

***Human Rights Violations of Sex Workers, People in the Sex Trades,
and People Profiled as Such***

**Submission to the United Nations Universal Periodic Review of
the United States of America**

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Submitted by a Coalition of Sex Worker Rights NGOs for UPR-USA: Best Practices Policy Project, Outlaw Project, Black Sex Workers Collective, New Jersey Red Umbrella Alliance, and Desiree Alliance

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This report is submitted by the Best Practices Policy Project¹, Outlaw Project², Black Sex Workers Collective³, New Jersey Red Umbrella Alliance⁴, and Desiree Alliance.⁵ The report focuses on human, civil, and labor rights violations of those engaged, or perceived to be engaged, in sexual trade, and sex work in the U.S. Findings are based on multiple interviews, a national survey (English/Spanish) with current and former sex workers, people in the sex trades, people from communities often profiled as sex workers, and advocates organizing with and providing services to these groups throughout the United States. The report also cites recent studies documenting persistent and widespread violations of the human rights of members of these communities.

¹ The Best Practices Policy Project (www.bestpracticespolicy.org) was founded in 2005 to provide capacity building support for organizations working with sex workers in the United States. P. Saunders (bestpracticespolicyproject@gmail.com) has collaborated as a writer.

² The Outlaw Project (www.theoutlawproject.org) is based on the principles of intersectionality to prioritize the leadership of people of color, transgender women, gender non-binary and migrants for sex worker rights.

³ The Black Sex Worker Collective (www.blacksexworkercollective.org) seeks to address the needs of current and former Black sex workers by providing education, legal assistance, healthcare resources, and affordable housing referrals in order to successfully leave & maintain a life outside of the industry.

⁴ The New Jersey Red Umbrella Alliance (NJRUA) (njrua.org) is a working alliance of activists and allies who are dedicated to promoting, defending, and advocating for the human rights of sex workers in the state of New Jersey.

⁵ The Desiree Alliance (www.desireealliance.org) was founded in 2005 as a national sex worker-led rights organization advocating for sex workers human, labor, and civil rights. Director Cristine Sardina has collaborated as a writer.

Background and Context

1. 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 social media, clubs, on the street, advertisements, and the internet. They include people of all gender identities who work in clubs, in brothels, in their or others' homes, in hotels, outdoors, and other spaces. While sex work is stigmatized and aspects of it criminalized, street-based or outdoor workers, transgender or gender non-conforming people, people of color, migrants, youth, and incarcerated sex workers, consistently bear a particularly heavy burden of law enforcement abuse and harassment, institutional discrimination, and violence. The current U.S. administration is hostile to human rights, violating in particular the rights of migrants and transgender people.

Legal and Institutional Framework

2. Criminal prohibition of prostitution, whether monetary, trade, or survival, exists in all fifty states (with the exception of some counties in the state of Nevada, where it is heavily regulated). Some forms of sexual commerce, such as exotic dancing, may not be prohibited by state legislation but are almost always heavily regulated by state and municipal policies, which may, for example, mandate registration through a law enforcement database. Many other laws may be used to criminalize the lives of sex workers including restrictions on being in public space (anti-loitering, anti-camping, and trespass statutes) and providing services such as massage “without a license.” In 2018 the U.S. passed federal restrictions via the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) limiting the sharing of vital safety information for sex workers online and causing economic harm and social marginalization.

3. During the 9th Round of the Universal Periodic Review, the U.S. accepted Recommendation 86ⁱ from Uruguay to “undertake awareness-raising campaigns for combating stereotypes and violence against gays, lesbians, bisexuals and [transgender people], **and ensure access to public services paying attention to the special vulnerability of [sex] workers to violence and human rights abuses.**”ⁱⁱⁱ The U.S. government has taken no steps towards implementation and has passed law and pursued policies that directly contradict this commitment, putting sex workers at heightened risk of human rights abuses.

4. Global organizations have called for respect of sex workers' rights and the removal of criminal sanctions on people trading sex. The World Health Organization (WHO) has encouraged “support [for] community mobilization of sex workers to respond to violence and discrimination,” and has urged states to work toward decriminalization of commercial sex.ⁱⁱⁱ Similarly, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the Global Commission HIV and the Law convened by UNDP and the Joint United Nations Programme on HIV/AIDS (UNAIDS) have called for the removal of punitive laws related to sex work.^{iv} The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) recognized “the right of all sex workers to choose their work.”^v The International Labor Organization released a report that emphasized the value of sex worker peer education programs.^{vi} UN Special Rapporteurs have highlighted how criminalization, stigma, and discrimination cause violations of human rights of sex workers.^{vii} Numerous global civil society organizations support the rights of sex workers. Notably Amnesty International adopted a

2016 policy to “respect, protect and fulfill the rights of sex workers” and recommending the removal of laws criminalizing them.^{viii} Despite global support by organizations widely recognized for their human rights, the United States fails to acknowledge or act on such recommendations.

Right to Freedom of Assembly and Freedom of Association^{ix}

5. The U.S. Supreme Court has acknowledged these rights stating that the freedom to engage in association, “for the advancement of beliefs and ideas is an inseparable aspect of the liberty.”^x Sex worker led organizations and rights coalitions play a vital role in civil society in the U.S. providing services and defending human rights.^{xi} Yet sex workers’ right to assemble has been severely compromised by recent federal legal enactments and U.S. policies that heighten criminalization during public gatherings. The Desiree Alliance, a civil society organization that holds the largest sex worker-led conferences in the United States, cancelled their seventh national conference *Transcending Borders: Immigration, Migration, and Sex Work* that would have been held in July 2019, due to repercussions of 2018 federal legislation (FOSTA/SESTA) and because attendees and their organization were at risk from local, state, and federal law enforcement and Immigration and Customs Enforcement (ICE). Desiree Alliance feared arrest as “sex traffickers” if they held the event.^{xii} Sex worker rights organizations have become vulnerable in numerous ways, including confiscation of grant moneys for a sex worker convening by a mainstream fiscal sponsor without explanation,^{xiii} and many fear surveillance and defunding.

6. All across the United States the enactment of FOSTA/SESTA has prevented sex workers from associating online as well. “A lot of the tools that I used to engage with people are not up and if they are I don't trust them. The ability to screen clients is gone as is the ability to have community, the forums have gone down ... These issues for sex workers of color are more intense. The first people affected by SESTA/FOSTA were those on free or low cost online platforms, which were primarily low income people of color.”^{xiv} The U.S. Supreme Court has recognized the movement of interchanging ideas and shaping public consciousness to electronic media.^{xv} As the act of associating has largely moved online, so should the protections offered to groups gathered in person. The associations created by sex workers and advocacy organizations online should be recognized as virtual assembly, protected by the First Amendment of the U.S. Constitution, because they promote the advancement of beliefs and ideas inseparable from liberty.

Right to Equal Protection under the Law^{xvi}

7. Law enforcement disproportionately hyper-police sex workers of color in the United States for arrest because of profiling minority status. People of color from the lowest income communities who do sex work in public spaces to meet their needs are relentlessly and disproportionately targeted by the police.^{xvii} Statutes and policies mandating the “banishment” of people from certain areas or eroding the reasonable suspicion standard for arrest and conviction violate due process rights.^{xviii} Law enforcement officials routinely invoke such concepts to threaten people they profile as sex workers, subjecting them to degrading and violent treatment such as removal of wigs or clothing, confiscation or destruction of property, and verbal abuse including homophobic, anti-transgender, and racist slurs and sexual harassment.

8. The current U.S. government is engaged in a sustained campaign to roll back the rights of transgender people, worsening already pervasive gender and racial profiling of transgender women of color, transgender men of color^{xxix} and gender non-conforming people across the country. Trans people, especially those of color, are profiled, targeted, harassed, cited and/or falsely arrested by the police as sex workers for simply walking outside. Trans led organizations have documented many cases of these rights violations: “Earlier this year a trans Latina was arrested for prostitution when she was shopping at 9 pm, a time of night when many people are doing their shopping in Jackson Heights.”^{xxx} Policing and profiling leads to incarceration and immigration detention, where transgender people are harmed, highly vulnerable to sexual assaults, and murdered. In 2018, for example, Roxsana Hernandez, a transgender woman from Honduras who was seeking asylum in the U.S., died in ICE detention.^{xxxi}

9. The current U.S. administration is violating the human rights of immigrants. The intersection of this with anti-prostitution and rights violating anti-trafficking policies has resulted in the death of migrant sex workers at the hands of state agents, the incarceration of migrant sex workers in rights violating detention centers, and deportation. Migrant sex workers face the double burden of stigmatization for working in criminalized labor sectors and for their immigrant status. In areas of the U.S. closer to the border, migrant sex workers are being forced to perform sexual favors to police officers in lieu of arrest for prostitution^{xxxi} and in other jurisdictions they are doubly policed under statutes relating to “massaging without a license” that result in felony penalties.^{xxiii} Migrant workers are arrested, detained and subsequently deported in “raid and rescue” missions carried out by local law enforcement and federal immigration authorities. Yang Song, a Chinese immigrant living in NYC, fell to her death from the fourth story of her workplace (a massage parlor employing Asian workers) when ten vice police stormed the building during a NYC police department raid under the pretext of these women being sex trafficked. “Migrant sex workers are targeted by law enforcement, especially after SESTA/FOSTA, allegedly in the name of anti-trafficking. In reality, police raids in search of trafficking results in criminalization, deportation, even death in the case of Yang Song and very few actual convictions of human trafficking, or T-visas and helpful services for arrested migrants.”^{xxiv} 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 influencing their access to justice. Lack of access to translators, language services, and legal representation, may also be a hindrance to completion of court-mandated programs, and lengthen the time spent in detention or incarcerated.^{xxv}

10. The current administration’s anti-immigration policies in the U.S. traumatizes trafficked persons and sex workers. The idea of “ending human trafficking” has been appropriated by government stakeholders, law enforcement, and anti-trafficking organizations to deport migrants and incarcerate sex workers. The U.S. government dismisses the intertwined fluidity of migration, economics, political unrest, war, wages, and remittance fees.^{xxvi} Deportation can pose great dangers to sex workers who have been arrested as a trafficker, as a victim (victims are arrested on initial police contact, detained and pressured to cooperate with law enforcement to receive services),^{xxvii} or one who has participated in acts of prostitution, no matter if forced, defrauded, or coerced, leaving them highly vulnerable to other rights violations. Trafficking programs have become a catch-all for large scale policing operations against entire communities. With amplified force, state and federal law enforcement coalesce mass “sweeps,” arresting

scores of sex workers and people the police profile as sex workers under the guise of eradicating “underage sex trafficking.”^{xxxviii} Arrestees (mostly non-minor adults) are handcuffed and have no opportunity to speak to a defense attorney during this process, even if they request one. In some sweeps, “qualifying” arrestees are told that they can participate in diversion programs (many of which are faith based) or, they will be taken into custody and face criminal charges. These mandated programs have high failure rates, meaning that the majority of people who do take this option eventually still face criminal charges, and will almost certainly be incarcerated under state and local mandatory minimum sentencing schemes.^{xxix}

11. People engaged in sexual exchange can face violence, including assault and rape, and numerous sex workers are murdered each year. Leading transgender advocates report that “transgender sex workers in the United States continue to be marginalized by the state, law enforcement, and in the judicial system, and we are considered disposable people.”^{xxx} As a result, high numbers of transgender sex workers are violently murdered each year.^{xxxi} The legal establishment does not conceive that those who work in sexual-based economies can be sexually assaulted and routinely obstructs sex workers’ attempts to seek justice for crimes committed against them. “A serial rapist in New Jersey has violently assaulted and robbed many sex workers for the last 10 years, if not longer. In order to stop him and seek justice for his victims, we documented a case and connected the victim to the sex crimes unit, but they took no action. Now this abuser is traveling across the U.S., assaulting women in other states and is even reaching out to Canadian providers.”^{xxxii} Such violations of sex workers’ rights represent a failure of the U.S. government to adequately promote and protect their lawful human rights, including protection from violence. Furthermore, sex workers fear and experience further harm, humiliation, and/or arrest when turning to the authorities for assistance. A sex worker who had been raped noted that she “did not go to the police out of fear of being outed as a prostitute to the community and possible arrest.”^{xxxiii} A woman was performing at a strip club and was attacked violently, “while he was hitting me he commented that he can do whatever he wants and if I call the police they won’t listen to me. This went unreported because the police know I engage in full service work so the police were scarier than the client beating me.”^{xxxiv} A legislative model to address these issues has recently passed in California.^{xxxv}

12. Individuals charged with prostitution-related offenses, particularly those associated with street-based sex work such as solicitation, are often not informed of legal options and are routinely viewed as unworthy of a robust criminal defense by state-appointed lawyers, who advise that defendants plead guilty. Judges, prosecutors and other court personnel also use demeaning language and humiliate those arrested.^{xxxvi} Despite the documented disparate effects of setting bail for pre-trial defendants, particularly for the poor and people of color, many jurisdictions in the U.S. continue this practice.^{xxxvii} In the case of those arrested on misdemeanor prostitution-related charges, bonds are often set disproportionately high, although bondsmen refuse to offer bonds because of the supposedly “minor” nature of the charges. Homeless people are often kept in detention or given very high bail, as they have “no fixed address.” Transgender defendants also report being refused bonds due to discrimination. In June 2019, Layleen Polanco, a 27-year-old Afro-Latina transgender woman died in solitary confinement, after being unable to afford \$500 pre-trial bail. NYC based activists note that she had a “warrant for re-arrest after missing a single court date” for prostitution-related charges and low-level drug charges and because she was “unable to complete mandated social services at the Human Trafficking Intervention Courts.”^{xxxviii}

13. Another particularly discriminatory practice by state agents is sex offender registration of people convicted for sex work related offenses. Most placed on sex offender registries are people of color, cis and transgender women. A sex worker who was victimized and then arrested as part of a Federal case against her abuser was offered a plea deal that she did not understand that included registering as a sex offender.^{xxxix} She experienced further arrest at the university she was attending for supposedly failing to file a change of address form, derailing her housing and attempts to receive education. We have included as an attachment to this report letters from nine young incarcerated women who will be placed on sex offender registries when released from prison due to being charged as “traffickers” even though they themselves were victims of human rights violations, often perpetrated by law enforcement and other state agents. Despite law reform in New Orleans, police continue to charge transgender women under the “crimes against nature” statute and have not removed all from the registry.^{xl} People placed on registries become completely shut out from other forms of work, many people who are mandated to register as sex offenders have no other option but to continue in sex work, potentially resulting in additional arrests and further incarceration.

Freedom from torture, other cruel, inhuman and degrading treatment^{xli}

14. U.S. sex workers’ greatest fear is abuse by law enforcement and other state agents. Our organizations have documented a pattern of practice by police towards sex workers which includes but is not limited to: assault, sexual harassment, public “gender searches” (police strip searches for the purpose of viewing genitalia), trafficking and rape, that constitutes torture and cruel, inhuman and degrading treatment. It is often extremely difficult or impossible for sex workers to access justice in these cases. In New Jersey, a sex worker who was brutally beaten by police officers for sex in a bathroom, found herself charged with “aggravated assault on a police officer with a firearm.” While the charge was ultimately dropped at a municipal level at prosecutor’s discretion, she was held on \$10,000 bail, and when she sought to bring a complaint, video evidence of the incident had mysteriously disappeared and her case was not treated seriously.^{xlii} She has experienced ongoing police surveillance since this instance and lives in constant fear of retaliation, most recently having been doxxed and threatened by law enforcement over social media.

15. State agents attack and kill sex workers and those profiled as such with impunity. A clear example of unchecked law enforcement violence is the case of Juan David Ortiz, a Texas Border Patrol agent and supervisor who tortured, raped, and murdered four sex workers (the fifth victim escaped) in a span of seven days. It is unclear if the border agent began his serial killing in a time frame of one week or if his ten-year tenure as a state agent will produce more bodies of sex workers thought disposable and insignificant to him. Border Patrol spokespeople dismissed the relevance of the heinous acts of Ortiz’s murder spree and instead, focused on the premise that the agency should not be tarnished because of “... the great work that our men and women do.”^{xliii}

16. Jails and prisons in the U.S. have been recognized as rights violating in previous UPRs. Women being admitted to a center of incarceration in the Northeast of the US are forced to strip in a room in front of a window where they can be seen by the public.^{xliv}

Right to Adequate Health Care

17. 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. The U.S. government has failed to ensure adequate access to health services and support for sex workers living with HIV or AIDS. They are not provided with HIV prevention and education services that would help them protect their own health and the health of their customers and partners. The Federal Action Plan for implementing the U.S. National HIV/AIDS Strategy makes no mention of sex workers.

18. 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 (or threatening to use) condoms and safe injecting kits as evidence and/or destroying condoms, harm reduction kits and safe sex materials. Police may also search for, confiscate and destroy HIV medication. As a result of the advocacy of sex worker rights organizations, police departments in some areas have announced they would stop utilizing condoms as evidence and this year California passed legislation that prohibits the use of condoms as evidence. However, sex workers continue to report that police take their condoms in many places in the U.S. Police have been documented as using "anti-trafficking" exceptions in laws and policies introduced to prevent them from using condoms as evidence to harass, investigate and arrest immigrant sex workers.^{xlv} These kinds of exceptions also apply to youth under the age of 18, who are automatically defined as "trafficked" if trading sex, so the presence of condoms can still be used as evidence in a criminal case.

19. State agents in the United States deny sex workers access to emergency health care. 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. 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. During arrests and while detained sex workers are denied access to health care. For example, during FBI stings in Alaska in 2017 a sex worker was detained for well over two hours and was denied medical attention (she was experiencing difficulty breathing).^{xlvi} Local police do not respond when homeless sex workers call in for overdose assistance because the police do not want to "waste Narcan" on people they see as "unworthy."^{xlvii}

20. 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. Sex worker-friendly service 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 service providers are not prepared to understand specific communities of sex workers' needs. In particular, reproductive and general health care services for transgender men are extremely limited. "Male sex workers also face stigma in that lack of service providers competent in sex worker health are non-existent and/or unavailable, making it difficult to maintain their abilities for medicalized healthcare; "only a few providers have asked follow up questions in a non stigmatizing way."^{xlviii}

21. By refusing to fully fund harm reduction services, the U.S. government effectively sentences countless people to death by denying them care for treatable but deadly diseases such as HIV or Hepatitis C. Even in localities where harm reduction programs exist, police and other state actors target such programs for harassment, or target people accessing those programs for heightened policing.^{xlix} Pressure from the community on needle exchanges to decrease the diffusion of safer injection supplies impacts organizations working to reduce HIV among sex workers who are also injecting drug users. Police also confiscate people's needles and life-saving Narcan, and throw them away.

22. U.S. governmental funding to religious groups for health and human services presents a number of barriers to the ability of people involved in sex trades to exercise their right to health.¹ Faith-based programs routinely discriminate against sex workers, transgender people, and others, inhibiting their ability to access crucial services including HIV prevention, treatment and care. Programs that use a religious model do not use clinical or public health best practices to assist sex workers, trafficking survivors, or people charged with prostitution.

23. U.S. anti-trafficking policies undermine the health and rights of sex workers internationally by requiring that organizations seeking funding adopt a policy against sex work (PEPFAR).

24. The U.S. government has failed its obligations to protect the rights of sex workers living with HIV by enforcing heightened criminalization, detention, and barriers to health and social services.^{li} In approximately 30 states, people living with HIV face the threat of harsh criminal sentencing and long term incarceration, and approximately six states require registration as a sex offender if arrested for prostitution regardless of intent, near impossibility of transmission, or knowledge of a third party.^{lii} In many states, people arrested for, charged with, or convicted of prostitution are mandated to undergo HIV and other STI testing. Respondents to our survey reported having to take such tests against their will. In some states where HIV is considered a crime, if an HIV/AIDS status is in question in the court, the prosecutor is able to inform the judge of a defendant's status. This may convert misdemeanor prostitution charges to felony enhancements.^{liii} Sex workers from already marginalized communities are greatly concerned about the repercussions of being seen as living with HIV: "I face violence because people think I am living with HIV and working."^{liiv} Police and other state agents may disclose in the community what they believe a sex worker's, or a person profiled as such, HIV status might be, furthering the possibilities of retaliation leading to harm, violence, and death.

25. A concern for the right to health, including the right to privacy regarding personal health information, is genetic sequencing and identifying clusters of HIV. The combined efforts of federal gatekeepers (such as the Centers for Disease Control, CDC), state, and local health departments working hand-in-hand with law enforcement could have dire consequences for sex workers, transgender sex workers, and other marginalized communities already heavily policed.^{lv}

Right to Family Life^{lvi}

26. Families can be broken apart by the incorrect assumption that engaging in sex work is inherently harmful to one's children and relatives. Healthcare providers may believe that they are mandated to report sex workers to government agencies and protective services. Perpetrators of domestic violence may report sex workers to the authorities. As a result sex workers, or people

who are profiled as such, have lost custody of their children, faced extreme stigma and shame, forced contact with law enforcement and the criminal justice systems. “As an advocate I see a great deal of problems which arise from child custody issues for sex workers. Children are taken away from mothers based on reports by people who are abusing them.”^{lvii} Police may threaten sex workers with the loss of their children and report them to child protective services to gain leverage over their lives.^{lviii}

Economic Rights and the Right to Work^{lix}

27. The passage of the federal legislation SESTA/FOSTA in 2018 created far-reaching carceral penalties attached to citizenship, sex, work, and labor.^{lx} These broadly-written federal enactments conflate sex work and human trafficking, and limit the sharing of vital safety information and advertising options for sex workers. Studies have shown that the more pressure placed on sex workers to prevent them from accessing income, the more health and rights are imperiled.^{lxi} Specifically, FOSTA/SESTA limits Section 230 — which was originally established to protect online platforms from liability over users’ free speech (ie sex work) — forcing platforms to ban sex workers or use of their apps for sex work (or anything that could be perceived as sex work).^{lxii} The U.S. has put sex workers and other communities at risk, chilling free speech and infringing upon the human right to work. The U.S. is not only violating it's own citizen's rights, but because US based companies own a large portion of the internet, the rights of people operating in countries where sex work is permitted are compromised.^{lxiii} Sex workers in the U.S. have reported loss of incomes, affecting their ability to pay for their basic needs and education. Organizations supporting sex workers have been stretched to breaking point: “I can't provide for the people in my community network who are now suffering. Everyone is in the same predicament. We all have rent to pay, we all need food to eat.”^{lxiv}

28. Inherent in economic rights and the right to work is the ability to access favorable conditions, autonomy and self-determination. The legislation has imperiled sex workers ability to control their own funds as banks, financial institutions and online payment services have frozen accounts of sex workers and people they profile as such. The loss of trusted online advertising platforms also forces people who are vulnerable economically to other arenas that are less secure, lack accountability, are exploitative and risky. These changes have affected all the inter-related sectors of sex work including outdoors and online. “A lot of us are being driven toward third party controlled ways of making money. Many of us are being driven inside, and because of that it's still cis men who are making a cut of our profits. Beyond that, even as we move off the street, we are being affected by these discriminatory laws which affect our payment processing.”^{lxv}

29. As incomes are weakened, sex workers become increasingly vulnerable to pre-existing patterns of human rights violations that have long undermined work and support networks for low-income people.^{lxvi} Arrest and subsequent conviction for prostitution-related offenses intensify the homelessness or housing precariousness experienced by people from low-income communities because people with criminal records are barred from accessing, or may lose current residence in public housing. Law enforcement officials also disrupt sex workers’ (or those profiled as such) support networks by arresting people nearby, such as in the same hotel room during an arrest, regardless of the individual’s involvement, and charging them as accessories, or worse.

Recommendations

It is recommended to the United Nations Universal Periodic Review that the United States of America should:

30. Immediately end and address the atrocities of current immigration and migration policies in the United States that impact all immigrants, including sex workers, at the border. Remove engagement in prostitution as grounds for denying visas/legal status to individuals seeking to visit, reside in, or become citizens of the United States.

31. Vigorously investigate the violations of the rights of transgender and gender non-conforming people, especially those perpetrated by state agents such as the police, and put an end to policing practices targeting transgender people. Transgender people should be offered the full protection of the law and rights violators should be held accountable.

32. Repeal legislative barriers, including FOSTA/SESTA, that violate the freedom of assembly and association of sex workers so that they may organize in defense of their health and rights.

33. End the criminalization of sex workers' lives by repealing federal, state, and local laws that criminalize sex work, and eliminate anti-prostitution policies that undermine protection for human rights of sex workers. At a minimum, the U.S. should immediately stop arresting and incarcerating people in sex trades.

34. Implement rigorous training of state officials, including law enforcement, on legal and human rights standards with regards to sex work that encompasses issues unique to heavily policed communities. Sex workers must be able to report police misconduct and violence while being protected from retaliation or further criminalization.

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

36. Remove any and all sex offender registration requirements of those arrested for engaging in prostitution and all archaic and outdated laws that criminalize HIV positive persons under which felony enhancements apply. Allow the right to expunge the records of those charged under these laws and remove from sex offender registries.

37. Eliminate policies that prevent individuals with commercial sex- and drug-related convictions from applying for and/or receiving student loans, public housing or housing assistance, public assistance, or other government-funded social services.

38. Invest resources in education, job training, healthcare, and housing programs for marginalized people engaged in sex work and the sex trade.

39. Provide funding for harm reduction and rights-based health care services for sex workers of all genders, sexual identities, and ages. Lift all restrictions on federal funding for harm reduction programs, including the ban on harm reduction best practices.
40. Include sex workers and transgender people as a priority with indicators in the National HIV/AIDS Strategy, describing the barriers sex workers and people in the sex trade face, and listing these groups in prevention and treatment priorities.
41. Prohibit agencies that receive public funding from discriminating against people engaged in sex work or in the sex trade.
42. Create policies that prevent accusations of “engagement in prostitution” from being used to remove children from their parents by Child Protective Services and in custody claims.
43. Strengthen and build upon the actions of some localities to end the law enforcement practice of using possession of condoms and other safe sex supplies as evidence of a crime, as pretext for search or arrest, or as a threat of arrest. Prohibit law enforcement from destroying, tampering with or confiscating condoms and other safe sex supplies or harm reduction materials.
44. End the use of money for bail.
45. Eliminate requirements for mandatory collaboration with law enforcement as a prerequisite for survivors of human trafficking that includes immigration relief or services. Provide comprehensive services and legal support for migrant sex workers, including language interpretation in the criminal justice system.
46. Repeal laws and eliminate federal policies that conflate sex work and human trafficking preventing sex workers from accessing social and economic services. Repeal and remove “anti-prostitution pledge” requirements for U.S. global AIDS funds and anti-trafficking funds.
47. Reorient anti-trafficking campaigns to be in line with the standards set by the UN High Commissioner on Human Rights. Repeal laws, such as FOSTA/SESTA, including those alleged to address human trafficking criminalizing commercial sex, advertising of commercial sex, or the ability of sex workers to work with each other or others for safety.
48. Cease the practice of basing evaluations of other countries’ anti-trafficking efforts in their level of criminalization of sex trades, such as US-based sanction policies TVPRA and PEPFAR.
49. Immediately implement UPR Recommendation 86 by engaging in concrete, politically-feasible steps that can minimize human rights abuses.

ENDNOTES

- ⁱ United States Department of State, “UPR Recommendations Support by the US Government” (June 2011) <http://www.state.gov/j/drl/upr/recommendations/>
- ⁱⁱ United Nations Human Rights Council, Report of the Working Group on the Periodic Universal Review 9th Session: United States, 19 (January 4, 2011) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement>
- ⁱⁱⁱ DEPT. OF HIV/AIDS, WORLD HEALTH ORGANIZATION, PREVENTION AND TREATMENT OF HIV AND OTHER SEXUALLY TRANSMITTED INFECTIONS FOR SEX WORKERS IN LOW- AND MIDDLE-INCOME COUNTRIES (2012); WORLD HEALTH ORGANIZATION, CONSOLIDATED GUIDELINES ON HIV PREVENTION, DIAGNOSIS, TREATMENT & CARE FOR KEY POPULATIONS (2014).
- ^{iv} Global Commission on HIV and the Law, Rights, Risks and Health, 38-43 (July 9, 2012). Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work, United Nations Development Programme (2012). UNAIDS, “UNAIDS Briefing Note: The Legal Status of Sex Work: Key Human Rights and Public Health Considerations,” Joint United Nations Programme on HIV/AIDS (2009).
- ^v UN Women, “Note on Sex Work, Sexual Exploitation and Trafficking,” United Nations Entity for Gender Equality and the Empowerment of Women (2014).
- ^{vi} International Labor Organization, “Leaving No One Behind: Reaching Key Populations through Workplace on HIV and AIDS,” International Labour Organization, 34 – 36 (2014).
- ^{vii} United Nations Human Rights Council (HRC), Session 23/36, “Report of the Special Rapporteur on Extreme Poverty and Human Rights, Ms. Magdalena Sepúlveda Carmona,” 12 (May 17, 2013); United Nations HRC, Session 14/20, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover” (April 27, 2010); United Nations HRC, Session 22/53, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez,” 18 (February 1, 2013).
- ^{viii} AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS POL 30/4062/201626 May 2016, <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>
- ^{ix} Article 21 and 22 of the ICCPR state that the “right of peaceful assembly shall be recognized” and that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”
- ^x NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958).
- ^{xi} For example, Sex Worker Advocates Coalition/DECIMNOW in the District of Columbia, <https://www.decrimnow.org/about>, the Coalition to Decriminalize, Decarcerate and Destigmatize in New York City and State, <https://www.decrimny.org/> and community led HIV service providers referenced in *Nothing About Us Without Us: Sex Work, HIV, Policy, Organizing, Transgender Empowerment* (2015) <http://www.bestpracticespolicy.org/nothing-about-us-without-us/>
- ^{xii} Conference Statement, Desiree Alliance. <http://desireealliance.org/conference/>
- ^{xiii} Interview with anonymous sex worker led organization (Sept. 23, 2019).
- ^{xiv} Interview with Jenna Torres (Sept. 16, 2019).
- ^{xv} *Network Down: How FOSTA-SESTA Forces Sex Workers Offline and Into Harm’s Way*, Northeastern University School of Law, Legal Skills in Social Context, Spring 2019, Law Office 8, in conjunction with Best Practices Policy Project.
- ^{xvi} 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.
- ^{xvii} Interview with Monica Jones, the Outlaw Project (Sept. 28, 2019).
- ^{xviii} Interview with Janet Duran, NJRUA (Oct. 1, 2019).
- ^{xix} Interview with the Black Sex Workers Collective (Aug. 20, 2019).
- ^{xx} Interview with Lorena Borjas, Colectivo Transgeniendo of Jackson Heights, Queens and the Lorena Borjas Community Funds (Sept. 19, 2019). The NYC based organization GLITS also reported cases of this kind. Interview with Ceyenne Doroshow, GLITS (Sept. 6, 2019).
- ^{xxi} <https://www.them.us/story/fighting-against-ice-is-an-lgbtq-issue>
- ^{xxii} Interview with Gilberto Perez, Alliance of Border Collaboratives (Sept. 4, 2019).
- ^{xxiii} Kate Zen, Red Canary Song, presentation at the *Teach-In: Stop Violence in the Sex Trades Act*, the LGBT Center, New York (Sept. 16, 2019).
- ^{xxiv} Interview Kate Zen, Red Canary Song (Sept. 29, 2019).
- ^{xxv} Red Umbrella Project, No Rescue In Handcuffs: The Effects of New York’s Human Trafficking Intervention Courts on People Charged with Prostitution-Related Offenses, 8-9 (2014).
- ^{xxvi} Cristine Sardina - *Desiree Alliance: Written submission for CEDAW discussion on the General Recommendation on Trafficking in Women and Girls in the context of Global Migration* (General discussion on TWGCGM) (February 2019)
- ^{xxvii} <https://www.necn.com/news/sports/Video-Obtained-of-Prostitution-Crackdown-That-Ensnares-Robert-Kraft-511071642.html>
- ^{xxviii} Operation Cross Country XI Recovering Underage Victims of Sex Trafficking and Prostitution <https://www.fbi.gov/news/stories/operation-cross-country-xi>
- ^{xxix} Interview
- ^{xxx} Interview with Ruby Corado, Casa Ruby (Sept. 27, 2019).
- ^{xxxi} Interview with Cecilia Chung (Sept. 16, 2019).

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- ^{xxxii} Duran, *supra* note xviii.
- ^{xxxiii} A sex worker in the South of the US who completed a surveyed in September 2019.
- ^{xxxiv} A woman living in Hawaii who completed a survey on September 8, 2019.
- ^{xxxv} See <https://stjamesinfirmiry.org/wordpress/?p=4425> and <https://thehill.com/homenews/state-watch/452572-california-legislature-passes-bill-to-protect-sex-workers-rights>
- ^{xxxvi} Jones, *supra* note xxix.
- ^{xxxvii} JUSTICE POLICY INSTITUTE, BAIL FAIL: WHY THE U.S. SHOULD END THE PRACTICE OF USING MONEY FOR BAIL (2012).
- ^{xxxviii} <https://medium.com/@Redcanarysong/in-support-of-dsa-res-53-decrim-platform-8eb4d164588>
- ^{xxxix} Interview with Terra Burns, Community United For Safety And Protection-CUSP (Sept. 19, 2019).
- ^{xl} Chung, *supra* note xxxi. See also, https://www.theadvocate.com/gambit/new_orleans/news/the_latest/article_577eded2-c900-11e9-a71d-b3a099e73380.html?fbclid=IwAR0xQqP63aKbyTqgOoU0K9CRy8vyBhqjPchp18vNuiMZzyHXLheoN_EzNzg
- ^{xli} 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. American Convention on Human Rights, art 5.1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, (“Every person has the right to have his physical, mental, and moral integrity respected.”).
- ^{xlii} Interview, New Jersey Red Umbrella Alliance (Aug 26, 2019).
- ^{xliii} Carla Provost - Chief of the United States Border Patrol, Washington D.C., Laredo Texas Press Conference (September 2018).
- ^{xliv} Interview with Sandy Guillaume, Second Chance Re-Entry (Oct. 2, 2019).
- ^{xlv} <https://gothamist.com/news/sex-trafficking-or-sex-work-crackdown-on-flushing-massage-parlors-gets-pushback-from-advocates>
- ^{xlvi} <http://sextraffickingalaska.com/operation-cross-country-alannas-story/>
- ^{xlvii} Interview with Sandy Guillaume, Second Chance Re-Entry (Oct. 2, 2019).
- ^{xlviii} Interview with Danny C. (Sept. 27, 2019).
- ^{xlix} Interview with an anonymous group providing needle exchange and harm reduction (Sept. 12, 2019).
- ^l Torres, *supra* note xiv.
- ^{li} The Office of the High Commissioner for Human Rights states that the right to be free from cruel, inhuman, and degrading treatment (CIDT) may arise in the context of criminalization of people living with HIV--particularly when a person is criminalized because of their HIV status and not because of a criminal behavior, *see* Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) (2006), “International Guidelines on HIV/AIDS and Human Rights, 151-153, 2006 Consolidated Version”. Available online at: http://data.unaids.org/Publications/IRC-pub07/JC1252-InternGuidelines_en.pdf.
- ^{lii} Interview with the SERO Project (Sept. 27, 2019).
- ^{liii} HIV Is Not A Crime Conference, Grinnell, Iowa 2014.
- ^{liv} Anonymous survey comment from a Black transgender man (Sept. 2019)
- ^{lv} Legacy Project: Brian Minalga (Moderator), Venita Ray, Positive Women's Network-USA (Moderator), Marco Castro-Bojorquez - HIVenas Abiertas; Octavia Lewis - Positively Trans National Advisory Board, Cristine Sardina - Desiree Alliance, Dr. Andrew Spieldenner, - US People Living with HIV Caucus; Robert Suttle - SERO Project *Without Our Consent: Centering People Living with HIV in HIV Genetic Sequencing (Part 1)* (March 27, 2019)
- ^{lvi} Article 16 of the Universal Declaration of Human Rights and Article 23 of the International Covenant on Civil and Political Rights provide basis for the right to family life as a fundamental human right.
- ^{lvii} Interview with Carol Leigh, BAYSWAN (Sept. 24, 2019).
- ^{lviii} Anonymous sex worker providing a report via a survey (September 2019).
- ^{lix} Article 23 of the Universal Declaration of Human Rights states that “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”
- ^{lx} Sardina, *supra* note xxvii.
- ^{lxi} City and County of San Francisco Department on the Status of Women *Mayor’s Task Force on Anti-Human Trafficking Position Paper On FOSTA* (October 24th, 2018)
- ^{lxii} Campaign Action: *Protect workers and free speech. Repeal SESTA/FOSTA.*
<https://actionnetwork.org/petitions/sign-the-petition-protect-workers-and-free-speech-repeal-sestafosta>
- ^{lxiii} Interview with Assembly Four, August 2019.
- ^{lxiv} Doroshov, *supra* note xx.
- ^{lxv} Interview with Suprihmba (Sept. 28, 2019).
- ^{lxvi} Interview with Project Safe (Sept. 28, 2019).