treatments, and we should approach gender-affirming care the same way.

HEALTH CARE PROVIDERS

Many American medical professionals in the United States lack training on how to adequately care for TGD youth. Pampati et al. suggest that medical “providers and office staff may benefit from transgender cultural competency trainings. In addition, clinic protocols relating to confidentiality and chosen name and pronoun use may help facilitate access to and receipt of quality care.”⁶⁸ Pediatricians should seek trainings and experiences that increase their knowledge of and comfort around TGD youth. Academia may also serve as a potential venue to disrupt systemic disparities. By offering more trans-inclusive curricula, nursing and medical schools can help prepare

emerging medical professionals to better serve TGD patients.⁶⁹

Salas-Humara et al. point out that “there are several organizations that provide clinical practice guidelines for the treatment of transgender youth including the WPATH and the Endocrine Society. . . . They recommend that certain eligibility criteria should be met prior to initiation of gender affirming hormones.⁷⁰ For example, it is generally recommended that physicians monitor TGD children for six months to two years to determine the extent to which they have experienced gender dysphoria during that period of time. If appropriate, they can prescribe hormone blockers to delay puberty for TGD adolescents, providing the patient and physician time to decide whether to pursue more aggressive forms of gender-affirming care in the future, including surgery and higher-dose hormone treatments. Hormone treatments can pose adverse side effects, but a consensus of doctors agree that proper gender-affirming treatment is far preferable to the alternative, which, for many TGD children, is suicide.⁷¹

It is crucial that care providers center both individual and contextual characteristics in both physical and mental health treatments. The minority stress model demonstrates the clear association between TGD identities and increased environmental hostility. Biello and Hughto encourage health care workers to adopt,

“an intersectional lens: Transgender stigma operates at the structural (e.g., discriminatory laws and policies), interpersonal (e.g., enacted discrimination), and individual (e.g., internalized stigma) levels to restrict access to the resources needed to maintain health, exacerbate psychological stress, and ultimately lead to the development or worsening of health conditions... An intersectional framework offers an approach for exploring if and how intersecting marginalized statuses synergistically contribute to health disparities.”⁷²

Laura Bochicchio et al. recommend, “given the

significance of findings related to the association between both depression and gender-based victimization and suicidal behavior, it is critical to advocate for the destigmatization of noncisgender identities through policy-level change,” including within medical communities.⁷³

SOCIAL CHANGE

The barriers to support faced by TGD children described above stem from the prejudices held by American adults resulting from centuries of structural patriarchal transphobia, homophobia, racism, classism, and other compounding factors. Remedying gaps in our social services will ultimately require an intentional shift in beliefs among American adults. School administrators and health care providers will not have the capacity to adequately serve TGD youth until their beliefs and social networks guide them to do so. To achieve this, we can borrow lessons from the gay rights movement.

Within the span of 50 years, same-sex relationships progressed from outright illegality in most US states to widespread societal acceptance and protection by federal law.⁷⁴ A movement that started with a few brave American activists grew slowly, and then more rapidly, until it became a norms cascade—an intersubjective idea initiated by “norm entrepreneurs” and then rapidly accepted as a norm by the majority.⁷⁵ State and federal anti-discriminatory legislation not only legitimize same-sex relationships in the eye of the law but also protect the rights of queer people to find and maintain work, access health care, serve in the military, and legally marry.⁷⁶

As a result of this norms cascade, public support of queer people in the United States “has doubled in the past three decades, more so than for any other group over the same time period, [and] two surveys show a 40% increase in [trans rights] support between 2005 and 2011,” according to the Williams Institute.⁷⁷ This rapid cultural

shift indicates many Americans who do not yet support the rights of TGD people are recruitable and may become increasingly willing to respect and support members of this demographic group.

Increased trans representation in media will be crucial in changing cultural attitudes toward TGD people. There are over one million TGD people living in the United States, but only a third of American adults know somebody who identifies as TGD.⁷⁸ People tend to feel greater empathy toward those who feel familiar; casting more TGD actors in mainstream television programs and films and portraying their characters accurately will help familiarize cisgender Americans with trans people and the structural barriers they face.⁷⁹ The Scholars Strategy Network, an American pro-democracy think tank, finds that “the effects of contacts with an outgroup involve more than just face-to-face interactions . . . cultural contact through media can shape opinions and values, even across national borders. Television, film, radio and the Internet remain powerful socializing mechanisms through which younger generations come into contact with previously invisible minorities.”⁸⁰

Despite a recent rise in TGD media representation, Mocarzki et al. assert that trans representation in mainstream film and television, often shaped by racism and “erasure of transmen and misogyny toward transwomen,” can negatively impact perceptions of TGD people when it does not accurately represent the broad array of lived trans experiences.⁸¹ It will thus be crucial for those working in the entertainment industry to reevaluate and broaden portrayals of lived experiences among TGD characters.

“There are clearly remediable injustices around us which we want to eliminate,” and denying trans children of adequate support is clearly one such remediable injustice.⁸² Lack of specificity in existing policies and legislation tacitly permit the continued violation of the rights and boundaries

of trans children with “disengaged toleration,’ with the comfort of such a lazy resolution as: ‘you are right in your community and I am right in mine.’”⁸³ In these passages, welfare economist Amartya Sen encourages us to critically examine the structural hostility baked into our policies and patterns of behavior rather than falling into patterns of toleration. Doing so will necessitate centering the lived experiences of TGD youth, a historically underserved group, in our social services moving forward.

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BRO-COUNTABILITY

Adarsh Shah

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AS A BOY, I OFTEN STRUGGLED to understand the intensity and cause of the emotions that would sometimes crash over me without any warning. One of my most visceral memories is crying at the dinner table, to which my mother angrily responded, “I do not want to hear you cry again unless I am either sick or dying.” I also remember hypocritically mocking other boys for crying or showing excessive emotion of any kind (such as frustration or anger). Thus, as I was wrestling with my own emotions in forced isolation, I was simultaneously engaging in judgment and censorship of other boys for their emotional expression.

In his book, *Buddy System: Understanding Male Friendships*, sociologist Dr. Geoffrey Greif characterizes close heterosexual cis-gendered male friendships as often being “shoulder-shoulder”—centered around shared activities such as playing video games or watching sports. This is in contrast to close heterosexual cis-gendered female friendships which are mostly “face to face,”¹ connecting over feelings and intimate conversations. By focusing on activities, men are able to avoid engaging with difficult feelings and emotional vulnerability with their friends, choosing instead to maintain “cool” and unaffected facades.

It is impossible to disentangle the nature of male relationships from larger societal masculine expectations that men refrain from showing any vulnerability that could be perceived as weakness. Most boys are taught to remain stoic at all times by everyone around them including parents and teachers. This consequently shapes their expectations of their own relationships and influences how they engage in them. I have often found myself envying the deeply intimate and emotionally expressive relationships that many of my female friends are able to cultivate with one another. Such intimacy, be it emotional, physical (non-sexual), or mental, would be unthinkable in most of my relationships with men. In particular, the sheer frequency and unfiltered nature of sharing feelings (regardless of how inconsequential) that can be present in female friendships has always struck me as a clear departure from male friendships. It is not the case that I never shared or discussed feelings with my close male friends but rather that the sharing stopped short of full emotional vulnerability and honesty. It always had to be filtered through a lens of acceptability and adherence to masculine ideals of emotional stability and invulnerability. For example, sharing sexual desire was always acceptable, but sharing sexual insecurities or questions was not.

Clearly, much work remains for men to grapple with the emotional self-mutilation they must engage in to successfully repress the emotional parts of their identity that contradict masculine expectations. This is critical but exhausting labor that typically falls disproportionately to people of gender identities other than cis-gendered heterosexual males. As men age, this problem is only exacerbated as men are much more likely than their female counterparts to deprioritize friendships.² This leads to a precarious situation in which many men must seek all emotional companionship and solidarity exclusively in their romantic partners. These de facto expectations of romantic partners combined with widespread emotional repression is a recipe for volatility and unfair treatment. Personally, the majority of my most open and intimate platonic emotional relationships have also been with and continue to be with cis-gendered women. Thus, in addition to reflecting on the burden that past female romantic partners have had to shoulder with regard to unpacking my socialized masculine tendencies, I also find myself periodically wondering how much unfair labor has fallen to close female friendships.

Given the unique shared experience of men, it follows that men are the ones best positioned to fully empathize with the emotional experience and associated internal conflicts of their fellow men. Thus, there is both a pragmatic and justice-oriented argument for the need for male-led accountability for men. However, in order for accountability to catalyze genuine behavior change rather than defensiveness and evasion, trust and emotional vulnerability are integral components. Without male trust and emotional vulnerability, there is a risk of centering shame, which consequently risks a focus on hiding wrongdoing instead of grappling with the root impulses of harmful behavior.

Research is already showing the enormous potential of close male friendship in operationalizing such an accountability measure. A study con-

ducted in *Men and Masculinities* found that, among the group of heterosexual men interviewed, “intimate, emotive, and trusting” male relationships lacking “judgment and boundaries” emotionally rivaled the benefits of a heterosexual romantic relationship. The study went on to conclude that “participants mostly determined that bromance offered them elevated emotional stability, enhanced emotional disclosure, social fulfillment, and better conflict resolution compared to the emotional lives they shared with girlfriends.”³

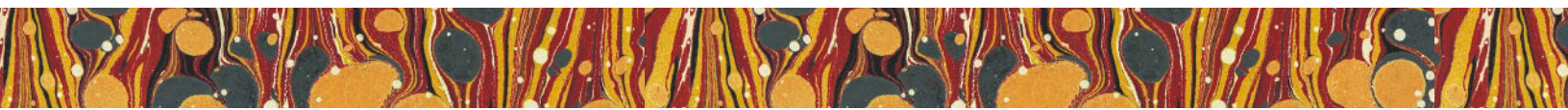
Male relationships also come with an ideal of irrevocable loyalty, sometimes referred to as “bro-code.” This ideal comes with a prioritization of supporting friends (“having each other’s back”) above all else, even in the event that the friend in question is engaging in behavior that is damaging to themselves or others. If male friendships were oriented toward emotional vulnerability and honesty, men could begin to share their true feelings, openly discuss the challenges they face, and genuinely support one another. Instead of being defined by a superficial loyalty, the bro-code could evolve into a truer and deeper loyalty in which men push other men closest to them to better themselves and root out inner destructive tendencies. Perhaps emotional openness could be the first step toward reimagining new methods of masculinity that replace isolation and emotional repression with tenderness, connection, and maybe even healing.

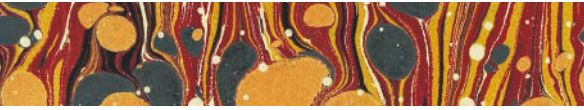
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INCARCERATION AND STATE VIOLENCE

MENSTRUAL EQUITY IN US PRISONS AND JAILS:

A GENDER-BASED ANALYSIS AND POLICY RESPONSES

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Antoinette “Toni” Gingerelli is an advocate for women and girls, working to create more inclusive policies and a more reflective democracy. Prior to pursuing her master’s in public policy at the John F. Kennedy School of Government at Harvard University, Toni was the deputy director of RepresentWomen, a nonprofit organization that researches, educates, and advocates for rules and systems reforms to advance representation and leadership of women in the United States. Most recently she served as chief of staff for a New Jersey state senator, where she oversaw office operations, communications, and legislation. Toni formerly served a two-year term as the American Association of University Women as a youth representative to the United Nations.

SUMMARY

ACROSS THE UNITED STATES, many incarcerated people have inadequate access to menstrual products. Because policies that surround requiring access to menstrual products vary from state to state, incarcerated menstruators are denied “menstrual equity,” or sufficient access to menstrual products regardless of their circumstances.¹ One reason for the lack of inclusive policies regarding menstruation is the inadequate gender-based analysis of the incarcerated population. Calzo et al. define a gender-based analysis in public health as “a systematic examination of how population health is shaped by systems of gender relations, involving policies and laws, programs and services, research priorities, social norms and practices, and public discourse.”²

There are a limited number of transgender-inclusive, formal studies on the number of incarcerated menstruators. Furthermore, there is also a general failure to differentiate biological sex at birth and gender identity when collecting data on prisoners. The absence of this information leads

to sparse knowledge regarding the prevalence of menstrual-product inaccessibility in correctional facilities. Additionally, because prison reform movements often center cisgender men, they usually exclude “the other.” Failure to meet the needs of menstruating individuals can lead to negative health outcomes, including mental health issues.³ As outlined in this paper, to fully understand the scope of menstrual inequity in US correctional facilities, this paper applies a gender-based analysis to the epidemiology of the issue and explores policies to address these inequities through challenging gender norms, otherwise known as a gender-transformative approach.⁴

ANALYSIS OF EPIDEMIOLOGY

Currently there are no formal studies on the number of menstruators incarcerated in the United States. As a result, the only way policy makers and public health professionals can assess menstrual inequity in prisons and jails is to review the available data for women-identifying people and transgender men. Numerous legal cases have argued that transgender individuals have the right,

under the Prison Rape Elimination Act, the Equal Protection Clause, the Eighth Amendment, and even the Americans with Disabilities Act, to be placed in the correctional facility that aligns with their gender identity.⁵ Unfortunately, despite these legal cases, most US prisons and jails “house transgender prisoners according to their birth/biological sex and not according to their affirmed gender identity.”⁶ As a result, the term “women” in data on prisoners may include transgender men and exclude transgender women due to variations in housing policies between correctional facilities.

Given this context, current data estimate that there are approximately 231,000 incarcerated women in the United States. Approximately 200,000 women are in state prisons and local jails, while 16,000 women are in federal prisons.⁷ Additionally, nearly 6,600 girls are in juvenile correctional facilities, and 7,700 women are in immigration detention facilities.⁸ These statistics encompass all 50 US states as well as correctional facilities in the US territories of American Samoa, Guam, and the US Virgin Islands and US commonwealths of Northern Mariana Islands and Puerto Rico. Since 1978, the number of women in state prisons across the United States has grown at a rate twice that of men.⁹ Despite this alarming trend, policies impacting those identifying as women and those who are biologically female in correctional facilities have not evolved over time.

There has yet to be a formal study conducted on the number of incarcerated transgender individuals in the United States. However, a 2009 epidemiological report by Zucker and Lawrence “suggests that the American transgender population is of statistical significance.”¹⁰ According to Elias Lawliet, who studies the transgender population in the United States, “the data we do have suggests that the proportion of transgender inmates in the criminal justice system is high” in comparison to the United States population.¹¹ According to the 2015 United States Transgender Survey, out of the 28,000 transgender people surveyed, nearly 2

percent stated they were arrested in the past year.¹² This is more than twice the rate of the general population at 0.87 percent.¹³ The incarceration rate for transgender people of color is disproportionately higher than that of the general population; for Black transgender individuals, the incarceration is nearly ten times that of the general public.¹⁴ In the most recent study in 2011, the National Transgender Demographic Survey found that “10 percent of its transgender male respondents reported being arrested, as compared to 4.9% in the general population.”¹⁵ In order to further study menstrual equity in correctional facilities, it is essential that state governments collect accurate data on transgender men, including whether they are housed by their gender identity or assigned sex at birth. This will help ensure the need for menstrual products in correctional facilities is appropriately met.

POLICIES ON MENSTRUATION FOR INCARCERATED PEOPLE

Although the progress on menstrual equity in correctional facilities has been slow, there have been some attempts to implement gender-transformative¹⁶ policies. In 2016, the New York City Council passed bill 1122-A, eliminating the cap on the number of sanitary pads an incarcerated person can receive.¹⁷ Prior to the bill, the limit was “eleven thin, poor-quality pads per period.”¹⁸ New York City was the first jurisdiction in the United States to pass legislation of this kind, and it spurred state legislation across the country in the years to follow.¹⁹

In 2018, the Federal First Step Act required that “The Director of the Bureau of Prisons shall make the healthcare products described in subsection (c) [tampons and sanitary napkins] available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner.”²⁰ The act does not specify gender or sex, making it effectively inclusive of all menstruators. Despite these regulations, a lack of enforcement has resulted in many correctional facilities failing to abide by this policy. Greater enforcement by the Federal Bureau of Prisons would create accountability for prison ad-

ministrators and move the United States toward menstrual equity.²¹ Additionally, as outlined in the epidemiological analysis earlier, only 7 percent of incarcerated women are housed in federal prisons.²² Given that nearly 93 percent of women are housed in state and local correctional facilities, even if effectively enforced, the majority of incarcerated women are not directly impacted by the law.

At the state level, as of 2020, only 13 states have laws requiring that state prisons and jails provide menstrual products at no cost to prisoners.²³ Of the 13 states, 11 use gender-neutral language to describe menstruators. Although this language is more inclusive, due to societal norms associating menstruation with cisgender women, transgender men may be overlooked in the law's implementation. The other two states, Tennessee and New York, specifically use the term "women" in their laws.²⁴ As a result, transgender men who still maintain their biological sex and are housed in male prisons are likely to have restricted access to menstrual products.²⁵

In the 37 states that do not have laws protecting menstrual product access, policies surrounding sanitary products are at the discretion of either correctional facilities or the state's Department of Corrections. As a result, many women are forced to purchase sanitary napkins or tampons from the prison commissary, often at an inflated price. Others are forced to ration the menstrual products provided by the correctional facility, which can result in negative health outcomes like reproductive tract infections or toxic shock syndrome.²⁶ The average job in prison pays approximately \$3.50 a day, which often goes toward court fees, phone calls paid by the minute, and sometimes medical fees; as a result, many incarcerated menstruators cannot afford menstrual products.²⁷ These barriers to access deny menstruators their right to bodily autonomy and essential menstrual hygiene products, an integral part of health care. With that said, standardized policies requiring unlimited access to menstrual hygiene products in

all correctional facilities can help rectify these inequities.

THE IMPORTANCE OF A GENDER-BASED ANALYSIS

A gender-based analysis provides insight on the role of sex-linked biology, structural sexism, and gender embodiment. In the case of menstrual equity in prisons, a gender-based analysis provides insight about the data that prisons don't collect. However, a gender-based analysis does not simply mean drawing attention to the data that are missing but also attempting to understand why certain populations may not be included as a result of societal structures and norms. For example, as Linda Steele and Beth Goldblatt suggest, transgender individuals are often "excluded from efforts to address menstrual inequities facing cisgender women and girls," as visible in correctional facility reform, due to "failing to meet normative gendered ideas of the menstruating body."²⁸ This is because menstruation is "a vehicle for sex and gender normativity and ideals of embodiment," or in other words, norms regarding who menstruates uphold sex and gender norms.²⁹

Assessing the role of structural sexism and power dynamics in the prison system also provides insight about the perpetuation of menstrual inequity. Menstruation cannot be separated from cultural, social, and political dynamics, as seen the prison system.³⁰ There are documented cases of correctional officers withholding menstrual products to control incarcerated women, stop them from reporting inappropriate behavior, or coerce them into sexual favors.³¹ There is a clear power imbalance between the correctional officers, many who identify as men, and the incarcerated women.³² As Inga T. Winkler notes, "Menstruation is fundamental because it is ultimately about power relations—the power of the guard in the prison or staff in a homeless shelter to dispense or withhold menstrual products."³³

The heterogeneity of menstrual equity laws in

correctional facilities by state results in inequitable access for incarcerated menstruators. An equitable solution would be to create a national policy, applied to correctional facilities at all levels, that clearly specifies the right of all menstruators to access menstrual products. To do so, the Biden administration can direct the Department of Justice to promulgate regulations on providing menstrual products to menstruators of all identities. It is important that the Department of Justice develops clear regulation and enforcement mechanisms to ensure the policy is implemented in an inclusive manner. Additionally, through federal legislation or regulations, all prisons and jails should be required to collect information on self-reported gender identity, in addition to biological sex, during the prisoner intake process. These data will provide better insight on the prevalence of menstrual inequity and enable better allocation of resources. In order to have a significant impact, menstrual equity in correctional facilities must be addressed with a gender-transformative approach.

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INTENT TO DESTROY:

REPRODUCTIVE VIOLENCE AGAINST UYGHURS AS A WEAPON OF GENOCIDE IN CHINA

Gabriela Cipolla, Sarah Froehlke, and Shivi Thakur

BACKGROUND

CHINA IS A MULTI-ETHNIC COUNTRY comprising 56 ethnic groups, with the predominant religion being Buddhism. The Han ethnic majority group represents 91.5 percent of the population, while 55 ethnic minority groups account for 8.5 percent.¹ Uyghur Muslims represent 0.31 percent of China's population. The Xinjiang Uyghur Autonomous Region, located in China's northwest, is the only region with a majority Muslim population. According to the 2010 Census, Xinjiang's population is 45.8 percent Uyghur (approximately 12 million) and 40.5 percent Han.² Uyghurs speak their own language, similar to Turkish, and consider themselves culturally and ethnically close to Central Asian nations.³ The Chinese government's oppression of Uyghur Muslims is not a new phenomenon but has reached unprecedented levels in recent years.

Severe and wide-ranging repression of ethnic minorities has persisted under the pretense of anti-separatism, anti-extremism, and counterterrorism in Xinjiang. Since 2017, approximately one million Uyghurs, Kazakhs, and other predominantly Muslim peoples have been arbitrarily detained without trial and subjected to political indoctrination and forced cultural assimilation in "transformation-through-education" centers.⁴ Despite initially denying the existence of camps altogether, authorities later described them as "vocational training" centers. Satellite imagery indicates that an

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increasing number of camps continue to be built.⁵ Documenting the full scope of human rights violations is challenging due to a lack of publicly available data and restricted access to Xinjiang.

In June 2020, 50 independent United Nations (UN) human rights experts strongly criticized China for the repression of religious and ethnic minorities in Xinjiang. On 6 October 2020, 39 UN member states issued a joint statement expressing grave concerns about the human rights situation in Xinjiang. They urged China to allow immediate, meaningful, and unfettered access to Xinjiang for independent observers, including the Office of UN High Commissioner for Human Rights

(OHCHR) and relevant UN special procedure mandate holders. Capitalizing on its rising political and economic influence and expanding role within the UN Security Council, China continues to challenge established human rights mechanisms.⁶ Most recently, over 40 countries have criticized China at the UN over the reported torture and repression of Uyghurs in Xinjiang.⁷ On 9 November 2021, the US Holocaust Museum's Center for the Prevention of Genocide's report concluded "a reasonable basis" to determine that China's actions against Xinjiang's Uyghur Muslims and other minority populations amount to genocide.⁸ Furthermore, in its seminal report on the genocide, the Newlines' Institute for Strategy and Policy dually concluded that China has, in fact, breached every act prohibited in Article II(a)–(e) of the Genocide Convention.

MAIN DEVELOPMENTS

This section will outline and analyze the gendered methods employed by China to destroy the Uyghur population, provide evidence of declining Uyghur birth rates, and detail the extent to which China has violated the 1948 UN Genocide Convention.

In 2014, China enacted the "Strike Hard Campaign against Violent Terrorism," in Xinjiang, which Chinese officials maintain is "essential for national security purposes."⁹ Since then, the number of people arrested in the region has dramatically increased compared to the previous five-year period.¹⁰ Arrested Uyghurs are sent to pre-trial detention centers and political education camps, the existence of which are not supported by Chinese law. According to interviews with Uyghur women conducted by Human Rights Watch, many reported that half or more of their immediate family members are in a mix of political education camps, pre-trial detention, and prison. For example, an interviewee said her husband, his four brothers, and their 12 nephews—that is, all the men in the family—have been detained in political education camps since 2017.¹¹ China's gender-targeted political violence is no coincidence. The separation of family units weakens its individual members socially, po-

litically, economically, and emotionally. As men are traditional heads of home, the removal of men will contribute to decreased birth rates, reduced access to formal social linkages and information, and decreased financial and economic resources. The targeting of men points to how gender is not only a female issue—males are impacted as well.

More specifically, China uses reproductive violence against Uyghur women to fulfill its mission under the guise of "re-education camps," wherein forced labor and brutal acts of forced sterilization, rape, sexual torture, and indoctrination occur. China has also imposed new birth control policies and forced interracial marriages and mass surveillance on Uyghur women. As of November 2021, at least one million people have been detained.¹²

Under international law, China bears state responsibility for breaching the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Evidence points to direct violations of sections (a)–(e) in Article II: "(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures to intend to prevent births within the group; (e) Forcibly transferring children of the group to another group."¹³

The international community has been slow to label these atrocities as genocide largely because common conceptions of the term evoke nothing less than mass killing. However, the convention clearly outlines the actions of China as genocidal. Genocide itself is gendered, as the destruction of a group, in whole or in part, is reliant on the manipulation of biological sex and the performance of traditional gender roles recognized by the persecuted communities.

SURVEILLANCE AND FREEDOM VIOLATIONS

In addition to the ongoing Strike Hard Campaign, China has installed a vast security network within

Xinjiang to monitor the Uyghur movement. Authorities have hired thousands of additional security personnel and have built “convenience” police stations and checkpoints in the region.¹⁴ Moreover, Xinjiang authorities conduct mandatory biometric data collection, such as voice samples and DNA, and use artificial intelligence and big data to identify, profile, and track everyone in Xinjiang.¹⁵ Employed as “filters,” these systems identify people with certain behavior or characteristics that the state deems threatening to the Communist Party’s rule in Xinjiang. These systems have also enabled authorities to implement fine-grained control, subjecting people to differentiated restrictions depending on their perceived levels of “trustworthiness.” A 2019 Human Rights Watch report found that the government was using a mobile application known as the Integrated Joint Operations Platform to store data of Uyghurs and other Turkic Muslims to monitor their movement through facial recognition.¹⁶ Their goal is “to identify patterns of, and predict, the everyday life and resistance” of Xinjiang’s population, “and ultimately, to engineer and control reality.”¹⁷ Residents of Xinjiang, inside and outside re-education camps, are flagged for their relationships, communications, and travel histories or for being related to someone deemed suspicious.¹⁸

DETENTION CAMPS

Inside the detention centers, Uyghur detainees are routinely subjected to physical and psychological violence at the hands of the detention center authorities.¹⁹ Documentation of survivor testimonies reveals detainees being beaten, whipped with cables, hung from ceilings and walls, stomped, forced into stress positions, placed in solitary confinement, subjected to electric shocks and prolonged shackling, forcibly deprived of sleep for extended periods, and deprived of food. Other reports also describe Uyghurs dying while in custody.²⁰ In some detention camps, men perform forced labor, often manufacturing textiles for large corporations such

as Gap, Uniqlo, Tommy Hilfiger, and others.²¹

The strongest indictment against the treatment of Uyghurs within detention centers came from Mihrigul Tursun, a Uyghur woman, during a hearing before the US Congressional-Executive Commission on China on 12 September 2018. She recounted how both her arms and legs were bound and she was stripped naked, electrocuted, and chained at the wrist and ankles to dozens of women and held together in a 420-square-foot underground cell, with no toilet facilities and only a small opening in the ceiling for ventilation.²² Uyghur women who were able to enter the United States as refugees in 2021 have collectively confessed that women in the camps are systematically gang-raped, tortured daily, and coerced to undergo medical procedures such as forced sterilization and organ removals.²³

Uyghur women are also regularly subjugated to pregnancy checks, forced intrauterine devices (IUDs), sterilization, and abortion. In 2018, Chinese authorities performed 963 IUD placements per 100,000 of the population, far higher than the national average of 21.5.²⁴ Moreover, a 2019 government document revealed that authorities in Xinjiang planned to subject at least 80 percent of women of childbearing age in the four southernmost minority prefectures to intrusive birth prevention surgeries, i.e., IUDs and sterilization.²⁵ Testimonies of pregnant survivors at the time of their detention also reported being kicked in the stomach and forced to abort their pregnancies.²⁶ Uyghur and Kazakh women held in detention centers also report being subjected to forced sterilizations and IUD placements while in detention.²⁷

GENERATIONAL EFFECTS

The re-education camps have catastrophically reduced Uyghur births. By selectively imprisoning women and men of childbearing age, depriving them of the ability to reproduce, the population growth rates in Uyghur-concentrated areas are

rapidly approaching zero.²⁸ China is in clear violation of Article II(d) of the Genocide Convention: “imposing measures intended to prevent births within the group.”²⁹ The birth rate across the region fell by nearly half (48.74 percent) between 2017 and 2019. Active reduction of births for women and removal of men from family units during childbearing years has devastating generational impacts. In addition, and as the Uyghur birth rate declines, remaining children are forcibly removed from their families to state-run orphanages. The trauma done onto the Uyghur people and their erasure will affect the continuation of cultural traditions, language, history, and religion.

While their parents are detained in re-education camps, approximately half a million Uyghur children are forced to attend state-run boarding schools. These facilities are reportedly a guise to brainwash Uyghur children “to be obedient and loyal to the Chinese Communist Party” while rescinding their own Uyghur culture and language.³⁰ Additionally, testimonies indicate that children in the boarding schools live in terrible conditions where they are “locked up like farm animals in a shed.”³¹ Uyghur children residing abroad are “unable to contact their parents.”³² The forced separation of families is in direct violation of Article II of the Convention on the Rights of the Child, which states that countries “shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”³³ Not only do Uyghur children face immediate consequences such as being without their parents, they also face harmful impacts on their development, mental health, and emotional stability that will last for generations to come.³⁴

STATE AND INTERNATIONAL RESPONSE

CHINA’S RESPONSE

The situation in Xinjiang calls for immediate action; however, any international initiative may be curtailed due to China’s position on the United Nations Security Council (UNSC). Though there are 15 members on the council, only five countries hold veto power: China, France, Russia, the United Kingdom, and the United States.³⁵ The influence and power behind each country’s veto are essential to international decision-making. Though France and the United Kingdom have not exercised their veto power since 1989, Russia and the United States are frequent users.³⁶ More concerning and relevant, over the past several years, China has increased its use of the veto.³⁷

Of Uyghurs living abroad, 96 percent have faced digital risks, threats, and harassment.³⁸ China’s Foreign Ministry has also curtailed survivors’ efforts to speak out against the Uyghur genocide. In numerous press conferences on “Xinjiang-related issues,” Foreign Ministry officials claim survivors are actors who “make a living by smearing Xinjiang abroad” to gain refugee status.³⁹ To silence survivors, China has launched a campaign of intimidation: discrediting survivors’ testimonies, jailing their families, and coercing survivors’ families to speak out against them.⁴⁰ By discrediting survivors’ experiences and testimonies, China in turn creates a narrative of victim-blaming and erasure of the Uyghur people.

Similarly, Uyghur activists outside China who demand information on the well-being of their families and friends often receive “proof-of-life videos” that the Uyghur Human Rights Project (UHRP) has deemed “hostage-style videos” designed to silence and discredit Uyghur activists.⁴¹ These videos, accused of being scripted by the UHRP, feature Uyghurs who give formulaic accounts of their life in Xinjiang while remaining uncritical of the Chinese government. Not only do these proof-of-life videos serve as a tool of manipulation and control by China, they also function as a “form of Uyghur erasure” working to deny and overwrite Uyghur “concern, expression,

and freedom.”⁴² Furthermore, the Uyghurs featured in the videos act as China’s mouthpiece to encourage the silence of their Uyghur relatives abroad. By being forced to discredit their family members, Uyghurs in turn damage the family unit and the sense of belonging that goes along with it. China has also worked to silence news outlets, journalists, and organizations that speak out against the genocide. For instance, 25 relatives of reporter Gulchehra Hoja have been arrested and detained in Xinjiang internment camps.⁴³ Hoja was also placed on China’s terrorism list.⁴⁴

The international community has been largely split on the response to the Uyghur genocide and has not addressed it through a gendered lens. In October 2021, 43 countries gathered at an OHCHR committee meeting and voiced concerns over “reports of widespread systematic human rights violations” and called on China to allow “immediate, meaningful, and unfettered access to Xinjiang.”⁴⁵ The number of countries condemning China has increased since the UN’s first condemnation in 2019, when only 23 countries voiced criticism. The United States, United Kingdom, and Germany are leading the charge.⁴⁶ However, many countries oppose criticism of China’s actions. Along with 61 other countries, Cuba released a statement dismissing the allegations of genocide against the Uyghur people as politically motivated and full of “disinformation.”⁴⁷ They further stated that what happens in Xinjiang is “China’s internal affair.”⁴⁸ In a statement to the OHCHR committee, China’s UN ambassador, Zhang Jun stated, “To the US and a few other countries: Your desperate attempts to cover up your own terrible human rights record will not work. . . . No matter how many times repeated, lies are still lies. . . . You are using human rights as a pretext for political maneuvering to provoke confrontation.”⁴⁹

LEGAL AND ECONOMIC ACTION TAKEN

In 2020, the European Union adopted legislation that “allows sanctions on human rights abusers,” though “it has yet to apply it to Chinese officials.”⁵⁰ In February 2021, the Canadian and Dutch par-

liaments “passed nonbinding motions to use the genocide label.”⁵¹ The United Kingdom “will fine companies that fail to” ensure their “supply chains do not use forced labor.”⁵² The United States has consistently advocated against the Uyghur genocide and was the first country to use this label. Furthermore, the United States has imposed visa restrictions on Chinese officials, blacklisted some two dozen Chinese companies “linked to abuses in the region,” signed off on sanctions against individuals oppressing Uyghurs, and banned cotton and tomato imports from the Xinjiang region.⁵³ Notably, the United States has not admitted any Uyghur refugees during FY2019 and FY2020.⁵⁴ Similarly, the global Uyghur refugee rate is remarkably low. Experts cite logistical reasons: “it’s next to impossible for Uyghurs in China, most of whom are under extraordinary state surveillance, to access refugee resettlement systems.”⁵⁵ Those who manage to escape face the possibility of being denied asylum or returned to China. Since 2015, China has pressured countries such as Thailand and Egypt to return Uyghur refugees, making it difficult for Uyghurs to find a safe place to go.⁵⁶ Additionally, some argue that US officials are hesitant to move forward with further action because of the precarious nature of their relationship with China.

Brookings Institution’s Director of Research in Foreign Policy Michael O’Hanlon believes that rhetoric such as “genocide” will heighten tensions and make “global conflict more likely—without actually aiding the Uyghur population.”⁵⁷

RECOMMENDATIONS

Though the international community’s response has been largely ineffective, especially considering China’s position as a UNSC veto power, there are several actions that US policy makers and international bodies can take. Acting multilaterally and bilaterally, the United States and other like-minded states follow the below recommendations:

* They should coordinate the US Commission on International Religious Freedom (USCIRF) through the UN General Assembly.

* Biden's newly minted Gender Policy Council (GPC) should immediately issue a statement condemning the genocide and acknowledging its inherent gendered attacks.

* Sanctions should be part of a more robust strategy instead of singular use. This should include coordinated actions with allies, particularly Canada, under its Sergei Magnitsky law, and the United Kingdom, which recently implemented its own version of the Global Magnitsky Act called Global Human Rights.

COORDINATE THE USCIRF THROUGH THE UN GENERAL ASSEMBLY

Although China controls the UN Security Council with the exercise of its veto power, it does not hold the same weight in other multilateral fora such as the UN General Assembly.⁵⁸ The United States and like-minded states must align themselves and respond in coalition to the genocide underway in Xinjiang. The USCIRF is well placed to inspire and coordinate the US response. There is an ongoing effort to construct an international fact-finding mechanism to officially document the details of China's actions. Although China has largely denied calls for independent missions to China, it is crucial that the United States and its allies use soft-power diplomacy to continually push China to allow fact-finding missions to enter Xinjiang. UN General Assembly members allied with the United States, and other states who have called for the cessation of the Uyghur genocide, must continue to engage in the pursuit of religious liberty and human rights.

Additionally, states could request that the General Assembly invoke the "Uniting for Peace" resolution, Resolution 377A, which provides that in cases in which the Security Council—due to a lack of unanimity among its permanent members—fails

to act according to its mandate to maintain international peace and security, the General Assembly shall consider the matter immediately and may issue recommendations to UN members for collective measures.⁵⁹

ISSUE A STATEMENT CONDEMNING THE GENOCIDE AND ACKNOWLEDGING ITS INHERENT GENDERED ATTACKS

According to the White House's official press release, the GPC was established to "advance gender equity and equality in both domestic and foreign policy development and implementation."⁶⁰ The GPC covers a range of issues, including economic security, health, gender-based violence, and education, with a focus on gender equity and equality and particular attention to the barriers faced by women and girls. The Uyghur genocide is inextricably intertwined with gender identity, attacks on motherhood, and reproductive rights violations—all issues that the GPC espouses are of crucial national importance. In order to express a willingness to engage in multilateral dialogues, contrary to his predecessor President Trump, President Biden should issue a statement from the GPC that firmly denounces China's genocidal campaign in Xinjiang. The statement must acknowledge gender as a focus of the genocide, not a consequence or result of genocide.

SANCTIONS SHOULD BE PART OF A MORE ROBUST STRATEGY INSTEAD OF SINGULAR USE

The Chinese government has implemented a vast system of forced labor in Xinjiang, which supplies much of the world's cotton (22 percent).⁶¹ China is transferring Uyghurs to factories around the country. Supply chains that start in Xinjiang end with celebrated global brands—Gap, C&A, Adidas, Uniqlo, Tommy Hilfiger, and more—permeating US markets. Most Uyghur men who work in these factories are removed from their family units at childbearing age, further contributing

to attacks on Uyghur reproductive rights. Indeed, China supplies more than a third of the apparel entering the United States. The US should strengthen the enforcement of US import bans on products produced in Xinjiang. US Customs and Border Protection can prohibit goods from entering the United States—and launch a civil enforcement action against importers when goods do enter—under the Trade Facilitation and Trade Enforcement Act of 2015, 19 USC. § 1307.⁶² Several Chinese goods are already subject to withhold release orders. Garments and cotton are of particular concern, given the complete vertical integration of the apparel industry in Xinjiang. Considering its push against human trafficking and forced labor, the US should sanction all garments made in Xinjiang with Uyghur labor.

NOTES

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FLOWER POWER:

IS WOMEN PROTEST MOVEMENT IN BELARUS FEMINIST OR FEMININE?

Tatiana Krivobokova

Tatiana is currently pursuing a master's degree in European and global studies. A former international political journalist, she is interested in gender studies and feminist research now. Tatiana's focus is on women's political empowerment and combat against domestic violence as well as the needs of marginalized women. She is also passionate about academic freedom and is actively advocating for it.

ABSTRACT

A MOTHER OF FOUR, a 20-year-old student, a lesbian activist, a university professor, and a nurse—what do they have in common? They all have been repressed, persecuted by the police, and forced out of their country. After “the last dictator of Europe” Aleksander Lukashenko claimed another landslide victory in 2020, Belarus descended into violence and reports of tortures and police abuse. Considered a deeply patriarchal state with “strongman” Lukashenko in power for nearly three decades, Belarus has never seen a female political leader, and women were discouraged from participating in politics. In the wake of the rigged elections in August 2020, primarily young men took to the streets to express their discontent and faced severe crackdown. Male opposition leaders were arrested or fled abroad—it seemed that there was no one left to guide the opposition. The level of violence was so staggering and appalling, women went to the streets to shield their sons and husbands. That is when, the “three graces”—three female opposition leaders—became symbols of pro-democratic peaceful protest, followed by thousands of Belarussian women in their fight against the tyranny. I interviewed several of

those women to understand their motivation, their struggles, and their vision and, most importantly, to make their incredible stories heard. Combined with historical overview and thorough analysis of women's socioeconomic and political position in modern Belarus, unique experiences of interviewees allow me to shed light on the origins of unprecedented women's appraisal in patriarchal society, and it is affiliated with modern feminism.

INTRODUCTION

“We were pressed against the fence. It was already hard to breath when they used pepper spray on our faces. We could not keep the line anymore, some scattered away. That's when the police started grabbing men, throwing them headfirst into police trucks or knocking them to the ground. They told us, girls, to run away if we didn't want more problems. I could not even walk, so I collapsed hysterically on the ground trying to catch my breath. It was one of the most terrifying moments of my entire life. This fear is still with me.” It is because of that day that Sveta (name changed), a former med-

ical worker, young woman, suffers from PTSD today. Now she is trying hard to live a normal life, months after massive protests swept Belarus and Lukashenko's regime violently suppressed them.

In 2020, after 26 years in power, "the last dictator of Europe" Alexander Lukashenko declared a landslide victory. Again. The very same night, the country plunged into violence. The uprising was spontaneous, violent, aspiring, desperate, and definitely unexpected both for the opposition and for the regime. The revolt was brutally suppressed by riot police, with many protesters beaten, tortured, and detained. On the fourth day, a human chain of women, dressed in all white with red flowers and ribbons in their hands, went to the streets of Belarus's cities. Three female leaders, called the "three graces" lead the revolt: Sviatlana Tsikhanouskaya, a homemaker and mother; Maria Kalesnikava, a feminist and musician; and Veronika Tsepkalo, an IT manager and mother. None of them initially planned to be at the vanguard, but they unexpectedly became the new—female—face of the resistance.

The president did not take them seriously at first; he made patronizing remarks and claimed that Belarus "was not ready to vote for a woman."¹ Belarus was believed to be a deeply patriarchal state, with Lukashenko playing a father figure and women discouraged from taking active part in politics for decades. "Women's revolution," as media labeled it, changed everything in 2020. But the questions remain unanswered. What has changed, and what made women step forward? Has the attitude of the society towards the very idea of a female president been reconsidered? And finally, how is it related to modern global feminist agenda?

THEORETICAL FRAMEWORK AND METHODS

Gender scholarship provides extensive analysis of women's protests and social movements^{2,3,4}; however, most of them are focused on Western

Europe and North America. Gender and women's studies in post-Soviet Eastern European nations are still fragmented and marginalized, and the majority of research has been done exclusively on Russia and in Russian language, while some of them analyze Russia, Ukraine, and Belarus as a consolidated group.^{5,6} Hence, a more detailed and thorough analysis is needed in order to attain more elaborate comprehension of women's role in democratic mobilization and the role of feminism. There is also demand for more studies of this region in English, which would allow wider international academia to delve into the topic.

To get a better understanding of the context of women's movement in the country, a brief historical overview will be provided. Apart from it, to draw a clearer picture of women's position in modern Belarus society, its gender power dynamics, and economic equality, the latest available statistics on gender-related criteria^{7,8} and Belarus' performance will be assessed.

This paper relies heavily on primary data, i.e., interviews conducted by the author among Belarus' female activists or activists who identify as female, adults over 18 years old, who participated in protests against allegedly fraud elections in 2020, many of whom faced legal and/or physical consequences. They endured physical damage during marches, were detained, faced criminal charges, and/or were forced out of the country. All interviews are in depth, open ended, recorded, and conducted in Russian and held under the condition of anonymity.

HOW WIDE IS BELARUS'S GENDER GAP?

The purpose of this part is to examine the statistical performance of Belarus in terms of gender equality in accordance to the basic global indexes. At first glimpse, numbers demonstrate an optimistic picture. According to Global Gender Gap Index 2021, Belarus holds 33rd place out of 156 countries, very

close to the United States (#30) or the Netherlands (#31) and surpassing countries such as Italy or Israel. It is also among the top five best-performing nations in the Economic Participation Subindex, which globally witnesses the widest gender gap. In the region of Eastern Europe, Belarus achieved remarkable results, showing the best performance in economic participation and opportunity, and the biggest share of women in parliament in Eastern and Central Europe (40 percent).⁹

In the Women's Power Index, which ranks 193 UN members and analyzes the share of women heads of state or those in cabinets, legislatures, local authority bodies, Belarus scores quite high. The proportion of women in local and national legislation is significant: 48 and 35 percent, respectively.¹⁰ Belarus displays good scores in gender equality in education, employment, health, and even legislation. Paradoxically, these ratings somehow do not translate into political empowerment. Katerina (name changed), an LGBTQ+ and feminist activist, believes that women don't even realize how much is on their shoulders and tend to downplay their own role. "Chores, kids, emotional serving, social communications, family member's health—these are exclusively women's responsibilities. And after all of it, they also have to go to politics, really? Women are already tired of their duties; they are happy to hear that at least in one single field they can be 'weak,' they don't have to solve this too." Nevertheless, women became the driving force of pro-democratic revolt. Let's examine how it happened.

THREE GRACES, WOMEN'S EMPOWERMENT

The discontent over Lukashenko's regime did not start in 2020; it was building up for decades, as he has been in office for 28 years now. Anna (name changed), a university professor, started her social activism in the 90s, when it became clear for her that after the fall of the Soviet regime something similar started to evolve in Belarus. Lukashenko

seized power after the referendum in 1996 and for decades has been gradually broadening the presidential mandate. Natalia (name changed), a mother of four, recalls that she never voted in previous elections and did not participate in anti-government protests, which were brutally suppressed every time. But 2020 was different.

All my interviewees were unanimous in their sentiment that it was the first year when real competitive candidates stepped into national political arena and voters felt like they could choose. There were three leading male figures: a popular YouTube blogger and anti-corruption activist, Sergei Tsikhanouski; a diplomat and former head of Belgazprombank, Viktor Babaryka; and an IT entrepreneur with state management background, Valery Tsepkala. Belarus's Central Electoral Commission refused to register Tsepkala, arguing that the majority of signatures collected for his candidacy were not valid. Viktor Babaryka was not registered either, in reference to alleged inconsistencies in his declaration of income and property. Sergei Tsikhanouski was arrested in May of 2020, two days after he announced his intention to run for presidency. It was in this environment that his wife, Sviatlana, took up the initiative. Before the elections, Tsikhanouskaya had never participated in any political or social activism. She explained that she started collecting signatures and submitted the documents to join the presidential race just to support her husband.

As Lukashenko's rivals, Sergei Tsikhanouski and Viktor Babaryka, were detained and Valery Tsepkala fled the country, Alexander Lukashenko felt safe. He got the men out of his way. Apparently, the "last dictator of Europe" did not take his female opponents seriously. But Sviatlana Tsikhanouskaya, Maria Kalesnikava, and Veronika Tsepkala have become Belarus's main opposition figures, named the "three graces" by the media and their supporters. Lukashenko, in his turn, called them "girls" and sent them "back to kitchen." Indeed, many were doubting Tsikhanouskaya, a simple housewife and a former English teacher, who ended up the main

opposition candidate. “At the beginning I thought, she won’t make it. A woman can’t handle political power—how can she be a president?” Natalia says. Anna confirms, “Many were not ready to accept Sviatlana as a candidate—she had zero management experience”. Indeed, Tsikhanouskaya did not offer anything concrete except new transparent and honest elections, and she was not seen as a plausible future president. At this point people were ready to cast their ballot for anyone to avoid another Lukashenko’s presidency. Tsikhanouskaya was a clear protest vote, but eventually she gained massive support from pro-democratic forces.

The presence of social media made election frauds visible and provable. Videos were posted showing certain election committees being instructed on how votes should be assigned. Some polling stations published real ballot papers, and people finally saw with their own eyes the scale and obscenity of manipulations. “Then I attended the first march—it felt like the entire capital was there. For the first time I realized how many were against the regime. I saw my friends and my neighbors there too; I understood that we stand together,” says Natalia.

Before Natalia and other women descended to the streets for peaceful manifestations, there were three nights of extremely violent clashes between protesters and the police. Cynically rigged elections were followed by massive opposition mobilization. The response by the security forces was unexpectedly brutal, with multiple reports of excessive force, use of stun grenades, gas, and rubber bullets.¹¹ The escalation of cruelty, including torture, rape threats, and food and water deprivation, by law enforcement forces was testified across the country.¹² According to official data, over the first four days of protest, 6,700 people were detained, while the information on hundreds of detainees remained unknown. In a desperate attempt to disrupt communication between protesters and their leadership, the biggest ever Internet shutdown was implemented by the

government, when the entire country was blocked from the global network for at least 61 hours.¹³ And after three days of unmotivated violence from the government, the women stepped in.

“STOP, B*TCH, OR I SHOOT!”

“From the very beginning it was exclusively a women’s protest. With all the solidarity chains in white dresses and with red flowers, we wanted to make clear that as woman we were unarmed, harmless, well intentioned, and nonviolent. In contrast to the police and the army against us, we were peaceful. Women’s marches showed to everyone that they should not be afraid to join the protest because we are not bringing destruction, violence, or looting.” After Natalia’s husband was detained for eight days, she told him to stay at home to be safe. “What will they do to me? I’m just a woman.”

“We decided to march because we saw that men were not doing enough; they were weak, so it was our turn. We naively believed that nothing bad would happen to us, ’cause we are girls. We were wrong.” Olga, a 20-year-old student, says she is not a feminist. She does not believe in equality between men and women, at least physically. She also claims that there is more trust in men in leadership, and they should be in the forefront of revolution, since “women are more emotional.” Olga relied on men to secure her safety, to protect her from the police brutality, and she was disappointed.

“It was October 25. My friend and I were about to leave the march when the police let off stun grenades at the crowd. I lost sight of my friend and was trying to find her to escape together, everything was covered with smoke, explosions at our feet, people screaming, panicking. . . . I tried to hide in the nearest courtyard, but the police were already there roughing up some guy. After one of them shouted at me “Stop, b*tch, or I shoot!” I rushed to the bigger street.” That’s when she got hit by a stun grenade and was severely injured. In addition, Olga shared a story of sexual harassment by the policemen, details of which she asked not to publish, so I

have no right to reveal it here. The only thing that I can confirm is that it is one of the most disgusting and hideous stories that I, as a woman, have heard. She has been forced out of the country and now is building her new life from scratch.

QUEER PERSPECTIVE

Anti-governmental protests after the rigged elections were massive and very inclusive—they united groups of artists, doctors, people with disabilities, pensioners, teachers, and many others. Katerina, LGBTQ+ and feminist activist, shares: “I was hesitant to join at the beginning. Their rhetoric of protest ‘for our brothers, sons, and husbands’ was questionable for me. Why don’t you stand for yourself? Why do you have to find a man to protect? Then a queer column mobilized, and I realized that it was a historic moment for queer community to make our voices heard. If we step forward now, in the future no one will have the right to say that we were not there.” Katerina together with other LGBTQ+ representatives and activists joined national protests in September and got disappointed rather than excited. She was marching under a rainbow flag for democracy and freedom and did not feel safe, not only due to massive police presence but also because of fellow protesters. Some were aggressive; some accused them of stealing the agenda and seeking attention. “What were we doing wrong? We were marching with our flag, just like others; we were simply manifesting our existence.”

Katerina and her partner had to flee the country. Above all she was worried about the future of her daughters, since in Belarus she, as a lesbian, could have been accused of “LGBT propaganda and child abuse.” Being a refugee herself, she has been working to support other women, same-sex couples, mothers, and other vulnerable groups of migrants. And even in the exile, she has to deal with open homophobia from people that call themselves pro-democratic and opposition.

“Now we stand for the same goal, but when we win, people like me will beat up people like you”—this is the message that she received multiple times from certain anti-governmental groups. She is not giving up on fighting, as she is determined to make queer people visible in the anti-authoritarian fight and to ensure that the women’s contribution to the resistance won’t be downplayed.

MADAM PRESIDENT?

Katerina is quite skeptical towards Sviatlana Tsikhanouskaya, who, despite being an inspiration for thousands of women across the world, reiterates that she cannot wait to come “back in the kitchen to cook cutlets.” Katerina has more trust in another key figure of the opposition, Maria Kalesnikava. She is a vocal feminist, professional musician, and art director who studied and toured in Germany and Belarus before she got involved into politics. In 2020, she headed the presidential campaign of Viktor Babaryka, Lukashenko’s biggest competitor. After he was arrested, she united her efforts with Tsikhanouskaya and Tsepkalo and created a triple alliance. Later, after both of her allies already fled the country, Kalesnikava was detained by the security forces after a failed attempt to force her out of Belarus. As her teammate reported later, she was forcefully pushed into the backseat of a van and brought to the border of Ukraine, where she tore up her passport and threw it out of the car window.¹⁴ After she refused to leave the country, she was sentenced to 11 years in a penal colony. “People voted for Tsikhanouskaya because there was no one else to vote for. But I hope one day they will vote for Masha [Maria Kalesnikava] because of who she is and what she stands for,” Katerina says.

In 2020, Natalia did not vote for Tsikhanouskaya as the new president—she rather voted for a change. But since then, her attitude toward the opposition leader changed completely. “Sviatlana said she was not ready to be a president back in the day. I don’t know if she is ready today, but I would vote for her

now.” Anna is even more optimistic about the chances of a woman becoming the next president of Belarus. She claims enthusiastically that the society, which on the family level is organized in a matriarchal structure, is ready for female leadership more than ever. “The only one not ready here is Lukashenko.”

CONCLUSION

What has been happening in Belarus is illustrative of broader trends, as women are playing an increasingly substantial role in political mobilization and democratization across the world and in Eastern Europe specifically. Women-led protests in Belarus were intended to be more peaceful and inclusive, representing all social groups’ interests. It attracted people who otherwise would be hesitant to join anti-government protest out of concern for possible unnecessary violence, looting, and street battles.

Furthermore, Belarus women’s revolution created new role models for the new generation of female leaders and activists, who are willing to be recognized as an independent member of the society. This is especially interesting to observe in former soviet republic of Eastern Europe, where families have been historically based on the matriarchal household model, which did not translate into political empowerment for women. “It is believed that men are the strong ones, but in reality women hold everything on their shoulders. The new generation is different, we’re tired of hearing that we are worth nothing and that our value is defined by our male partner.” Women-led pro-democratic movements have been reshaping social roles as female opposition leaders are shattering stereotypes.

However, it should be noted that women’s protests in Belarus were not organized or managed by feminists. In fact, feminists’ “natural allies,” LGBTQ+ groups, have been silenced and discriminated, as traditionalist values are still present and powerful in Belarus. Even prominent female

activists tend to distance themselves from the very notion of feminism due to its negative connotations in society and hence remain rather individualistic and poorly organized in their efforts. As one of my interviewees, Katerina, assumed, women are so negative toward the word “feminism” because they are tired of everyday social burden and “are afraid of more even duties and responsibilities.”

Nevertheless, it is increasingly obvious that Belarus’ society is rediscovering themselves. Classic femininity images and symbols has been successfully instrumentalized by women to protest against patriarchal dictatorship, while operating within global feminist agenda. And although Belarussian feminism is to face and overcome many challenges, maybe it will define its own unique way to fight for gender equality and women’s empowerment.

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A FEMINIST CASE FOR BORDER ABOLITION

Rachel Carle

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IN 2020, MILLIONS OF PEOPLE in the United States and around the world rose up for Black lives, moving the decades-long call for abolition to the forefront of public political consciousness. This call, led by Black feminists,¹ asks us to reject all dimensions of the carceral state: police, prisons, surveillance, and—crucially—the border. In the words of Angela Davis and Gina Dent, “the prison is itself a border.”² Scholar and activist Harsha Walia expands this to say that the border, too, is a prison.³ On streets across the country, protesters cut right to the heart of this relationship, chanting, “La migra, la policía, la misma porquería.”⁴ *ICE, the police, the same shit.*

The US border is not just a physical wall, but a much more complex, national, and even transnational system. No matter how far you travel, you cannot move away from it.

Its endless deputies—ICE, police, prisons, courts, employers, landlords, partners, and strangers—exist everywhere to do its violence. Two-

thirds of Americans live within 100 miles of a US border (land or coastal), which gives Customs and Border Protection (CBP) jurisdiction to police and punish some 200 million people.⁵ The border itself is traveling, extending its authority southward in multibillion-dollar military aid programs. Former Department of Homeland Security (DHS) Assistant Secretary and CBP Commissioner Alan Bersin said it nakedly, “The Guatemalan border with Chiapas is now our southern border.”⁶

This system enforces particular violences against women, girls, and queer and trans people. More and more women are migrating in the Americas, and due to the illegality of the journey, they risk considerable exploitation and gendered violence.⁷ Once in the United States, asylum seekers and undocumented people are typically barred from formal employment and face a higher risk for labor abuse in informal sectors like farm work, food processing, and domestic work.⁸ Undocumented women disproportionately face sexual abuse, in no small part because partners have the threat of deportation at their disposal.⁹ As the US immigration detention

system has grown significantly over the past few decades,¹⁰ women are increasingly incarcerated,¹¹ sexually and medically abused,¹² and deported by the US government.

Each violence is a choice—a feature, not a bug, of a system carefully designed to enforce the project of racial capitalism and imperialism. The late bell hooks wrote that feminism is “a struggle to eradicate the ideology of domination” that is inherent to “imperialism, economic expansion, and material desires.”¹³ Anti-imperialism cannot be an add-on to feminist praxis; it must be central to it. There is no liberation from sexist oppression in an unjust world. And there is no tearing down of walls without dismantling the systems that built them.

We can choose differently from the violence of our current systems. Led from the margins of racism and imperialism, feminist and queer movements are fundamentally world-making projects. Scholar José Esteban Muñoz writes, “Queerness is essentially about the rejection of a here and now and an insistence on potentiality or concrete possibility for another world.”¹⁴ What a gift, that the tools we need to construct a world without borders come from the lineages that led us here. “No Borders” politics is imaginative, but ultimately it is practical¹⁵. It means a material difference in communities’ safety, connection, and access to the commons. There was a time before borders, and there will be a time after them. Can you see it?

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**DIFFERENTIAL
VALUES OF
LABOR**

MAPPING INDIGENOUS WOMEN'S ORGANIZATIONS IN THE COLOMBIAN AMAZON

Lorena Romero Leal

Lorena Romero Leal is a Colombian activist-researcher and co-founder of Fundación Yauda and is interested in understanding the intersectional impacts of extractivism on the lives and bodies of local populations, particularly women, as well as other alternatives for making Global South territories more viable and inviting for all living beings. Her extensive work in the Colombian Amazon and other biodiverse regions in Colombia has given her tools to carry out complex analyses that may have tangible applications. Currently, she is pursuing a PhD in anthropology at the University of Florida.

THE KNOWLEDGE AND VISIBILITY of the associations mainly formed and/or led by indigenous women in the Colombian Amazon is a pending task. Different contexts of opportunity, such as calls to finance collective initiatives, have encouraged indigenous women in the region to organize around identity practices. Mostly, their activities are related to the traditional division of labor according to gender in indigenous peoples, such as food management and the elaboration of handicrafts. The women's struggle to revitalize cultural practices to sustain themselves economically are ways in which women have actively responded to different pressures on their lives and territories in the region.

The research project "Mapping indigenous women's organizations in the Colombian Amazon" aimed to map indigenous women's organizations of the Colombian Amazon linked to the defense of the territory and the good living.¹ Particularly, our purpose is to understand the moti-

vations, challenges, and expectations regarding the implementation of indigenous women's collective dreams. The study was developed through a collaborative alliance between Fany Kuiru and two young researchers from the nonprofit organization Fundación Yauda. She is a notable indigenous woman leader and current secretariat of the Women, Family and Children area of the regional organization for Amazonian indigenous peoples in Colombia (OPIAC).

METHODOLOGY

This research sought to contribute to the organizational dynamics of the indigenous peoples of the Amazon under their own terms as well as to be comprehensive of the region's particularities and consistent with the conditions of public order in Colombia in mid-2021. Due to our collective experience of community work and research in the area, we recognized from the beginning the need to acknowledge the particular contexts we wanted to include in our study. Under a feminist

and *sentipensante*² methodology, we understood, especially the two non-indigenous researchers, that we had a great responsibility with our participants. A significant number of investigations in the Amazon tend to be short due to time and budget constraints. Also, many do not conceive the research results' dissemination, which has generated distrust of indigenous peoples toward quick research projects in which long trust-building processes are not developed. In a certain way, this study could have been identified as another project seeking to take advantage of the native knowledge without contributing anything in return. In order to avoid our fieldwork being seen as an extractive act, we devised three strategies: (1) the establishment of horizontal relationships in which the relation of researcher-researched power on legitimized knowledge vanishes, in key to recognizing the struggles and experiences of women leaders as the central axis of our research³; (2) the emphasis placed on the expected results as an opportunity for the visibility of indigenous women's organizations and their trajectory through the digital map; and (3) the manifest interest in maintaining and strengthening the relationships established and continuing the cooperative

work in the future, which is directly linked to the socialization of the results of this work, which for the moment will be done through digital media.

This research was conducted in an extraordinary time (third national wave of COVID-19, ending of nationwide strike⁴) in five out of six departments in the Colombian Amazon. Our budget and time frame were limited, but one of the critical factors to successfully collect information was the research's collaborative nature. Given the restrictions to conduct fieldwork, three research instruments were applied online and in-person: (1) survey for women area coordinators in local indigenous organizations, (2) survey for indigenous women organizations, and (3) semi-structured interviews. In total, 39 interviews were conducted, 34 face to face with indigenous women leaders and 5 online with key actors. Finally, 85 women's organizations comprise the digital map, including 69 projects led by women funded by the Colombian government environmental program *Visión Amazonia*.

MAIN RESULTS

This work is an exploratory exercise contributing to the geographies of hope^{5,6}, since it records geographically the indigenous women's initiatives to work cooperatively for their communities and ter-

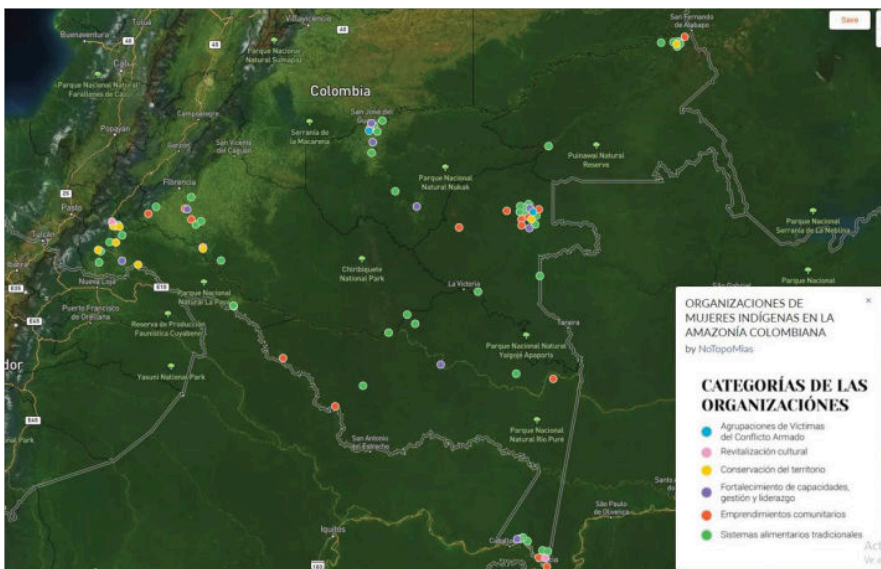


FIGURE 1. Screenshot of the digital map of indigenous women organizations in the Colombian Amazon. Most of the organizations are located in or close to urban areas where most public services are provided.

territories in the Colombian Amazon. The geographies of hope are produced by resisting and promoting reterritorialization processes, which drive creative processes based on solidarity between humans and non-human beings. For Hazlewood, the geographies of hope are also present in contexts of dispossession, direct violence, ecological transformation by megaprojects, even those linked to CO2lonialism.⁷ The organizations studied are not only located in an ecosystem threatened by the climate crisis but also carry out their work amid new violent orders,⁸ socioeconomic inequality, and the damage caused by the armed conflict, illegal economies, and environmentalist discourses and practices, which are not exempt from stimulating dynamics that go against the life processes of local populations in their territories.

The organizations studied respond to the current demands held by indigenous women in the Amazon. Throughout the region, they have traditionally been assigned a fundamental role in planting crops in the *chagra*, food processing, and, in general, sustaining life. Today, the demands of Western education and the labor market require native populations to complete a series of academic programs so as not to be left in the sectors with the lowest economic compensation if they work for a salary. Likewise, government institutions deliver ambivalent messages around empowerment and prevention of gender-based violence. Still, those programs tend to be very focused on specific populations without including differential ethnic approaches. Thus, women organize themselves because they seek a livelihood, but based on identity practices promoting culture's reproduction. Although the agroecological knowledge of women is not frequently recognized,⁹ women in the Amazon know that they are the guardians of food seeds and other plants of traditional use and also that their knowledge is put into practice in their demanding daily work.

There is a diversity of motivations and objectives that lead indigenous women to organize in

the Amazon region. One of the axes that we initially perceived as dichotomous was economic empowerment and political participation. Perhaps because when mentioning the word "organization," the first reference that arose within the indigenous movement was the institutionalized indigenous organizations, including the figure of the *Cabildo* o *Capitancy* and the associations of traditional indigenous authorities,¹⁰ which within their structure include an area related to women's affairs. Thus, this area is not seen as a separate section but is found within the organizations. Sometimes, when speaking with representatives of these institutionalized organizations, it was emphasized that indigenous people did not conceive a political division between men and women. The previous answer is closely related to the fact that women's coordinations do not keep a record of organized women's groups in their areas of influence, which means there is an under-record of these initiatives. In turn, this leads us to wonder about the level of participation of women in institutionalized indigenous organizations.

Despite this first impression, economics and politics are indeed interconnected in the struggles of the indigenous peoples of the Colombian Amazon, as demonstrated by the discussions at the Summit of Women from the Amazon basin¹¹ held 8–12 October 2021, organized by our colleague, Fany Kuiru. The narratives of the women leaders show that the notion of empowerment is not restricted to the economic independence of women, which tends to be seen as an individual process in other contexts, instead it is related, among other things, to the fact that being able to speak in public, to make their demands heard in different settings, ultimately means that they are able to participate.

The women leaders interviewed emphasized the fundamental role that women play in sustaining the life of their communities. Their daily activities run among the production and transformation of food, family care, and support in ritual preparations, health, and education. This means that women in Amazonian indigenous communities are the transmitters of traditional knowledge because of their

active role in preserving native languages and agroecological practices. The search for spaces in relatively new scenarios such as indigenous politics in the dialog with government institutions, salaried jobs, and the sale of food in urban areas are actions continuing the economic practices of women within their communities. Those spaces respond to their social and economic conditions, including those experienced by women victims of forced displacement. The opening of these spaces means for women to have access not only to monetary resources but also to symbolic resources, such as their positive valuation as caretakers of the forest, which are linked to their daily struggle to have a good life for themselves and their families. In such a way, their participation in multicultural societies, which includes highly institutionalized and more informal settings, is often mediated by their traditional knowledge and identity practices.

In addition, the lack of opportunities and the interest in recovering ancestral and cultural practices are two main reasons to form organizations. Therefore, most organizations aim to develop productive activities to promote their individual, familial, and communal well-being. Remarkably, those enterprises designed by women are directly related to the cultural practices and traditional knowledge of their peoples, including topics such as food sovereignty, craft production, and traditional medicine. External conditions of possibility include the requirements made by government institutions and nongovernmental organizations (NGOs) to consolidate as a women's association to finance collective projects.

There are also quite a few challenges that women leaders have had to overcome for their voice to be heard. Male leaderships continue to prevail at different scales characterized by the practice of a hegemonizing policy, seeking to nullify the participation of sectors not fully inserted in the local dynamics of networks of corruption and patronage. This situation is not exclusive to indigenous organizations but affects all political spaces in the region, as mentioned by the inter-

viewees. Structural discrimination, the inexistence of intercultural and gender approaches in many of the departmental and municipal programs, the lack of civil servants with experience in working with ethnic populations, the little participation in public positions of indigenous people, and the insufficient resources to guarantee the satisfaction of human rights are recurrent situations in all the Amazonian departments in Colombia. At the same time, the presence of armed actors in forest reserve areas or indigenous territories limits the full participation of society in territorial management and use. In Colombia, the threats to social leaders committed to defending their territories have become alarming in recent years, even though the national government proclaims that the country is in a post-conflict period.¹²

FINAL REFLECTIONS

Women's organizations do not belong exclusively to processes of institutionalized organizations. The research's participants position themselves from different identity markers, which shows the intersectional construction of their subjectivity as indigenous women but also as victims of the conflict, displaced, and/or mothers head of household. Hence, intersectional analyses are necessary when considering spaces for participation and meeting of indigenous women from the Amazon region in all the stages of public policy. Also, although the relationship maintained with the constituted indigenous organizations is not, by all means, exclusive, frequently their work and action scenes coincide. They work cooperatively to generate and strengthen lasting alliances with NGOs and state institutions participating in decision-making scenarios on environmental policy, land rights, food security, etc.

One contribution of this research is not to take the relationship between women and the environment for granted and, specifically, to complicate the relationship between Amazonian indigenous women and climate change. We sought to under-

stand the problems identified by the women leaders in relation to the broader context of their participation in the indigenous movement. Our work recognizes their role as architects of practices challenging the extinction of indigenous peoples. Their organizations promote fairer economic and political dynamics that redistribute financial and symbolic resources within the framework of a globalized economy that threatens to eradicate multiple forms of life and coexistence.

11 The summit mandate can be read here: https://mujeres.coicamazonia.org/wp-content/uploads/2021/10/ENG_MANDATO-CUMBRE-MUJERES.pdf.

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NOTES

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CO-OWNING CARE WORK:

POLICY FOR PARITY

**Anuradha Das Mathur, Rangoli Gupta,
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FOR EVERY FIVE HOURS the average Indian woman spends on unpaid care work in a day, a man spends half an hour—a ratio over three times the global average.¹ Changing this ratio can dismantle entrenched gender roles and arrest the declining participation of women in India’s paid workforce. Alarming, between 2006 and 2021, India’s female labor force participation rate declined from 34 percent to an abysmal 22.3 percent.²

This represents an immense economic and social loss. In terms of growth, increasing women’s labor force participation in India by 10 percent could have added \$770 billion to the GDP between 2018 and 2025.³ More importantly, promoting financial independence among women will advance gender equality, a critical social goal. But to seize these benefits, women professionals have to be supported by a conducive ecosystem and policy environment that not only addresses workplace obstacles but also more pervasive social barriers. The foremost of these is care work.

What is this care work that is disproportionately borne by women and nudges them to quit? Care work may be broadly defined as the work of looking after the physical, psychological, emotional, and developmental needs of one or more other people and is the primary reason women drop out of the workforce.⁴ Other reasons include inflexible working hours, concerns of safety, and infrastructural inadequacies. Additionally, there

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are few opportunities for part-time work and multiple challenges surrounding the re-entry of women into the labor force.

A necessary condition for women to go out to work is that men pick up the slack at home. Their current lack of participation in care work is as much a problem of social norms as it is a structural issue. Surveys indicate that men view their contribution to domestic chores as “helping the women with their work” rather than their own responsibility.⁵ While combating these ingrained norms is a long-

term goal, public policy will be instrumental in creating structures that enable and encourage men to take up care work. Potential policy interventions include introducing paternity leave, facilitating flexible work, and instituting wages for caregiving.⁶

Statutory paternity leave is one of the most widely used measures to promote men's participation at home, especially in childcare. Although a growing number of organizations now offer this, including the government's Central Civil Service,⁷ India is yet to see definite legislation on the topic.⁸ Research indicates that extended paternity leave is linked to fathers' active involvement in care work and determines the allocation of domestic responsibilities between couples in the years to come.⁹ Not only is this essential for men's well-being, it also mitigates the negative impact of motherhood on their partner's career and diminishes the household's long-term gender wage gap.¹⁰ At the workplace, an increase in men taking paternity leave could normalize maternity leave for women and reduce the bias that mothers returning to work often face.

Given the ubiquity of gender stereotypes and the higher earning potential of men across borders, some countries have taken concrete steps to counter their effects on the uptake of paternity leave. Specifically, they have made paternity leave paid and non-transferable and minimized eligibility restrictions.¹¹

Flexible work, an arrangement that was mainstreamed and degendered during the pandemic, represents another solution.¹² Analysis indicates that men spent more time on domestic work during the 2020 lockdown when working remotely, even though women still bore the greater proportion.¹³ We must not lose this advantage—while flexible work is a benefit usually granted at the employer's discretion, there are global precedents for it to be laid down in policy. In the UK, for example, employees have a statutory right to request their employers for flexible working conditions.¹⁴ Japan's Child Care and Family Care Leave Act requires employers to provide shorter working hours, flexible

timing, staggered working hours, remote work, or financial assistance for formal childcare or eldercare services.¹⁵ Though a lack of equivalent digital infrastructure in India limits the viability of such a policy on a large scale, incentive schemes for organizations that offer flexible working arrangements could be a possible solution.

Finally, an idea that has the potential to transform the balance of responsibility within homes is payment for care work. A proposition this radical is likely to face resistance, but implementable solutions include a salary for caregivers through a statutory deduction from the breadwinner's salary or a contract between the two. Assigning economic value to care work could have a transformative impact on the—usually female—caregiver's financial independence and push more men to take up this role by elevating its status in the household. While this has been an enduring idea in feminism, recognizing the value of care work deserves more consideration from policy makers.

For policy to be conducive for women in the workforce, it has to be gender sensitive. Thus, it is equally important to remove or amend policies that reinforce the roles of the male breadwinner and female caregiver. For example, India's Maternity Benefit (Amendment) Act 2017 permits mothers to visit their workplace daycare centers up to four times a day but has no such provision for fathers, signaling that childcare is a women's responsibility.¹⁶ Such a policy enshrines regressive gender norms and acts as a disincentive for men to take on care work.

Although these recommendations only apply to a fraction of India's population—urban professionals who work in the organized sector—they can still create a tangible impact. This is the segment where the problem of women's labor force participation is acute—in 2019, only 7 percent of urban Indian women were in paid employment,¹⁷ and as household incomes grow, women are more likely to drop out of the workforce due to social pressure.¹⁸

However, even a well-thought-out policy will be constrained by gender norms. For example, while Sweden and Finland have among the highest uptake of paternity leave—70 and 82 percent, respectively—they also have more liberal social norms than India. On the other hand, countries like Japan and Korea fare differently.¹⁹ Both have provisions for one year of non-transferable paid parental leave, but only 2 percent of Japanese men with a newborn child have made use of it, and in Korea, men make up only 4.5 percent of parental leave users.²⁰

The importance of context means that policy must be social norms intentional so it can enforce the practice of certain behaviors with time. For example, the Arogya Laxmi program in Telangana includes a unique “spot-feeding” component²¹ to ensure that the food provided under the scheme is consumed by its intended recipients, i.e., pregnant and lactating women.²² Also, these essential policy interventions need to be supplemented with additional measures, like public campaigns that encourage men to take leave and be more involved at home.

The participation of men in care work will break down the principal barrier to women’s entry into the workforce and, in due time, reverse the trend of India’s falling female labor force participation. With public policy as a catalyst, India’s urban educated women have the potential to create a tremendous multiplier effect that can transform the country’s economic, social, and political trajectory. Rather than being the problem, they can, rightfully, be a part of the solution.

NOTES

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INVISIBLE FARMERS OF INDIA:

WOMEN IN PESTICIDE-LADEN AGRICULTURE

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INTRODUCTION

Men are considered the default. This observation was made most eminently, perhaps, by Simone de Beauvoir when she wrote in 1949: “*He is the Subject, he is the Absolute - she is the Other.*”¹ Decades later, women in India are still “the other” and fighting to be recognized in male-dominated spaces like farming.²

Globally, around 43 percent of the workforce engaged in agricultural activities comprises women.³ Even though women are usually not recognized as farmers in India, reports suggest that 405 million women in India are engaged in agricultural and other allied activities.⁴

There is no clear or formal definition of who a farmer is. In practice, however, the identity of a farmer is linked to land ownership,⁵ leaving the vast majority of women out of its ambit. Recent statistics released by the University of Maryland and the National Council of Applied Economic Research (NCAER) state that women constitute over 42 percent of the agricultural labor force in India but own less than 2 percent of farmland.⁶

A study published by *BMC Public Health* reported that out of 11,000 annual global deaths due to acute pesticide poisoning, 6,600 occur in India.⁷ It is likely that this number is much higher, given the lacuna in reporting exposure deaths in India. Reasons for this high number of acute pesticide poisoning include lack of training, awareness, and information about the health risks of pesticides; weather conditions; extremely poor business practices by the pesticide companies; and the decrepit regulatory regime that fails to ensure that pesticide companies are held accountable for illegal and unsafe business practices. The global pesticide industry operates under the myth of “safe use”; however, they are not held accountable to ensure it.

Indian women engaged in agricultural activities do not have access to information or training to minimize the health impacts of carrying out agricultural work. The National Statistical Office’s Situation Assessment of Agricultural Households (SAAH) 2018–19 reported the farming population to be anywhere from over 90 million to almost 150 million farmers,⁸ but only about half a million (5,85,130) farmers have been trained on integrated

pest management, which includes training on safe usage of pesticides.⁹ Gender-segregated data on this training are unavailable.

Women face the risk of exposure at all stages in the agricultural process as they carry out the work of weeding and preparing the field for sowing; collection of fodder, fuel, herbs, grasses, medicinal plants, and produce; and post-harvest activities such as disposal, thinning, packaging, preserving seeds, etc.

The gendered division of labor means that the overwhelming majority of labor in the private sphere is undertaken by women. The health risks of “public” agricultural labor may be insufficiently recognized, but the risk of pesticide exposure due to domestic work is barely even acknowledged. Women are at risk of exposure to pesticides through mixing solutions, washing pesticide bottles for re-use, and performing household chores such as the washing of contaminated clothing. Consequently, even women who are not directly engaged in agricultural activities are often exposed through unpaid, non-occupational work. Despite the diverse ways in which women are exposed to pesticides, the common assumption is that pesticide exposure is a risk primarily experienced by men.¹⁰

Heavy dependence on toxic pesticides has led to adverse health impacts, as well as deaths caused by accidental exposure.¹¹ There is a need to recognize and appreciate gender-specific impacts of pesticides on women to formulate policies to safeguard women’s health.

With increasing feminization of agriculture due to migration of men to urban areas,¹² it is also imperative to investigate gendered information gaps to ensure appropriate steps can be taken so that women can access the information they need to undertake agricultural practices safely.

WOMEN’S UNIQUE VULNERABILITY

Accidental exposure to pesticides poses risk from

acute problems such as nausea, vomiting, breathlessness,¹³ headache, skin irritation, and burning in the eyes to chronic diseases like cancer, immune failures, inflammatory diseases, and reproductive disorders, and in extreme cases may even cause death. Long-term effects of exposure could lead to cardiopulmonary issues, neurological and skin disorders,¹⁴ adverse reproductive effects¹⁵ such as foetal deformities, miscarriages, lower sperm count, brain tumors,¹⁶ etc.

A study conducted in three cotton-farming villages in southern India found that the mixing and refilling of pesticide bottles can be as dangerous as the direct spraying of pesticides.¹⁷ This study was crucial in revealing how women cotton workers undertaking allied activities are seriously exposed to pesticides.

Several studies have shown that female bodies absorb and store pesticide in the skin. Pesticide exposure becomes particularly dangerous during pregnancy and breastfeeding as there is a risk of miscarriages and birth defects.¹⁸ Pesticide exposure can also result in menstrual disorders among women as well as swelling and discoloration of the skin of the limbs and frequent fever attacks.^{19,20}

While the involvement of women in pesticide-spraying activities is limited, of the women who are direct users, many complain of sore eyes, skin rashes, burnt fingernails, disruption of the menstrual cycle, birth defects, and in cases of exposure during early pregnancy, the loss of unborn children.²¹

There is more evidence on the specific biological effect on the female body of the accidental exposure of pesticides. Studies have shown biological factors like body size and stages of life such as pregnancy, lactation, and menopause²² may also affect women’s vulnerability to pesticides. They can lead to issues such as premature births, birth defects, and low birth weight from trans-placental exposure or via breast milk during postpartum breastfeeding.²³

Despite existing documentation of the pesticide-induced health problems unique to women, the risk of pesticide exposure and the provisions regarding protection against these risks are not reflected in the laws and policies of the government in India.²⁴

INVISIBLE IN LAW AND POLICY

The International Code of Conduct for Pesticide Management, established by the Food and Agricultural Organisation and the World Health Organisation, contains several directives to guide governments and industries to regulate pesticides in order to ensure the health and safety of its users.

The code requires industries to ensure appropriate packaging and labelling of products and complete technical support backed by full product stewardship to end-user level, including advice.²⁵ It specifically states that pesticides whose handling and application requires the use of personal protective equipment (PPE) that are expensive, unavailable, or uncomfortable should be avoided in places with hot climates (of which India qualifies). The code also requires governments to make efforts especially with regard to vulnerable groups including women to introduce support and develop policies. Governments are also required to carry out health surveys of those who are exposed and document poisoning cases, extension services, health advisory services, first aid centers, proper disposal of containers, awareness about health risks,²⁶ and so on.

The pesticide industry is reliant on the safe use of their products. Products that are potentially dangerous or even lethal for humans are considered safe when they are used under the right conditions. In practice, however, universally safe use is near impossible given weak regulations in low- and middle-income countries and a lack of industry accountability.

In India, pesticides are managed and regulat-

ed through a five-decades-old law called the 1968 Insecticides Act. It provides for limited provisions with regard to the safety of the end user or those who may indirectly face the risk of exposure. There is no provision for companies to create awareness or provide training on safe use of their products. The act requires pesticides to be labelled and sold with appropriate warnings; however, the products are not clearly and appropriately labelled as per the Insecticide Act and Insecticide Rules.²⁷ Companies conduct minimal training under their stewardship program; whatever training is conducted is with the objective of highlighting the benefits of using pesticides. Several attempts to bring an amendment to this law have so far failed.²⁸ Neither the government nor the companies are being held accountable for providing information, training, and awareness regarding pesticides risk to women farmers.

It is clear from the data available that in India, like many other countries in South Asia, the ownership of the land, and hence the decision-making power regarding land use, transfer, alienation of land, and other important aspects, remain predominantly with men. Since credit schemes are generally available only to farmers who own land, the benefits under such schemes are also available largely only to men.

Besides access to credit, these schemes provide benefits such as plant protection, training, information on the latest agricultural practices and technology, and others. Government schemes and extension programs also provide specialized training for pest management.²⁹ Vital information about pesticide exposure and safe practices flows from these schemes, resulting in the exclusion of a vast number of rural women who are engaged in agricultural and farming activities.^{30,31}

A study conducted in Karnataka, India, found that many women claimed they were not farmers, but when asked about their daily activities, they reported that they were engaged in agricultural activities. These women were interviewed to understand access to information and the kinds of ag-

ricultural information they seek. What came to light was that women sought information on the use of pesticides and fertilizers. The information sought was directly or indirectly linked to health concerns since the information available on health risks is limited.³²

Further, there are very few studies that actually examine women farmers' need for information on agricultural activities. However, through the initiative of certain nongovernmental and other organizations, there have been efforts to enable women to access informative schemes. For example, under the government scheme pertaining to plant protection, the concept of farm schools was introduced where information regarding seeds, pesticides and their use, risks, and latest agricultural technology is given to farmers. Through the initiative of civil society organizations, there are instances where women have also enrolled in such farm schools.³³ Therefore, although some civil society efforts to educate women on safe farming practices have been made, they are largely excluded from systematic and institutionalized state schemes and educational programs.

CONCLUSION AND RECOMMENDATIONS

There are data to suggest that women engaged in agriculture are placed at high health and safety risk, of which they are unaware due to inadequate state policies and bad practices of pesticide companies.

The traditional set up in Indian households (restricted mobility, engagement in domestic labor, etc.) creates obstacles for women to access information that is crucial for their safety at the workplace. As a consequence of customary and traditional property ownership and succession norms, women's right to land ownership is denied. Gender-blind policies that recognize only land owners as "farmers" have pushed women farmers and cultivators to the margins, rendering them invisible in the eyes of current government

policies and schemes.

The situation presents the need to examine existing policies through a gender lens and bring about some specific changes focusing on women:

- * Establish institutional mechanisms at the local level through the Gram Panchayat system to identify women in agricultural activities and offer gender-specific information regarding pesticide exposure, protective measures, and first aid.
- * Introduce gender mainstreaming in existing pest-management schemes by including gender-specific concerns, such as identifying as the risk of pesticide exposure from domestic work.
- * Ensure that PPE and protective clothing is manufactured taking into account cultural and gendered-clothing norms, without assuming men as the default user.
- * Make pest-management training programs more gender sensitive, by including gender-aware information and training as well as by employing women as trainers. Women trainers are more likely to understand and respond to women farmers' concerns and make women more visible as agricultural experts.
- * Decrease the current reliance on chemical farming by empowering women to utilize traditional organic farming practices that are locally adaptable.
- * Expand the definition of "farmer" by adopting the definition in the National Policy for Farmers.³⁴ This definition was proposed in 2007; however, it has not been incorporated in any legal document, thus rendering it non-actionable. The broader scope of this definition will include women engaged in agricultural and allied activities, allowing them

to access existing government informational and training programs.

* The state must hold pesticide companies accountable to existing international standards prohibiting the sale of hazardous pesticides for which they cannot ensure safe use.³⁵

NOTES

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A TALE OF COMMITMENT AND STRUGGLES:

INDIA'S ASHAS

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Avishi Srivastava is an undergraduate student at Ashoka University pursuing economics and finance, with an interest in the field of labor economics. She is greatly interested in the economics of gender and development, especially in the education sector in developing nations. She has had the privilege of working with several educational organizations in rural Rajasthan and the Naxal-affected areas of Chhattisgarh, India. Avishi's current research project involves engaging with blue-collar workers through a nonprofit organization called Behind the Scenes.

CLAD IN PINK SARIS, unflinching in their approach, a dedicated team of medics who often go by the name ASHA (accredited social health activist) have been turning the monumental task of vaccinating rural India into a reality. This one-million-strong¹ body constitutes the world's largest all-female community health worker program.² With the third wave of COVID-19 engulfing the country, India needs these frontline workers more than ever. This experience has served as a crucial reminder of the problems faced by ASHA workers: consistently undervalued services, enormous pay disparities, and limited safety measures.

With over 72 regular duties, including ante-natal and postnatal care, immunizations, community well-being, family planning, and nutrition care,³ ASHAs are overburdened, even more so due to COVID. With the onslaught of the pandemic, an ASHA worker performs a variety of additional tasks including door-to-door visits, contact tracing, quarantining migrants, and arranging for relief measures,

all of which require them to devote themselves 7–12 hours per day, oftentimes up to seven days per week.⁴ At any moment of the day, patients can call them to discuss health concerns. This is noticeably in contrast with their official charter, which states that they are expected to work for three to four hours per day, two to three times per week.⁵ Despite increasing their workload, the pandemic has been accompanied by little to no protective gear and transportation support. Without access to personal protective equipment (PPE) kits and gloves, a 200 mL bottle of sanitizer, six-hour disposal mask, sometimes just a *dupatta* or the corners of their *saris* must make do. Additionally, there has been a pressing absence of specialized safety training for treating COVID. Each ASHA is allocated up to 1,500 people within a single locality.⁶ With the imposition of strict lockdowns in many parts of the country and the associated disruption of transportation services, it has become extremely tedious for them to reach their assigned populations.⁷ To save money, many ASHAs prefer to cover long distances on foot, which can be treacherous.

Another important element contributing to

their hardship is the pay gap. ASHAs are viewed as “honorary workers” or volunteers rather than as government employees. This is because they are not “industrial workmen.”⁸ This distinction results in honorariums, payments carrying no legal obligations, rather than fixed monthly salaries for ASHAs. The honorariums are often much lower and do not offer as much opportunity for a pay raise. Critically, this pushes ASHAs out of the Minimum Wages Act and deprives them of many perks granted to a government employee, such as maternity benefits, job security, and social security funds.⁹ Under the honorarium system, ASHAs usually receive ₹2,000 (\$27) to ₹4,000 (\$54) per month along with a maximum of ₹1,000 (\$14) in performance-based incentives with enormous pay disparities between states.¹⁰ During the pandemic, ASHAs were provisioned to receive ₹1,000 extra per month to compensate for their increased work.¹¹ However, in reality, hardly any ASHA received the full amount.¹² While this incentive was slated to begin in April 2021 and lapse after October 2021, the government website stopped working after August 2021 in many states.¹³ Facing extreme financial difficulties after receiving no payment for over two months, Sarita Devi, an ASHA from Uttar Pradesh attempted suicide.¹⁴ The ASHAs’ painfully low level of income and frequent delays in payment fail to reflect their essential contribution to the community. Additionally, a major segment of ASHAs come from low- to middle-income backgrounds, which makes even this small wage crucial to the family income. Delays in payment can be devastating.

These frontline workers are often subjected to the hostility of the community. Fearing that ASHAs may forcefully quarantine them in government facilities or infect them, communities often disrespect their efforts. This fear, along with other social stigmas, has escalated to violence in certain regions. Suksham Makane, an ASHA, was left injured by the citizens of Latur during her COVID documentation work after she advised them to follow social distancing protocols.¹⁵ In a

similar incident in Faridabad, an ASHA was beaten up while conducting a door-to-door survey.¹⁶ In the heart-wrenching case of Uttar Pradesh, caste-based violence led to the gang rape and murder of an ASHA.¹⁷ Physical safety remains a paramount concern as they complete their frontline care duties.

Even after a decade of protest, ASHA demands for change have fallen on deaf ears. Recently, an on-the-ground protest against delays in payments in Jantar Mantar led to an FIR (first information report) being lodged against ASHAs, creating institutional delays that complicated the process of receiving their dues.¹⁸ Furthermore, such actions deter ASHAs from protesting for their rights. This poses a critical, or rather, uncomfortable question: had this body been composed of men, would they have to undergo the same social, physical, and financial struggles?

It is time that these deeply ingrained injustices towards ASHAs, including their as honorary workers, be challenged. Such a provocation would result in fair wages and affirm their standing in the community while building the foundation of India’s rural healthcare system. These changes would transform the lives of educated rural women in this profession, providing both current and future ASHAs a safer working environment, stronger socioeconomic standing, and dignity.

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HOW A TWEAK BY THE SEC COULD HELP ADDRESS GENDER AND RACIAL PAY GAPS

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A MANTRA WE HEAR almost daily from corporate titans everywhere is, “People are our most valuable resource.” There is evidence to back up this claim. In 1975, 83 percent of the value of an S&P 500 company was tied to its physical assets. By 2015, that statistic had completely inverted, and human capital represented 84 percent of the typical company's value.¹

Research tells us that more diverse companies outperform their peers.² These dynamics, coupled with a more socially conscious shareholder class, have led the Securities and Exchange Commission (SEC) to look at human capital disclosures more seriously.

Current disclosure rules do not tell us much about the economic parity or advancement of protected classes in corporate America. This deficit could be addressed immediately by requiring publicly listed companies to disclose median compensation by gender and race. Requesting information of this nature is not new. The Dodd-Frank Act of 2010 requires almost all US firms to disclose their CEO pay ratios (total CEO compensation compared with the median employee).³

And any firm with employees in the United Kingdom is already required to disclose their pay gap for UK-based employees.⁴

Until 2020, the SEC only required companies to disclose one HR-related metric: the total number of employees at a public company. New rules released last year now require companies to disclose material human capital risks related to attraction, development, and retention as well as diversity, equity, and inclusion (DEI) and safety issues. However, the commission's guidance fell short of telling companies which data to disclose. If this sounds vague to you, you're not alone.

Without direct guidance, companies struggled with this mandate and were unsure which information to share with investors or how to present it—a problem that seems to plague most corporate DEI programs. Even when there were good intentions, there was poor data and little comparability. To wit, one of America's most esteemed software companies used its DEI report to trumpet perfect pay equity (equal pay for equal work) of \$1.01 in earnings for women for every \$1.00 a man made in an equivalent role. However, that same firm's UK-based female employees still only made 90 percent

of what men made when compared with all employment classifications (pay gap).

Why does median total compensation matter? If Facebook executive Sheryl Sandberg walks into a bar with nine Americans who each make \$36,000 (approximate per capita US income), the average income of the bar (after her arrival) would spike to \$3–5 million dollars per year. Yet, the median income of \$36,000 would remain unchanged. In extreme environments, like corporations with large CEO pay packages, median figures tell us more about how the average employee is treated. Median total compensation data cut through the myriad factors that contribute to pay gaps (talent pipeline, attraction, retention, motherhood, and yes, sometimes discrimination) and offers one clean data point that is relatively immune from statistical window dressing.

For decades, the investment community's primary focus has been on risk and return. Whether or not an investment was "good for the world" was usually an afterthought. With the rise of ESG (environment, social justice, and corporate governance) investing, both individual and institutional investors are now paying more attention to social accountability and making sure that they're putting their money where their values are. Even with changing investor sentiments, companies are still fighting shareholder-led gender pay disclosure resolutions. In a sampling of 12 such resolutions from the 2020 proxy season, Oracle Corp. was the only company that encouraged investors to vote for the resolution⁵—a smoking gun for regulators that voluntary disclosure is not the answer.

Requiring SEC-registered companies to disclose median total compensation by gender and race would usher in a new era—one in which corporate DEI efforts might gain sponsorship in a way that they never have before. Mitigating glaring compensation gaps might become a customary key performance indicator for all corporate managers. And most importantly, as it relates to the

SEC's mission, socially responsible investors would be able to visibly track corporate performance and improvement and make their investment decisions accordingly.

The current SEC chairman, Gary Gensler, has been known to lead measures to adopt disclosure requirements that cater to the interests of socially responsible investors. This does not imply that migration to more robust human capital disclosures is inevitable. The time is now to move swiftly toward a data-driven approach to human capital investor disclosures. In recent years, ESG investing has become a tremendous area of growth for the financial services industry. However, it's not without its sceptics, many of whom claim that investing decisions are not a substitute for sound policy measures that are ultimately necessary to fix social problems. These criticisms of the ESG movement can be used as political cover for the SEC to craft consistent disclosure policies around human capital that can help us drive a more just and equitable economy.

Readers interested in sharing their thoughts on this matter can contact the SEC at www.sec.gov.

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