

## Report on The United States of America 9<sup>th</sup> Session of the Universal Periodic Review – November 2010

1. This report is submitted by the **Best Practices Policy Project**,<sup>1</sup> **Desiree Alliance**,<sup>2</sup> and the **Sexual Rights Initiative**.<sup>3</sup> It focuses on civil and human rights violations of those engaged, or perceived to be engaged, in sexual trade and sex work in the U.S.

### Background and Context

2. People involved in sexual trade or sex work in the U.S. are found in a wide array of settings and circumstances; perform a variety of services; and communicate with clients through clubs, on the street, through newspapers, phonebooks, and the internet. They include people of all gender identities who work in clubs, in brothels, in their or other's homes, in hotels, outdoors, and in other spaces. While sex work is generally stigmatized and aspects of it criminalized, street-based or outdoor workers, transgender or gender non-conforming people, people of color, migrants, and youth consistently bear a particularly heavy burden of police abuse and harassment, institutional discrimination, and violence.

3. Stigmatization of sex workers and those profiled as such in tandem with “zero-tolerance” policing in urban areas where poorer communities are being displaced, operate to ensure that these populations are disproportionately impacted by the prison system.<sup>4</sup> Sex workers in these areas face additional burdens of police violence and abuse. Arrests for sex work can lead to a cycle of continued exclusion from housing and other job opportunities, and to re-imprisonment.<sup>5</sup> Furthermore, because many forms of sex work in the U.S. are treated as a crime, law enforcement officials frequently fail to recognize that sex workers can be victims of crime, and thus deny justice or support to sex workers who seek their help.<sup>6</sup>

### Legal and Institutional Framework

4. Criminal prohibition of sex for money and surrounding activities exists in most states (with the exception of some counties in the state of Nevada).<sup>7</sup> Some forms of sex work, such as exotic dancing, may not be prohibited by state legislation but they are always regulated by state and municipal policies. Sex work that occurs in public spaces is also often policed under legislation prohibiting loitering, public nuisance, trespassing or “failure to obey” a police officer’s directive to move along. More states in the U.S. are now mandating minimum sentences so that judges are required to give people convicted for prostitution-related offenses jail time<sup>8</sup> and some states have sentencing guidelines and judicial practices which make a third charge for prostitution-related offenses a felony.<sup>9</sup>

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<sup>1</sup> **The Best Practices Policy Project** was founded in 2005 to provide capacity building support for organizations working with sex workers in the United States. Penelope Saunders, Che Gossett and Elizabeth Nanas have collaborated as writers.

<sup>2</sup> **The Desiree Alliance** was founded in 2005 to create a space for sex workers, allies and their organizations to work for sex worker rights. J. Kirby has collaborated as writer.

<sup>3</sup> **The Sexual Rights Initiative**: a coalition including Mulabi, a Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others.

<sup>4</sup> See, ALLIANCE FOR A SAFE & DIVERSE DC, MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C., 13-14 (2008). [Hereinafter: ALLIANCE FOR A SAFE & DIVERSE DC (2008)].

<sup>5</sup> Haywood, Deon, Women with a Vision, New Orleans, Interview, (Feb. 19, 2010).

<sup>6</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 39-40 (2008).

<sup>7</sup> See, SEXUAL HEALTH AND RIGHTS PROJECT (SHARP) AND LAW AND HEALTH INITIATIVE (LAHI), FOSTERING ENABLING LEGAL AND POLICY ENVIRONMENTS TO PROTECT THE HEALTH AND HUMAN RIGHTS OF SEX WORKERS (2006) (report of a meeting co-sponsored by the Sexual Health and Rights Project & Law and Health Initiative).

<sup>8</sup> For example, in Arizona a law passed in 2006 mandates that a first offense under A.R.S. §13-3214(A) carries a mandatory minimum 15-day jail sentence.

<sup>9</sup> Also each subsequent conviction will be a felony. Kelli Dorsey, Different Avenues, personal communication, February 23, 2010.

5. While the United States has only ratified a few of the major U.N. human rights treaties, (the Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), and the Convention on the Rights of the Child (CRC), these treaties have direct bearing on sex workers' human rights. These include: the right to be free from discrimination; freedom from torture, cruel, inhuman and degrading treatment; the right to healthcare; and the right to equal protection under the law.<sup>10</sup>

### **The Right to Equal Protection under the Law<sup>11</sup>**

6. Sex workers of color in the United States are disproportionately targeted by the police for arrest because of their minority status, violating the U.S. Constitution, international standards against discrimination and treaties such as CERD and ICCPR.<sup>12</sup> Furthermore, people of color from the lowest income communities who do sex work in public spaces to meet their most urgent and immediate needs, are relentlessly and disproportionately targeted by the police. Arrest and subsequent conviction for prostitution and prostitution-related offenses intensifies the homelessness or housing precariousness experienced by people from low-income communities because people with criminal records are barred from accessing, or may lose, their public housing.<sup>13</sup>

7. Transgender women, especially those of color, in the United States are profiled, targeted, harassed, cited and/or falsely arrested by the police as sex workers for simply walking outside. Male sex workers may be harassed by the police in part because of homophobia and women sex workers who are perceived to step outside of traditional female roles (e.g. by failing to be subservient) may be disproportionately targeted for arrest. Gender based discrimination against women and gender non-conforming people violating their right to equal protection under the law are reinforced by anti-prostitution legislation. For example, legislation enacting "Prostitution Free Zones,"<sup>14</sup> areas in which police may move along and arrest people who they believe to be prostitutes, erode legal protections barring officers from detaining individuals on the basis of how they are perceived or the way they are dressed.

8. Another particularly discriminatory practice by state agents is sex offender registration of people convicted for sex work related offenses.<sup>15</sup> In some parts of the U.S., these sex workers are registered as sex offenders for ten years and must carry an identification card with "sex offender" stamped on it, among other penalties. The majority of people sentenced this way are African-American and almost all are women and transgender women. They then face discrimination from employers, housing agents and are unable to qualify for education loans, making it impossible to secure even menial, low-wage work. Because they become completely shut out from other forms of work, many people who are registered as "sex offenders" have no other option but to continue in sex work, potentially returning to prison after subsequent arrests.<sup>16</sup>

9. Many people engaged in sexual exchange, particularly street-based workers, face violence,

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<sup>10</sup> Additionally, as a State party to the United Nations and member of the Human Rights Council, the U.S. is obligated to uphold the rights protected under the Universal Declaration of Human Rights (UDHR).

<sup>11</sup> Article 26 of the ICCPR states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Furthermore, the CERD states under Article 2(1)(a) that "Each State Party must to ensure that all public authorities and public institutions, national and local, shall act in conformity" with the obligation of eliminating racial discrimination in all its forms. Article 14 of the U.S. Constitution ensures similar protections against racial discrimination by government officials.

<sup>12</sup> Andrea Ritchie, Esq., former Director of the Sex Workers Project, personal communication, (Dec. 22, 2009).

<sup>13</sup> Kelli Dorsey, Executive Director of Different Avenues, personal communication, (Feb. 23, 2010); HUMAN RIGHTS WATCH, NO SECOND CHANCE: PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING, (2004).

<sup>14</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 8-9 (2008) In 2005, Prostitution Free Zones were introduced in legislation in Washington, DC, modeled off similar laws in other jurisdictions, including Portland, OR, Honolulu, HI, and Richmond, VA.

<sup>15</sup> Flaherty, Jordan, *Her Crime? Sex Work in New Orleans*, Colorlines, (Jan. 13 2010).

<sup>16</sup> *Supra* note 4, Haywood, Deon interview, (Feb., 19 2010).

including assault and rape, and numerous sex workers are murdered each year. The notion that sex workers are “disposable” may be the root cause of this violence.<sup>17</sup> The legal establishment does not conceive that sexual workers can be sexually assaulted and may obstruct sex workers’ attempts to seek justice for crimes committed against them.<sup>18</sup> Such violations of sex workers’ rights lead to a lack of faith in the State providing them with adequate promotion and protection of their lawful human rights, including protection from violence. Furthermore, sex workers fear further harm, humiliation, and/or arrest when turning to the authorities for assistance. Youth thought to be engaged in the sex trade face discrimination and neglect from a wide range of institutions, including hospitals, shelters, treatment centers, Child and Family Services agencies, and law enforcement agencies.<sup>19</sup>

10. Migrant sex workers face the double burden of stigmatization for working in criminalized labor sectors and for their immigrant status.<sup>20</sup> A portion of migrant sex workers are undocumented but even if migrants have correct immigration paperwork, engaging in sex work can both invalidate visas causing deportation and prevent entry into the United States.<sup>21</sup> Anti-prostitution laws can therefore become a tool for immigration officials seeking to deport migrants: recently police have begun arresting large numbers of Latinas, charging them with prostitution related offenses leading to their deportation. When arrested or in court immigrants are often not provided with an interpreter, so they may be completely unaware of the charges brought against them and/or the need for attendance at follow up court dates significantly impacting on their access to criminal justice.<sup>22</sup>

11. Misguided U.S. law and policy addressing trafficking in persons makes the lives of migrant sex workers more difficult. Migrant workers may be arrested, detained and subsequently deported in “raid and rescue” missions carried out by local law enforcement and federal immigration authorities.<sup>23</sup> The current prosecution-oriented approach to anti-trafficking work in the US also traumatizes trafficked persons. People trafficked into the sex sector in the United States are forced to comply with law enforcement and endure possible “re-victimization” in order to get benefits and status. Migrant sex workers have become increasingly wary of service providers because of the operation of some anti-trafficking organizations that have provided information about work places to law enforcement authorities leading to raids, arrest and deportation.<sup>24</sup> U.S. anti-trafficking policies undermine the health and rights of sex workers both domestically and internationally by requiring that organizations seeking funding adopt a policy against sex work (“anti-prostitution pledge”)<sup>25</sup>

### **Freedom from torture, and other cruel, inhuman and degrading treatment (CIDT)<sup>26</sup>**

12. U.S. sex workers’ greatest fear is abuse by the police and other state agents. Organizations working with sex workers have documented a pattern of practice by police towards sex workers, which includes assault, sexual harassment and rape that constitutes torture and cruel, inhuman and

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<sup>17</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 17-18 (2008).

<sup>18</sup> For example Philadelphia Judge Theresa Deni Carr ruled that the gang rape of a sex worker at gunpoint was not in fact rape, but was instead “theft of services.” Boston Herald, *Judge Blasted for Dismissing Alleged Rape of Prostitute As “Theft of Services”*, (Oct., 2007).

<sup>19</sup> YOUNG WOMEN’S EMPOWERMENT PROJECT, *GIRLS DO WHAT THEY HAVE TO DO TO SURVIVE*, 30 (2009).

<sup>20</sup> Dilcia Molina, Madre Tierra, Fredericksburg, Virginia, personal communication, (Feb. 23, 2010)

<sup>21</sup> Sex Workers Project, email communication (Feb, 18, 2010).

<sup>22</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 39-40 (2008); *See also, supra* note 21.

<sup>23</sup> *See, SEX WORKERS PROJECT, KICKING DOWN THE DOOR* (2009).

<sup>24</sup> Cyndee Clay, Director of Helping Individual Prostitutes Survive (HIPS), personal communication (Feb, 2010)

<sup>25</sup> This requirements applied to international organizations seeking funds from the President’s Emergency Plan for AIDS Relief (PEPFAR). In addition to this almost all U.S. groups seeking PEPFAR funding are also subject to the pledge, the exceptions being a small number of groups that challenged the application of the pledge requirement to their organizations in a lawsuit against USAID. Organizations within the U.S. were also subject to the pledge under Trafficking Victims

<sup>26</sup> Article 7 of the ICCPR states that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” The CAT Treaty as well as the U.S. Constitution also provide for similar protections to individuals.

degrading treatment.<sup>27</sup> Street sex workers and other people who are often profiled as prostitutes (such as transgender women) are very frequently subjected to this kind of treatment.<sup>28</sup> When sex workers seek recourse for crimes committed against them, officers do not take their reports seriously or may further violate these sex workers by arresting them, physically assaulting them or pressuring them for sex.<sup>29</sup>

### **The Right to Adequate Health Care**

13. Criminalization, marginalization and stigma prevent sex workers from enjoying their right to health by undermining their access to adequate health care and the conditions in which they live and work.<sup>30</sup> The U.S. Government has failed to ensure adequate access to health services and support for sex workers. They are not provided with HIV prevention and education services that would help them protect their own health and the health of their customers. Furthermore, policing directly undermines sex workers' ability to prevent the transmission of HIV and other sexually transmitted infections because of the widespread law enforcement practice of using condoms as evidence and/or destroying condoms and safe sex materials.<sup>31</sup>

14. Sex workers in the United States are very unlikely to discuss their work with medical providers because of fears about how they will be treated in addition to their fears of the law.<sup>32</sup> These fears are based on real lived experiences. Sex workers who approach police with severe injuries from violence perpetrated against them are routinely belittled and blamed for the attacks against them and are not escorted, or even referred, to emergency rooms. Further, individuals in medical facilities seeking care for injuries sustained from attacks against them who are profiled as sex workers have been accusatorily questioned by police prior to receiving medical care.<sup>33</sup> Sex worker friendly services providers capable of addressing the full range of their health needs (reproductive health care, sexual health, counseling, assistance with domestic violence, etc) are few and far between in the United States and significantly under-funded. Many mainstream service providers are not prepared to understand sex workers' needs; services for men in sex work are extremely limited.<sup>34</sup>

### **Recommendations**

#### ***The United States of America should:***

15. Implement rigorous training of law enforcement officials on legal and human rights standards with regards to sex work. e.g. police training on issues relating to gender, race, ethnicity, age and addressing crimes that may be committed against sex workers including the importance of referring victims of crime to rape crisis and trauma support agencies.

16. Institute mechanisms that allow sex workers to find redress for human rights violations and hold law enforcement accountable for their actions, e.g. officers who subject sex workers to degrading treatment and abuse, must be subject to appropriate disciplinary procedures. Sex workers must be

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<sup>27</sup> SEX WORKERS PROJECT, REVOLVING DOOR: AN ANALYSIS OF STREET BASED PROSTITUTION IN NEW YORK CITY, 37, (2008); *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, (2008).

<sup>28</sup> Sex Workers Outreach Project, (SWOP-USA), personal communication with a member, (Feb.17, 2010) (SWOP is an all volunteer sex worker-run, non-profit organization). *See also*, SYLVIA RIVER LAW PROJECT, IT'S A WAR IN HERE: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN'S PRISONS (2007); AMNESTY INTERNATIONAL, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S., AMNESTY INTERNATIONAL (2005); *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 39-40 (2008).

<sup>29</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 39-40 (2008).

<sup>30</sup> Article 25 of the Universal Declaration of Human Rights (UDHR) provides that all persons have a right to adequate health care. As a State party to the United Nations and member of the Human Rights Council, the U.S. is also obligated to uphold the rights protected under the UDHR.

<sup>31</sup> *Supra* note 3, ALLIANCE FOR A SAFE & DIVERSE DC, 39-40 (2008); *Supra* note 18.

<sup>32</sup> COHAN, D. L., A. LUTNICK, ET AL, SEX WORKER HEALTH: SAN FRANCISCO STYLE, 1-12 (2006).

<sup>33</sup> Emily Metzner, NY Harm Reduction Educators, email communication, (Feb. 19, 2010).

<sup>34</sup> COHAN, D. L., A. LUTNICK, ET AL, SEX WORKER HEALTH: SAN FRANCISCO STYLE, 1-12 (2006).

able to report police misconduct and violence while being protected from retaliation.

**17.** Repeal laws, including laws against prostitution and prostitution-related offenses, and eliminate policies, such as “zero tolerance” of prostitution, “prostitution free zones,” and “quality of life” measures, that undermine protection and respect for human rights of sex workers, people in the sex trade and other marginalized groups. Sex workers should also be able to expunge any criminal records relating to these laws.

**18.** Repeal the application of felony-level charges and mandatory minimum sentencing against people arrested for sex work and expunge the records of those arrested and charged under these laws.

**19.** Remove any and all sex offender registration requirements of those arrested for engaging in prostitution or “unnatural copulation,” and expunge the records of those arrested for sex work and charged under laws that mandate sex offender registration.

**20.** Change policies that prevent sex workers from applying for and/or receiving student loans and public housing.

**21.** Invest resources in education, job training, healthcare, and housing programs for marginalized people engaged in sex work and the sex trade. Specifically, funding for low-income communities and communities of color should be allocated to provide job training, education programs, apprenticeships, healthcare, and housing opportunities.

**22.** Provide funding for harm reduction and rights based health care services for male, female, and transgender sex workers. Lift all restrictions on federal funding for harm reduction programs.

**23.** Prohibit agencies that receive public funding from discriminating against people engaged in sex work or in the sex trade.

**24.** Immediately end the law enforcement practice of using possession of condoms and other safe sex supplies as evidence of a crime.

**25.** Provide comprehensive services and legal support for migrant sex workers, including language interpretation in the criminal justice system.

**26.** Reorient anti-trafficking campaigns to be in line with the standards set by the UN High Commissioner on Human Rights.

**27.** Repeal and remove “anti-prostitution pledge” requirements for U.S. Global AIDS Funds and anti-trafficking funds.