

## Reducing Violence Against Sex Workers: *What are the Policy Options?*

### **Executive Summary**

In November 2010, the current human rights record of the United States was reviewed by the United Nations Human Rights Council. As part of this process, members of the U.N. made a series of recommendations toward improving human rights in the U.S. In recommendation #92.86, member state Uruguay called on the Obama Administration to “undertake awareness-raising campaigns for combating stereotypes and violence against gays, lesbians, bisexuals and [transgender people],<sup>i</sup> and ensure access to public services paying attention to the special vulnerability of [sex] workers<sup>ii</sup> to violence and human rights abuses.”<sup>iii</sup>

This recommendation from the global community highlights human rights issues that have gone unnoticed for too long. Sex workers—that is people who engage in sexual commerce for income and subsistence needs—are members of families and communities in all parts of the United States. Because of stigma and criminalization sex workers—and those profiled as such—are subjected to violence and discrimination, and are impeded from accessing critical services, such as healthcare, and the right to equal protection under the law. State agents themselves, specifically police officers, commit physical and sexual violence against sex workers. These abuses are particularly rampant in poor and working class, urban, majority African-American and immigrant communities and also greatly affect lesbian, bisexual and transgender (LGBT) people. Globally, the U.S. federal anti-prostitution policies, such as the “anti-prostitution pledge,” have had dire consequences for international HIV/AIDS efforts.

The U.S. Federal Government can show progress in addressing human rights abuses against sex workers by a) accepting recommendation #92.86, and b) engaging in concrete, politically-feasible steps that can minimize human rights abuses including at a minimum:

1. Building capacity for states to address human rights violations through research and dialogue.
2. Modifying or eliminating existing federal policies that conflate sex work and human trafficking and prevent sex workers from accessing services such as healthcare, HIV prevention and support.
3. Investigating and preventing human rights abuses perpetrated by state agents, such as law enforcement officers.
4. Investigating the impact of criminalization, including state level criminal laws, on sex workers and other groups.

### **Context and Importance of the Problem**

People of all gender identities and sexual orientations are involved in sex work in the U.S. work in a wide array of settings such as clubs, brothels, in their or other’s homes, in hotels, outdoors, and in other spaces. Sex workers are also family members and community representatives; many are parents; many work in other forms of employment or study while also being involved in sex work.

Violence and other forms of human rights abuses against sex workers are endemic in the United States. All sex workers face these issues but outdoor workers, transgender people, people of color, migrants, low-income people and youth consistently bear a heavy burden of police abuse and harassment, institutional discrimination, and violence. Violence stems from many sources including a widespread belief that sex workers are not eligible for police or legal protection because of criminalization.<sup>iv</sup> Police themselves often do not protect sex workers or perpetrate abuse themselves. In a New York City-based study, 27% of sex workers surveyed had experienced violence at the hands of law enforcement.<sup>v</sup> Another study in Washington D.C. found that more than 50% of sex workers who went to the police for assistance were either ignored or further abused by officers.<sup>vi</sup> Lack of protection from violence, stigma, and human rights abuse by state agents has a devastating impact; in one study the standardized mortality rate for death by

homicide among sex workers was nearly 18 times higher than the general population.<sup>vii</sup> Criminalization and stigma affect sex workers in a myriad of other ways including a cycle of arrest, incarceration, exclusion from housing, healthcare, education and other job opportunities, and re-imprisonment.<sup>viii</sup>

### **Overview of Current Policies**

**Federal policies that conflate sex work and trafficking:** Some current federal policies are rooted in the misconception that sex work and human trafficking (a serious human rights abuse acknowledged by the U.S. Government under the Trafficking Victims Protection Act of 2000 and subsequent re-authorizations) are the same issue. This misconception, combined with pressure from some advocates seeking to use concern about human trafficking as a way of diverting resources into anti-prostitution campaigns, has had significant impact on efforts to provide the services and support needed by sex workers both within the United States and globally.

Globally, the U.S. imposes the Anti-prostitution Loyalty Oath or the “anti-prostitution pledge” on groups funded by the President's Emergency Plan for AIDS Relief (PEPFAR) to provide services internationally to address HIV/AIDS.<sup>ix</sup> In order to receive funds organizations must adopt a policy indicating that they oppose prostitution and “sex trafficking.” This policy runs counter to documented best practices for HIV/AIDS interventions<sup>x</sup> and have lead some groups to avoid offering any health and safety services for sex workers.<sup>xi xii</sup> As a result, the global and public health community has been virtually unanimous in its calls for revoking the anti-prostitution pledge.<sup>xiii xiv xv xvi xvii</sup> Two lawsuits against the U.S. government were filed on behalf of three U.S.-based NGOs engaged in HIV-prevention, leading to U.S. Court Judgments concluding that the “anti-prostitution pledge” is unconstitutional on the basis of violating the first amendment right to freedom of speech.<sup>xviii</sup> The Department of Justice has appealed both cases; the second case is still in court.<sup>xix</sup>

Federal policies that conflate sex work and trafficking also impact sex workers' human rights domestically. Federal funding and other resources intended to protect victims of trafficking have instead been used to arrest and incarcerate adult sex workers based on state laws. For example, ongoing federal taskforces aligned with regional and municipal law enforcement agencies, such as “Operation Cross Country,” use funds that are allocated for services for trafficking victims.<sup>xx</sup> There is mounting evidence that anti-trafficking brothel raids of this kind place migrant sex workers *and* trafficked persons at greater risk of incarceration, deportation, and trauma.<sup>xxi</sup>

**Federal Approaches to HIV/AIDS:** The U.S. National HIV/AIDS strategy provides guidance on prevention and harm reduction for communities such as intravenous drug users (IVDUs) and men who have sex with men (MSM), but fails to include best practice approaches for—or any mention of—sex workers. Developing strategies in partnership with communities of sex workers affected by HIV would help address barriers to service access.<sup>xxii</sup> Issues include the widespread law enforcement practice of using condoms as evidence and/or destroying condoms and safe sex materials,<sup>xxiii</sup> importance of harm reduction and peer-based program models and the need for services for under-represented communities such as men in sex work.<sup>xxiv</sup> In addition to this in 2012, the United States will host the International AIDS Conference highlighting the importance of these issues domestically and internationally, as well as Federal barriers to civil society participation at the conference (such as immigration restrictions on people with experience of sex work).

**Criminalization (including state level laws) and Policing:** Many of the laws and policies that undermine the human rights of sex workers operate at the level of states. 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>xxv</sup> Sex work that occurs in public spaces is also often policed under legislation prohibiting loitering, public nuisance, trespassing, etc. All forms of criminalization reduce sex workers' safety, and some more recent policies enforce a harsher set of restrictions with penalties that can have even more significant negative impacts on individuals and communities. Policies such as “prostitution free zones” implemented in different jurisdictions across the U.S. give the police power to arrest on the

basis of how individuals are perceived or the way they are dressed, which can lead to personal judgments on what is perceived as ‘acceptable attire’ by individual officers.<sup>xxvi</sup> More states in the U.S. are also now mandating minimum sentences so that judges are *required* to incarcerate people convicted for prostitution-related offenses,<sup>xxvii</sup> even if the judge would prefer to provide the individuals with access to resources or services. In addition, some states have sentencing guidelines and judicial practices which make a third charge for prostitution-related offenses a felony,<sup>xxviii</sup> and some states subject people arrested on prostitution-related charges such as solicitation to involuntary/mandatory HIV testing and impose higher penalties (including felonies) on those found to be living with HIV.<sup>xxix</sup> Another growing practice is sex offender registration of people convicted for sex work related offenses.<sup>xxx</sup>

These state level issues intersect with federal government processes in the following ways. In terms of human rights abuses perpetrated by the police, the U.S. government has the authority and is mandated to collect national data on police misconduct and abuse under the 1994 Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141, which directs the Department of Justice to collect data on the use of excessive force by police officers. Most state level law enforcement agencies also receive federal funds. In terms of how criminalization more generally leaves sex workers at risk of human rights abuses, the federal government can investigate and monitor concerns.

### **Policy Options**

The Federal Government’s first step for reducing violence and human rights abuses against sex workers is to accept the United Nations Human Rights Council recommendation #92.86 regarding sex workers. The decision on whether or not to accept various U.N. recommendations is under consideration using a Federal inter-agency process. It is understood that those engaged in this process may prioritize recommendations based on the Federal capacity to make and show progress in the defined area. In support of this standard, the following three recommendations outline specific, actionable strategies to reduce violence and human rights abuses against sex workers.

#### **1) Build capacity for human rights through research and dialogue**

- Fund state commissions on Human Rights to convene state, city and county officials to assess regional data and create action plans for addressing human rights issues, including a focus on ending violence against sex workers.
- Commission research that investigates effects of criminal laws on the ability of sex workers and trafficked persons to report acts of violence without fear of physical or legal retribution.
- Evaluate all federally funded health programs to make sure they are not discriminating against sex workers.
- Facilitate conversations between sex worker advocacy groups and key health care provider services to identify best practices in reducing health risks to sex workers and their clients.
- Fund associations that represent key policy makers (i.e. National Governors Association, National Council on State Legislators, etc.) to encourage dialogue about the potential harm of current policies around sex work.

#### **2) Modify or eliminate existing federal policies that conflate sex work with human trafficking and prevent sex workers from accessing services such as healthcare, HIV prevention and support**

- Instruct the Department of Justice to cease its appeal of the litigation challenging the anti-prostitution pledge.<sup>xxxi</sup>
- Revoke “anti-prostitution pledge” requirements for U.S. Global AIDS recipients and anti-trafficking funds, which significantly reduce the capacity of organizations seeking to decrease harm against sex workers.
- Include sex workers in the U.S. National HIV/AIDS Strategy regarding prevention and harm reduction efforts.
- Support research on the unintended harm of current anti-trafficking initiatives against sex workers, as well as other communities/groups including trafficked persons, youth, communities of color, and migrants.

**3) Investigate & prevent human rights abuses perpetrated by state agents, such as law enforcement officers**

- Collect national data on police misconduct and abuse of sex workers under the 1994 Victims of Violent Crimes and Law Enforcement Act.
- Mandate that law enforcement agencies receiving federal funding address police abuse of sex workers.
- Ensure the use of national enforceable standards for law enforcement training on respectfully and appropriately interacting with sex workers and people profiled as such (i.e. transgender people).

**4) Investigate impact of criminalization, including state level criminal laws, on sex workers & other groups**

- Evaluate the human rights impact of state policies such as: “prostitution-free zones,” mandatory minimum sentencing, mandatory HIV testing, and sex offender registration for sex work offenses.

The United Nations Human Rights Council recommendation #92.86 creates an opportunity for the United States to reduce unchecked and unacceptable levels violence against sex workers. The approach outlined in this brief would build upon already existing collaborations between the Federal, State, and Local institutions, but also introduce standards which prioritize human rights and scientific inquiry, and encourage collaboration between sex workers, health professionals, and local and federal law enforcement. We are optimistic that current U.S. leaders will seize this opportunity to advance and protect basic human rights for all.

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- Desiree Alliance
- Different Avenues
- Helping Individual Prostitutes Survive (HIPS)
- Sex Worker Outreach Project (SWOP)
- Sex Workers Project at the Urban Justice Center
- St. James Infirmary
- Woodhull Freedom Foundation

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## Sources Consulted

- <sup>i</sup> The translation of member state Uruguay recommendation uses the term “transsexuals.” We have inserted the term “transgender people” which is a translation that more accurately reflects terms used in the United States.
- <sup>ii</sup> The translation of member state Uruguay recommendation uses the term “sexual workers.” We have inserted the term “sex workers” which is a translation that more accurately reflects terms used in the United States.
- <sup>iii</sup> Human Rights Council, United Nations General Assembly. Geneva, 1-12 November, 2010. Draft Report of the Working Group on the Universal Periodic Review.  
[http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A\\_HRC\\_WG.6\\_9\\_L.9\\_USA.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_L.9_USA.pdf)
- <sup>iv</sup> In pleading guilty in 2003 to murdering 48 women, the “Green River Killer” told a judge he targeted women sex workers “because I thought I could kill as many of them as I wanted to without getting caught.” News, F. 2010 (June 21). “The Green River Killer’s ‘Statement of Guilt.’” <http://www.katu.com/home/related/96844544.html>.
- <sup>v</sup> Sex Workers Project at the Urban Justice Center. 2003. “Revolving Door: An Analysis of Street-Based Prostitution in New York: Fact Sheet.” Accessible at: <http://www.sexworkersproject.org/downloads/RevolvingDoorFS.html>
- <sup>vi</sup> Alliance for a Safe & Diverse DC. Move Along: Policing Sex Work in Washington, D.C., 13-14 (2008).
- <sup>vii</sup> Potterat, J.J. et al. 2004. “Mortality in a long-term cohort of prostitute women. American Journal of Epidemiology 159, 8: 778-785. In this 30-yr study, violence and drug use were the primary cause of escalated rates of mortality for sex workers, not only during their time working but after their retirement. These findings point to a need for a comprehensive and multi-sectoral approach to violence and health across the lifespan of vulnerable populations.
- <sup>viii</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). 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>ix</sup> Organizations within the U.S. were also subject to the pledge under Trafficking Victims Protection Reauthorization Act but recent policy changes now allows groups to say that they have no policy on prostitution and will remain neutral during the term of the grant.
- <sup>x</sup> UNAIDS. 2002. Sex Work and HIV/AIDS. UNAIDS Best Practice Collection. [http://data.unaids.org/publications/IRC-pub02/jc705-sexwork-tu\\_en.pdf](http://data.unaids.org/publications/IRC-pub02/jc705-sexwork-tu_en.pdf)
- <sup>xi</sup> Sexual Health and Rights Program (SHARP), Open Society Institute. 2007 (June). Anti-Prostitution Pledge Materials. [http://www.soros.org/initiatives/health/focus/sharp/articles\\_publications/publications/pledge\\_20070612](http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/pledge_20070612)
- <sup>xii</sup> Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All. (October 2010). Center for Health and Gender Equity (CHANGE) and Center for Human Rights and Humanitarian Law at American University Washington College of Law. (See P. 22).  
[http://www.genderhealth.org/files/uploads/change/publications/Human\\_Trafficking\\_HIVAIDS\\_and\\_the\\_Sex\\_Sector\\_12\\_3\\_2\\_010\\_FINAL.pdf](http://www.genderhealth.org/files/uploads/change/publications/Human_Trafficking_HIVAIDS_and_the_Sex_Sector_12_3_2_010_FINAL.pdf)
- <sup>xiii</sup> In 2005, Brazil turned down 40 million dollars of USAID funds due to its ethical opposition to the “anti-prostitution” pledge. See: <http://www.thenation.com/article/just-say-nao>
- <sup>xiv</sup> Middleberg, M.L. 2006. “The Anti-Prostitution Policy in the US HIV/AIDS Program.” Health and Human Rights 9, 1: 3-15.
- <sup>xv</sup> Roehr, B. 2005. “Charity Challenges US ‘Anti-Prostitution’ Restriction.” BMJ 331(7514): 420.
- <sup>xvi</sup> Schleifer, R. 2005. “United States: Funding Restrictions Threaten Sex Workers’ Rights.” HIV/AIDS Policy Law Review 10, 2: 26-7.
- <sup>xvii</sup> Center for Health and Gender Equity. 2008 (August). “Policy Brief: Implications of U.S. Policy Restrictions for HIV Programs Aimed at Commercial Sex Workers.” <http://www.genderhealth.org/loyaltyoath.php>
- <sup>xviii</sup> Bristol, N. 2006. “US Anti-Prostitution Pledge decreed “Unconstitutional.” Lancet 1, 368 (9529): 17-8.  
[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(06\)68948-4/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)68948-4/fulltext)
- <sup>xix</sup> For an in-depth discussion of the anti-prostitution pledge and its current legal status, see Pp. 18-26 of Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All. (October 2010). Center for Health and Gender Equity (CHANGE) and Center for Human Rights and Humanitarian Law at American University Washington College of Law.  
[http://www.genderhealth.org/files/uploads/change/publications/Human\\_Trafficking\\_HIVAIDS\\_and\\_the\\_Sex\\_Sector\\_12\\_3\\_2\\_010\\_FINAL.pdf](http://www.genderhealth.org/files/uploads/change/publications/Human_Trafficking_HIVAIDS_and_the_Sex_Sector_12_3_2_010_FINAL.pdf)

<sup>xx</sup> More information available at: <http://www.examiner.com/sex-trafficking-in-national/fbi-arrests-885-suspects-nationwide-child-sex-trafficking-sting-operation>

<sup>xxi</sup> See: Sex Workers Project. 2009. Use of Raids to Fight Trafficking in Persons.” Sex Workers Project.

[http://www.urbanjustice.org/pdf/publications/Kicking\\_Down\\_The\\_Door\\_Exec\\_Sum.pdf](http://www.urbanjustice.org/pdf/publications/Kicking_Down_The_Door_Exec_Sum.pdf). Based on interviews with self-identified trafficking victims, this report recommends a rights-based (rather than a law-enforcement based) approach to identifying and assisting trafficking victims.

<sup>xxii</sup> Global and public health researchers have consistently found that risk of HIV/STIs declines for sex workers and their clients when several structural factors are in place, including safer working conditions and availability of condoms. See: Shannon, K. and Csete, J. 2010. Violence, Condom Negotiation, and HIV/STI Risk among Sex Workers. *JAMA* 304, 5: 573-574.

<sup>xxiii</sup> Alliance for a Safe & Diverse DC, 39-40 (2008).

<sup>xxiv</sup> Cohan, D. et al. 2006 (July 19). "Sex Worker Health: San Francisco Style." published online 19 Jul 2006; Sexually Transmitted Infections. <http://stjamesinfirmary.org/Uploads/Sex%20Work%20SF%20Style.pdf>

<sup>xxv</sup> Sexual Health and Rights Project (SHARP) and Law and Health Initiative (HAHI), 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>xxvi</sup> 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>xxvii</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>xxviii</sup> Also each subsequent conviction will be a felony. Kelli Dorsey, Different Avenues, personal communication, February 23, 2010.

<sup>xxix</sup> Dave Nether, “Local Woman With HIV Arrested For Prostitution,” *Fox 8 News*, March 2, 2010,

<http://www.fox8.com/news/wjw-hiv-prostitute-txt,0,1938597.story>; Karen Bastow, “Prostitution and HIV/AIDS,” HIV/AIDS Policy and Law Newsletter 2, no. 2 (1995), <http://www.walnet.org/csis/papers/bastow-aidslaw.html>. People testing HIV positive can face significant penalties and incarceration, even if they used condoms and engaged in less risky forms of sex with their partners or, in the situation of soliciting for the purposes of prostitution had not actually had sex with anyone at all.

<sup>xxx</sup> Haywood, Deon, Women with a Vision, New Orleans, Interview, (Feb. 19, 2010); Flaherty, Jordan, Her Crime? Sex Work in New Orleans, *Colorlines*, (Jan. 13 2010). In some parts of the U.S., 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. 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.

<sup>xxxi</sup> This item is directly adopted from the list of recommendations proposed in Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All. (October 2010). Center for Health and Gender Equity (CHANGE) and Center for Human Rights and Humanitarian Law at American University Washington College of Law. (See Pp. 6-8).

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