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Anti-Sexism Committee of the National Lawyers Guild, Engender, Global Initiative for Economic, Social and Cultural Rights, Global Youth Connect, Human Rights Citizen Association, Human Rights First Rwanda Association, Malcolm X Center for Self Determination, Medical Whistleblower Advocacy Network, Mother Of Hope Cameroon, National Network for Immigrant and Refugee Rights, Vermont Workers Center, Women Peacemakers Program (WPP), Women's UN Report Network (WUNRN)

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I. Executive Summary

1. The recent global economic crisis created serious challenges for the realization of human rights in the United States and throughout the world. The roots of the crisis stemmed from U.S. financial markets and policy decisions, including deliberate legislative changes, the lack of regulatory protections for risky financial products offered by commercial or investment banks, and the failure to extend government oversight of the private sector.[i] The "Great Recession" created high rates of unemployment and home foreclosures. It also revealed the true extent of discriminatory practices in the subprime mortgage market. Today, Americans continue through a long economic recovery process, trying to rebuild from the impact of the recession.

2. Under international law, states are obligated to fulfill, protect and respect basic economic and social human rights and to ensure equal enjoyment of these rights for all. This economic crisis impacted the rights to work and to maintain adequate standards of living. The budget control act of 2011 violated the principles of non-discrimination and equality, and labor market trends reveal continuing inequalities.

3. This review will provide a human rights analysis of the U.S. response to the Great Recession, focusing particularly on macroeconomic policies and the impact of relief/ recovery programs on women, racial/ethnic minorities, and other economically marginalized groups. The specific human rights that we highlight in this submission include the right to work and the right to an adequate standard of living. In addition, the submission examines the government conduct and concrete outcomes with regard to the obligations to protect and fulfill economic and social rights and the principles of progressive realization, non-retrogression, and non-discrimination and equality.

II. Introduction

4. ***Framework:*** The evolution of U.S. financial regulations over the past several decades sets the stage for the financial and economic crisis that emerged in 2007. Here is a brief review of the regulations that were put in place during the Great Depression and the more recent legislation that removed earlier protections.

5. *The Glass-Steagall Act* (1933) established the Federal Deposit Insurance Commission (FDIC) and allowed the Federal Reserve to regulate interest rates. Importantly, this act also effectively prevented the use of the assets of commercial banks for speculative activities – that is, banks could not invest deposits on the stock market. Glass-Steagall originally prohibited banks from owning non-bank financial institutions.

6. *The Securities Exchange Act* (1934) established the SEC (Securities and Exchange Commission) to govern the exchange of financial securities. The SEC mandate to regulate financial markets has not always kept pace with financial innovations (hedge funds, derivatives – including financial futures, swaps, etc.).

7. *The Depository Institutions Deregulation and Monetary Control Act* (1980) increased the scope for bank mergers, allowed savings and loans and credit unions to offer checkable accounts, and deregulated interest rates. These changes set the

stage for a weakened regulatory framework that led to the Savings and Loan crisis in the 1980s. It also contributed to the subsequent consolidation of the banking industry in the U.S.

8. *The Gramm-Leach-Bliley Act* (1999) ('Financial Services Modernization Act') repealed portions of the Glass-Steagall Act that established a firewall between banks and other financial institutions. It allowed the consolidation of commercial banks and investment banks, thereby setting the stage for the largest financial institutions to become 'too big to fail'.

9. *The Commodity Futures Modernization Act* (2000) insured that over-the-counter (OTC) derivatives would not be regulated under existing laws governing futures contracts.

10. *The Sarbanes-Oxley Act* (2002) followed the Enron scandal. It established standards for business management and accounting. The Act does not apply to privately held companies. In addition, apart from some new accounting guidelines, the Act did not attempt to regulate the financial system[ii]."

11. *Dodd-Frank Wall Street Reform and Consumer Protection Act* (2010) was a direct response to the financial crisis. The Act was meant to increase the oversight and regulation of the financial sector. It created the Consumer Financial Protection Bureau (CFPB), an independent agency to manage marketplace regulation and enforcement. The Act also included the "Volcker Ruler" which prevents proprietary trading in which bank resources are used to engage in short-term speculative trading from which the bank profits directly.

12. ***Policy measures:*** The federal government and the Federal Reserve have responded to the economic crisis and disparities in economic opportunities in several ways. The responses have included:

13. *The Troubled Asset Relief Program* (TARP), launched in 2008 – a bailout of the financial institutions, funded through the federal budget, aimed at rescuing firms that were thought to be systemically important.

14. *The American Recovery and Reinvestment Act of 2009* – a fiscal stimulus measure that aimed to stop the hemorrhaging of jobs, to help resource-stressed states, and to stimulate the economy through a combination of spending programs and tax cuts.

15. *Federal Reserve monetary response* – the Federal Reserve injected a substantial amount of liquidity into the financial system, keeping interest rates low and buying assets for which there was no longer a viable market. By buying such assets, the Federal Reserve replaced illiquid assets with liquid assets.[iii]

III. Promotion and Protection of Human Rights on the Ground

16. The ongoing global economic crisis has its origins in U.S. financial markets and was a consequence of deliberate legislative changes, the erosion of regulatory protections, and the failure to extend oversight to new financial products that contributed to excess systemic risk. The economic downturn destroyed jobs, reduced standards of living, heightened risks for ordinary people and drove families deeper into poverty, especially

women and people of color. While this submission does not focus on international dimensions of the crisis, globally[iv], it is important to note that the United States must also recognize its extraterritorial obligations. In our interconnected world, the US must make economic decisions that respect the human rights of all individuals- within the country and abroad- who will be impacted by US policy.[v]

Obligation to protect

17. All governments are obliged to advance human rights. One of the specific obligations under international law is to protect the rights of their residents. When a third party threatens to interfere with someone's basic rights, the government must step in to protect those rights.[vi]

18. Three of the five largest investment banks failed or nearly collapsed in 2008, sending shock waves throughout the world. This happened because they had been allowed to borrow excessively against too little capital and to grow excessively large. They had also become deeply intertwined with other huge financial institutions. The economic crisis was caused by the risky behavior of these institutions and the failure of the government to take steps to prevent the risky behavior from happening.[vii]

19. Similar issues arise with respect to the credit rating agencies – Moody's, Standard and Poor's, and Fitch. Many of the derivatives associated with securitized mortgages received excessively generous ratings despite the high risk of the underlying assets. This helped to insure a growing market for many of the financial instruments that were behind the economic crisis. Moreover, institutional investors, including many pensions funds, were able to invest in these financial products only because they had received such high ratings. This exposed a broad swathe of the U.S. population to the risks and uncertainties of the subprime mortgage market. The rating agencies' business model contains an inherent conflict of interest, since the originators of the new derivatives paid for the ratings they received. Even though the Securities and Exchange Commission has recognized this conflict of interest, steps have not been taken to insure that the agencies practice due diligence and they have not been held to account for the overly optimistic ratings they gave to high risk assets.

20. The financial bailout orchestrated by the Federal Reserve involved buying up the bad assets of a range of financial and non-financial corporations – thereby injecting liquidity into the economy. This was part of the overall strategy of "quantitative easing" – the monetary policy used to address the economic crisis. Despite the massive scale of the bailout and the amount of liquidity introduced into the U.S. economy, financial institutions were not held accountable for the use of these funds – specifically, to extend credit in ways that would stimulate real economic activity. According to the financial accounts of the U.S., published by the Federal Reserve, the value of reserves held by depository institutions totaled $2.4 trillion in the first quarter of 2014, compared to about $20 billion in reserves held in 2007 immediately before the crisis. These excess resources reflect the liquidity the Federal Reserve had pumped into the U.S. economy that the banking sector is simply holding, rather than extending credit in ways that would speed the recovery of the economy.

Right to work and the right to an adequate standard of living

21. According to the Universal Declaration of Human Rights (UDHR), accepted by all UN member states, all people have the right to work.[viii] By recognizing the UDHR, the United States has made a commitment to ensure that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment".[ix]

22. The ability of the average U.S. family to maintain an adequate standard of living depends critically on the economy's ability to generate employment. The realization of other economic and social rights in the US, especially rights to health, education, and social protection, is dependent on access to relatively high-quality employment. Fiscal policy has a direct role to play, in terms of investing in education and infrastructure to support employment in the long run and, in the short-run, running counter cyclical policies to prevent job losses when the economy weakens.[x]

23. The financial crisis and economic recovery policies have had an enormous impact on the right of individuals to work. Overall unemployment rates have fallen since the yearly average of 9.6% in 2010 to 7.4% in 2013 and 6.5% in the first six months of 2014[xi], but have not yet returned to pre-2008 levels. The *underemployment rate* (which includes not just the officially unemployed, but also jobless workers who have given up looking for work and part-time workers who want full-time jobs)[xii] has decreased from 2010, but remained at an average rate of 21.1 percent in June 2014,[xiii]still almost 4 percentage points higher than the average rate in 2007.[xiv]

24. While employment rates have improved since 2010, unique challenges remain for individuals who lost their jobs during the height of the recession. Many of the new jobs in the market are lower paying or part-time positions. Although the greatest losses during the recession were among higher paying jobs and mid-wage jobs, the greatest percentage of new jobs are in lower paying industries. In 2014, there are 1.85 million more people employed in low paying jobs than in 2008, while 958,000 fewer people are employed in mid-wage industries and 976,000 fewer people are employed in high wage industries than there were six years ago.[xv]

25. Even during periods of economic boom, entering the workforce becomes increasingly more difficult the longer a worker has been unemployed. The long-term unemployment has remained high during the recovery partially due to the large numbers of workers who lost jobs during the recession and who began their initial months of job-hunting (when prospective employees are most hire-able) in an extremely strained job market.[xvi] From 2008-2012, only "36 percent of those who were long-term unemployed in a given month were employed 15 months later."[xvii] As of June 2014, 32.8 percent of the unemployed population has been out of work for more than 27 weeks.[xviii]

26. Not included in these unemployment rates are the high number of discouraged workers, those who are not in the labor force but "not currently looking for work specifically because they believed no jobs were available for them or there were none for which they

would qualify."[xix] Despite the unique difficulties facing the long-term unemployed, federal Emergency Unemployment Compensation (EUC) expired in December 2013. This program provides unemployment benefits beyond the number of weeks provided through state unemployment programs[xx]. While the US Senate passed a bill that would extend EUC benefits, the House of Representatives has not taken action on this matter.[xxi]

Progressive realization and non-retrogression

27. Under the UN Declaration of Human Rights (UDHR), the United States has clear and immediate obligations to ensure human rights. [xxii]Economic policy in the United States should be guided by the principles of progressive realization and non-retrogression. Progressive realization recognizes that the resources at the disposition of a government are limited; nevertheless, a government must take specific steps to ensure that the enjoyment of economic and social rights improves over time. Non-retrogression means that once a particular level of enjoyment of rights has been realized, it should be maintained. If retrogressive measures are introduced, then the Committee on Economic, Social and Cultural Rights has specified that the state has to show that they have been introduced after consideration of all alternatives and are fully justifiable by reference to totality of rights provided for in the Covenant and in context of the full use of the maximum of available resources.[xxiii] The United States has signed (though not ratified) the International Covenant on Economic, Social and Cultural Rights (ICESCR), indicating further commitment to the principles the ICESCR embodies. [xxiv]

28. With regard to the right to an adequate standard of living, budgetary decisions, fiscal austerity measures, and strained resources have seriously impacted the scope and the efficacy of many federal, state, and local social services since the end of the stimulus program, the American Recovery and Reinvestment Act. Public spending faced additional challenges in 2013 due to the mandatory sequestration of federal spending in March and the government shutdown in October. Both events compromised important public expenditures and aggravated existing gaps in the social safety net.

29. The Budget Control Act of 2011 mandated that a Congressional Joint Select Committee must create a plan to reduce the national budget deficit by $1.2 trillion over 10 years. If this plan could be not be devised by December 23, 2012, automatic budget cuts to both military and non-military spending would go into effect.[xxv] The Joint Committee was unable to come to an agreement, and a "sequestration" of federal spending went into effect on March 1, 2013.[xxvi]In December 2013, the Murray-Ryan Budget Deal provided some sequestration relief for fiscal years 2014-2015, but this agreement omitted important areas of funding, such as an unemployment benefits for long-term workers, and relief measures under the agreement extend only through 2015.

30. The 2013 sequester created serious funding challenges that threatened a range of publicly funded social programs with implications for the right to an adequate standard of living. Mandatory cuts impacted nutritional programs, housing support, educational programs, unemployment benefits, Medicare and the federal court system, and forced furloughs or delayed hiring at government agencies throughout the country.[xxvii]

31. The Special Supplemental Nutrition Program for Women, Infants and Children WIC was one of the many programs impacted by the sequester. This program was reduced by $333 million.[xxviii] The cuts came despite the serious issue of food insecurity in the United States, and the reliance of many families on assistance for nutritional needs. In 2012, 14.5 percent of American households were food insecure at some point during that year, a figure largely unchanged since 2008 in the midst of the recession.[xxix] According to the U.S. Department of Agriculture, food insecurity was disproportionately higher for families of particular minority groups (24.6 percent of Black, non-Hispanic households experienced food insecurity; 23.3 percent of Hispanic families, compared to 13.0 percent of non-Hispanics or other or, or multiple races and 11.2 percent of White non-Hispanic households). Households with children headed by a single parent also had significantly higher rates of food insecurity. Single mother-headed households had higher rates of food insecurity (34.5 percent of these households experienced food insecurity) than households headed by single men (23.6 percent). [xxx]

32. In October of 2013, Congressional discord on budget issues created another, very acute economic crisis. Due to continued disagreement on budget measures, Congress failed to pass a necessary temporary budget measure. This resulted in a shutdown of all non-essential government activity starting on October 1, 2013, which lasted 16 days. The government shutdown impacted a broad variety of federal programs, as well as state and local programs supported by government funding and private industries that relied on government services. The federal government was forced to furlough approximately 850,000 federal employees per day, not including furloughed or laid-off workers employed by private companies that contract with the federal government. A wide range of government activities were delayed or postponed, including certain lending services and vital public health measures, such as NIH clinical trials, CDC flu monitoring, and food safety inspections. [xxxi]

Right to non-discrimination/ equality

33. Governments have immediate obligations for ensuring non-discrimination and equality in the enjoyment of human rights.[xxxii] As a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the US is obligated to end racial discrimination and to promote non-discrimination.[xxxiii]The right to non-discrimination and equality intersects all other rights, connected to the government's obligation to protect, to achieve adequate standards of living and to ensure progressive realization and nonregression of human rights. These others rights must be realized in a way that respects equal enjoyment of rights by all members of society, regardless of gender, race, ethnicity, religion, sexual orientation, etc. The following are a few specific examples where the principles of non-discrimination and equality were violated in the design, implementation, or outcomes of the economic environment and of fiscal, budgetary, and labor policy decisions.

34. Women have continued to experience higher rates of poverty and to continue make less money for comparable work than their male peers throughout the recession and the recovery periods. The gender poverty gap has actually expanded during the recovery, with 16.3 percent of women and 13.6 percent of men living in poverty in 2012, compared to 16.2 percent of women and 14.0 percent of men living in poverty in 2010.[xxxiv]

35. While unemployment rates for men remained higher than unemployment rates for women during much of the economic crisis, disaggregation of employment statistics by race, age, ethnicity and education shows a more nuanced picture of the groups most impacted by the economy. African American and Latino women, for example, faced much higher rates of unemployment during the recession than did white and Asian men. African Americans and Hispanic individuals- both women and men- were among those hardest hit by this recession, as were single mothers, younger workers, and those with less education. [xxxv]

36. Across professional fields, female workers make less than their male counterparts. In 2014, women continue to make only 77 cents for every dollar that their equally qualified male counterparts make. Efforts to contribute to the economic recovery, including federal job training programs, have failed to address the issues of gender pay gap and industry segregation. "One-Stop" local career centers created under the Workplace Investment Act (WIA) of 1998 have been used a tool during the current recovery to provide multiple job-related services for displaced workers, unemployed adults, and low-income youth. Of those individuals who received training from the Workforce Investment Act (WIA) in 2011, women were more likely to be received training for "service" jobs, while men were much more likely to receive training in higher paying "installation, repair, production, transportation or….construction." Men who received various WIA trainings made an average of $1,789- $2,078 more per quarter than women completing corresponding WIA programs.[xxxvi] The differences in the way that women and men utilize these training programs can have enormous impacts on future incomes.

37. There is also clear evidence that there has been a failure to protect women, the poor and people of color who were disproportionately affected by predatory lending practices and the subprime mortgage crisis.[xxxvii] Despite expansion in the availability of credit at the aggregate level over recent decades, access to credit had been circumscribed by race and gender. Specifically, discriminatory lending practices marginalized racial groups in credit and housing markets. With the expansion of subprime mortgages, that is, mortgages that required lower up-front cash and lower incomes than standard mortgages, these patterns of exclusion from credit markets began to shift. Credit was extended to previously excluded populations, although on unfavorable terms. Providers of subprime mortgages targeted women and people of color. This allowed marginalized groups access to housing markets, although at the cost of higher interest and fee payments than for standard mortgages. An ongoing expansion of credit requires the generation of new markets for loans, and subprime lending to the previously excluded represented a profitable new market opportunity.[xxxviii]

38. Two studies for the Consumer Federation of America examined the race and gender dimensions of subprime mortgage lending. The studies found that about 24 percent of male borrowers received subprime mortgages compared with about 32 percent of female borrowers. They also found discrimination between different racial and ethnic groups: about 20 percent of white borrowers and 13.5 percent of Asian borrowers received subprime loans in 2005, compared with almost 40 percent of Latino borrowers and over

50 percent of African American borrowers.[xxxix] Women, particularly minority women, were significantly more likely to receive subprime mortgage loans. While white women were 25.8 percent more likely to receive a subprime mortgage loan than white men, African American women were 256 percent more likely to receive a subprime mortgage than white men (and 5.7 percent more likely to receive a subprime mortgage than African American men). Latino women were also disproportionately impacted by the subprime mortgage crisis; Latino women were 177.4 percent more likely than white men and 19.3 percent more likely than Latino men to receive subprime mortgage loans.[xl] The costs of a subprime mortgage relative to a standard mortgage were substantial. Subprime borrowers were estimated to pay between $85,000 and $186,000 more in interest than average borrowers over the period of a typical mortgage.[xli]

39. While the Dodd-Frank Act of 2010 increased regulation of mortgage lending practices, the subprime mortgage crisis continues to haunt impacted homeowners. Failure to make payments and foreclosures has affected credit scores for subprime mortgage borrowers. In addition, credit score checks have become a popular tool used by employers to screen job applicants for attributes like conscientiousness, responsibility and integrity.[xlii] While no research supports a correlation between credit history indicators and worker performance, using credit history to aid hiring or promotion decisions can have detrimental and discriminatory effects on the right to work. On average, minorities groups in the United States have lower credit scores than their white counterparts. A study by *The Psychologist-Manager Journal* reported that, "that Blacks have an average credit score roughly 10%–35% worse than Whites. Hispanics have scores 5%–25% worse than Whites…consequently, credit checks as a selection tool could be racially discriminatory, which clearly violates Title VII of the Civil Rights Act."[xliii] This racial gap is "a result of discrimination in lending housing and employment,"[xliv]particularly evident in the racial bias observed in the recent subprime mortgage crisis.

IV. Achievements, Best Practices, Challenges and Constraints

40. During this period of review, the U.S. implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to address the high-risk activity in the financial sector that contributed to the recession of 2007-2009. The Act increased federal oversight and regulation of financial services in the United States, and requires more transparency and better information for potential investors and consumers of financial products.

41. Several components of the Dodd-Frank Act support a human rights perspective to economic policy by reining in the power of major financial institutions and private businesses in the interest of the economy as a whole. The Dodd-Frank Act created the Consumer Financial Protection Bureau, a watchdog agency with authority to regulate, examine practices, and enforce rules for all financial institutions. The CFPB provides a central process for addressing regulation and oversight, eliminating any confusion over agency responsibility and streamlining means of enforcement. The Act also creates the Financial Stability Oversight Council, designed to monitor and make recommendations that will eliminate or mitigate risks that could lead to a future economic crash. The act limits commercial banks from participating in proprietary investing, which led to high-risk financial activity preceding the 2007-2009 recession.[xlv]

42. Under the Troubled Asset Relief program, the Congress authorized $700 billion to assist failing financial institutions, although the actual cost of the bailout over its lifetime is estimated to be significantly lower. Given magnitude of the crisis, this was not the most effective or efficient way to create decent jobs and build resilient economic base [xlvi] The Dodd-Frank Act addresses some of these concerns by eliminating future tax-funded government bailouts, limiting Federal Reserve emergency lending, and creating incentives for companies to avoid expanding until they are "too big to fail". Under new regulations, large corporations need to submit plans that detail what will happen if the company fails and needs to shut down.[xlvii]However, many of the provisions of the Dodd-Frank Act require regulatory agencies, such as the Securities Exchange Commission, to develop new the rules governing financial markets and institutions – a process which has been slow and remains incomplete.

V. Recommendations for a Human Rights-Centered Economic Policy in the U.S.

Obligation to Protect

43. Hold financial institutions accountable for use of bailout funds and liquidity introduced into the U.S. economy. Increase transparency and accountability to ensure that the funds are being used to prevent the retrogression of rights, not simply the realization of profits. [xlviii]
44. Ensure that fiscal policy promotes human rights, including the right to work to work and the right to an adequate standard of living. Fiscal policy should play a direct role in investing in education, health care and other social spending and infrastructure to support sustainable employment gains in the long run and, in the short-run, running counter cyclical policies to prevent job losses when the economy weakens. [xlix]
45. Strengthen Dodd-Frank Act so that it would force commercial financial institutions to wall off standard bank deposits from the riskier activities of investment banking and develop specific and effective rules for regulating agencies to implement.

Right to work and the right to an adequate standard of living

46. Expand macroeconomic initiatives to address the ongoing crisis of unemployment. Assess macro policy to insure job creation and that jobs are of decent quality and employment opportunities are equitably distributed.[l]
47. Restore federal Emergency Unemployment Compensation for long-term unemployment relief. Extend disability benefits and support to low-income households to help maintain a minimal standard of living.[li]

Progressive realization/ non-retrogression

48. Address long-term budget reform. Ensure counter-cyclical policy that does not lead to regression of social and economic rights.
49. Provide additional federal relief to state and local government to prevent cuts to education, health, and core social services. [lii]
50. Extend sequester relief funding.
51. Ratify and implement the ICESCR and other relevant international human rights documents.

Right to non-discrimination/ equality

52. Monitor the job creation associated with the recovery to ensure that jobs are of decent quality and employment opportunities are provided in a non-discriminatory and gender-sensitive way. [liii]
53. Ban credit checks as a pre-employment job-screening mechanism.
54. Support policies that promote gender equity in the workplace, such as paid parental leave and affordable childcare.
55. Ratify and implement CEDAW.

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