

***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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1. This report is submitted by the Best Practices Policy Project,<sup>i</sup> Desiree Alliance,<sup>ii</sup> and the Sex Workers Outreach Project-NYC.<sup>iii</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. Findings are based on multiple interviews, conducted in August and September 2014, of 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, widespread violations of the human rights of members of these communities.

## **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 others' 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, youth and detained and incarcerated sex workers consistently bear a particularly heavy burden of law enforcement abuse and harassment, institutional discrimination, and violence.

3. Stigmatization of sex workers and those profiled as such, in tandem with "zero-tolerance" policing and vague, overbroad laws criminalizing such ill-defined acts as "loitering for prostitution," or "manifesting intent to commit prostitution", operate to ensure that these communities are disproportionately impacted by the prison system.<sup>iv</sup> These community groups face additional burdens of police violence and abuse. Arrests for sex work can lead to a cycle of continued exclusion from housing, other employment opportunities, and government benefits, while tracking people into repeated incarceration.<sup>v</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>vi</sup> Simply put, the pervasive criminalization and stigmatization of sex workers, and those profiled as such, prevents them from fully exercising their human rights guaranteed under international law, including their civil, political, social and economic rights.

## **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, where it is heavily regulated). Some forms of sex work, such as exotic dancing, may not be prohibited by state legislation but are almost always regulated by state and municipal policies, which may, for example, mandate registration through a law

enforcement database. 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. Some states in the U.S. mandate minimum sentences so that judges are required to give people convicted of prostitution-related offenses jail or prison time<sup>vii</sup> and some states have sentencing guidelines and judicial practices which make a second or third charge for prostitution-related offenses a felony.<sup>viii</sup>

5. During the 9th Round of the Universal Periodic Review, the U.S. accepted Recommendation 86<sup>ix</sup> 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.**”<sup>x</sup> Regarding the second part of this recommendation, the U.S. government has taken only minimal steps towards implementation, while passing laws<sup>xi</sup> and pursuing policies<sup>xii</sup> that directly contradict this commitment, putting sex workers at heightened risk of violence and human rights abuses.

6. Global health, labor, human rights and women’s rights organizations have called for respect for 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.<sup>xiii</sup> In 2012, the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA) released a survey of sex work and the law in almost 50 countries in Asia and the Pacific that called for the removal of punitive laws related to the sex industry.<sup>xiv</sup> The Global Commission on HIV and the Law, convened by UNDP and UNAIDS, noted in its 2012 report that “sex workers are not fully recognized as persons before the law and are rendered incapable of holding or exercising the range of human rights available to others.” The Commission also called for the full decriminalization of sex work.<sup>xv</sup> In 2013, 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.”<sup>xvi</sup> The Joint United Nations Programme on HIV/AIDS (UNAIDS) has also argued that the criminalization of sex workers’ increases their vulnerability to HIV/AIDS.<sup>xvii</sup> In 2014, the International Labor Organization released a report that emphasized the value of sex worker peer education programs.<sup>xviii</sup> UN Special Rapporteurs have also highlighted how criminalization, stigma and discrimination cause violations of human rights of sex workers.<sup>xix</sup>

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

7. Police disproportionately target sex workers of color in the United States for arrest because of their minority status. Furthermore, people of color from the lowest income communities who do sex work in public spaces to meet their most

urgent and immediate needs (including those who are homeless) are relentlessly and disproportionately targeted by the police. Arrest and subsequent conviction for prostitution and 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.<sup>xxi</sup> 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 to the crime, or worse.<sup>xxii</sup>

8. Transgender and gender non-conforming women and youth, 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.<sup>xxiii</sup> Despite some steps taken by the U.S. government to address the problem, gender and racial profiling of transgender women of color remains pervasive across the country.<sup>xxiv</sup> For example, a survey in New Orleans of young African-American transgender women found that 74% had been profiled by law enforcement as involved in sex trade, while 67% had been pressured for sex by officers.<sup>xxv</sup> In New York City, a transgender woman of color reported that she was approached by an undercover police officer while depositing money at her local bank. The officer asked her, "how much was her price," and she replied that he must have the wrong person. However, several police officers continued to follow her, and ultimately arrested her under prostitution-related charges.<sup>xxvi</sup> Gender profiling also affects male sex workers, who may be harassed by the police in part because of homophobia, and female sex workers who are perceived to step outside of traditional gender roles.

9. Gender-based discrimination violating people's right to equal protection under the law is reinforced by anti-prostitution legislation.<sup>xxvii</sup> For example, legislation enacting "Prostitution Free Zones,"<sup>xxviii</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. Statutes mandating the "banishment" of individuals from certain areas or eroding the reasonable suspicion standard for arrest and conviction further violate due process rights.<sup>xxix</sup> Finally, law enforcement officials routinely invoke such concepts to threaten sex workers or those profiled as such with arrest if they don't leave an area, or simply arrest individuals under previously repealed laws.<sup>xxx</sup> Such interactions are almost universally accompanied by degrading and humiliating treatment by law enforcement, 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.<sup>xxxi</sup>

10. Due Process Violations Through "Diversion" have been reported across the U.S., with particular focus on "Project ROSE" in Phoenix.<sup>xxxii</sup> Under an amplified force of officers, police conduct mass "sweeps," arresting scores of sex workers and people the police profile as sex workers. Arrestees are handcuffed and transported via police car to the Project Rose center, where they speak with police and with a

prosecutor. Arrestees have no opportunity to speak to a defense attorney during this process, even if they request one. Qualifying arrestees are told that they can either take a several-month-long diversion program offered by Catholic Charities, or they will be taken into custody and face criminal charges. The mandated program has about a 70% failure rate, 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.

11. Another particularly discriminatory practice by state agents is sex offender registration of people convicted for sex work related offenses.<sup>xxxiii</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. For example, in Louisiana, the majority of people sentenced this way are African-American and almost all are women, including 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 resulting in additional arrests and further incarceration. Despite a successful court challenge to this practice in Louisiana, police continue the practice of charging individuals under the law, while those previously wrongly placed on the sex offender list are not automatically removed, despite the court’s findings that the punishment violates their rights.<sup>xxxiv</sup>

12. Many people engaged in sexual exchange, particularly street-based workers, face violence, 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>xxxv</sup> 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.<sup>xxxvi</sup> 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 further harm, humiliation, and/or arrest when turning to the authorities for assistance.<sup>xxxvii</sup> Among lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, the demographics most affected by violence including murder are the same demographics criminalized by anti-prostitution and other policies--transgender people, LGBTQ people of color, and LGBTQ youth.<sup>xxxviii</sup>

13. 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 welfare agencies, and law enforcement.<sup>xxxix</sup> When these young people seek assistance from such institutions after incidents of individual violence, these state and civil actors cause further violations, rather than provide help.<sup>xl</sup>

14. Service providers violate young people's economic rights, based on their perceived involvement in sex work or sex trading.<sup>xli</sup> Often the services that youth who are engaged in the sex trade need, when they exist, are contingent on the young person's personal story fitting a "victim" narrative, or being identified as "trafficked" or "exploited." Once a young person's narrative fits this expectation, their involvement in sex work becomes the focal point for the service agency, rather than the services the youth actually is seeking. For example, they may be prescribed unwanted therapy sessions rather than being given referrals for health care or housing that they requested.<sup>xlii</sup>

15. Migrant sex workers face the double burden of stigmatization for working in criminalized labor sectors and for their immigrant status.<sup>xliii</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>xliv</sup> Anti-prostitution laws and federal programs such as Secure Communities can therefore become a tool for immigration officials seeking to deport migrants.<sup>xlv</sup> 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.<sup>xlvi</sup> Lack of access to translators or language services may also be a hindrance to completion of court-mandated programs, and lengthen the time spent in detention or incarcerated.<sup>xlvii</sup>

16. 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. The current prosecution-oriented approach to anti-trafficking work in the U.S. also traumatizes trafficked persons. People trafficked into the sex sector in the U.S. are forced to comply with law enforcement and endure possible "re-victimization" in order to get benefits and status.<sup>xlviii</sup>

17. The same misguided approaches have resulted in the closing of human rights defender organizations such as the Young Women's Empowerment Project in Chicago<sup>xlix</sup> and Different Avenues in Washington, D.C. The loss of such organizations, which conducted ground-breaking human rights defense work, research and direct services, represents a serious blow to the human rights of young people in the sex trades. Other results of these new "anti-trafficking" laws include mass arrests of young people,<sup>l</sup> increased arrests and misgendering of transgender women of color,<sup>li</sup> and the coercion of individuals to self-incriminate in order to access social services.<sup>lii</sup>

18. 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 ("anti-prostitution pledge").<sup>liii</sup> New proposals even further undermine efforts to protect the human rights of sex workers by threatening

sanctions against countries that do not take a pro-criminalization stance on commercial sex, flying in the face of international best practices.<sup>liv</sup>

19. Individuals charged with prostitution-related offenses, particularly those associated with street-based sex work such as solicitation, 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.<sup>lv</sup>

20. Despite the documented disparate effects of setting bail for pre-trial defendants, particularly the poor and people of color, many jurisdictions in the U.S. continue this practice.<sup>lvi</sup> 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. Transgender defendants also report being refused bonds due to discrimination, while homeless individuals are often kept in detention or given very high bail, as they have “no fixed address”.<sup>lvii</sup>

### **Freedom from torture, and other cruel, inhuman and degrading treatment<sup>lviii</sup>**

21. U.S. sex workers’ greatest fear is abuse by law enforcement 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, public “gender searches” (police strip searches for the purpose of viewing genitalia) and rape--that constitutes torture and cruel, inhuman and degrading treatment.<sup>lix</sup> 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 in a bathroom, found herself charged with “aggravated assault on a police officer.” While the charge was ultimately dropped, she was held on a \$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.<sup>lx</sup> Street-based sex workers and people who are often profiled as sex workers (such as transgender women) are very frequently subjected to this kind of treatment.<sup>lxi</sup> In a Los Angeles study of Latina transgender women, 42% reported being solicited for sex by law enforcement while 24% reported that officers sexually abused them.<sup>lxii</sup>

22. When sex workers seek recourse for crimes committed against them, officers do not take their reports seriously, refuse to file a report, or may further violate these sex workers by arresting them, physically assaulting them or pressuring them for sex.<sup>lxiii</sup> When one sex worker in New Jersey attempted to bring a case against a security guard who handcuffed and raped her, police referred to the rapist, who had personal connections with law enforcement, as a “big teddy bear,” and said they felt bad for him. Police also falsified her report, attributing exculpatory statements to her that she did not make.<sup>lxiv</sup> Serial murderers attack and kill sex workers and those

profiled as such with impunity because police treat these communities with indifference and hostility.<sup>lxv</sup>

23. Law enforcement in some jurisdictions leverage the visibility and vulnerability of sex workers to force sex workers to participate in drug sting operations, putting them at risk of violence from those targeted by such stings. Police also detain sex workers in jail in order to force them to testify as witnesses to murders and other crimes. Rather than afford these individuals witness protection services made available to other victims and witnesses, they are put in danger of witness intimidation within the facility and are denied their rights to liberty. For example, an African-American transgender woman sex worker who witnessed a violent crime was detained by police and held in the men's jail in Baltimore (where she was subject to harassment and violence) in order to force her to testify at trial.<sup>lxvi</sup>

24. In New York, when transgender or gender nonconforming people, including youth, are arrested, which in many instances occurs because police profile them as sex workers, they face the difficult decision of whether to ask to be held as a "special category" prisoner. If they make the request, police sometimes respond harshly, holding the person alone in a back cell for a longer amount of time than they would usually be held, or subjecting them to assault. If there are no empty cells, police will chain people to a desk or metal bar, often for hours at a time. If people do not request to be a "special category" prisoner, they may be put in a cell where they are unsafe, or police may incite further danger placing them in a cell with others, e.g. by saying, "Here's a [anti-LGBT slur] for you."<sup>lxvii</sup> Physical violence and sexual abuse against transgender and gender non-conforming people in detention is well documented in the U.S., exacerbated by the practice of placing transgender women in cells with men.<sup>lxviii</sup>

25. 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.<sup>lxix</sup> In twenty-three states, sex workers living with HIV face the threat of harsh criminal sentencing, long term incarceration, and the severe collateral consequences associated with being criminalized as a "sex offender," regardless of intent, near impossibility of transmission, or knowledge of a third party. Police arrested one HIV positive young woman in Tennessee and charged her with "aggravated prostitution," placing her on the sex offender registration list for life.<sup>lxx</sup> She cannot receive assistance for housing where children live; landlords refuse to rent to her; police can search her home at anytime without a warrant or probable cause. She is the mother of a seven month old and cannot actively participate in her daughter's education, cannot have other children in her home or take her daughter to a park, and cannot live or work within 1000 feet of a playground, park, school, or recreation center.<sup>lxxi</sup> In many states, people arrested for, charged with, or convicted of prostitution can legally be required to undergo HIV and other STI testing. In Colorado, for example, people convicted of prostitution are subjected to mandatory HIV testing<sup>lxxii</sup> and a person living with HIV who engages in "prostitution with knowledge of being infected with acquired immune deficiency

syndrome” can be charged with a felony.<sup>lxxiii</sup> Several people have been charged under these statutes since 2012. In many situations involving mandatory testing and criminalization of sex work and HIV, the right to privacy is also violated when information about a person’s HIV status is shared with prosecutors or the general public (sometimes accompanied by photographs) via the media.<sup>lxxiv</sup>

## **Right to Adequate Health Care**

26. 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 and partners. In Baltimore, health officials have stated no funds will be dedicated to people struggling with addiction who also trade sex, precisely some of those most in need of services and support <sup>lxxv</sup>

27. 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 as evidence and/or destroying condoms and safe sex materials.<sup>lxxvi</sup> As a further abuse under this paradigm, law enforcement utilize the presence of condoms on someone’s person as an entryway to sexual harassment, or harassment based on sexual orientation or gender identity (SOGI), particularly with young women and girls of color, and transgender or gender nonconforming youth of color. Police may ask intrusive questions about SOGI, inappropriately touch youth, and make disparaging comments. To avoid harassment and arrest, youth resort to throwing condoms away or hiding them in their hair or shoes when they see law enforcement.<sup>lxxvii</sup>

28. 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> 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 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 sex workers’ needs; services for men in sex work are extremely limited.<sup>34</sup> This range of stigmatizing and judgmental behavior and attitudes from health care providers also impacts sex workers’ ability

to disclose to future healthcare providers. Some healthcare providers directly discriminate against those in the sex trade by forcing them to engage in counseling, regardless of their desire to participate.<sup>lxxviii</sup>

29. Many jurisdictions in the U.S. violate the right to the highest attainable standard of health by only serving individuals who have maintained a certain amount of time of sobriety, leaving those struggling with addiction to suffer with negative health outcomes. By refusing to fund or allow harm reduction services, including the federal ban on funding for syringe exchange programs, the U.S. government effectively sentence 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.<sup>lxxix</sup>

30. 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. Sex workers and others are mandated to participate in these religiously-based programs, or else be incarcerated.<sup>lxxx</sup> Religious programs routinely discriminate against sex workers, transgender people, and others, inhibiting their ability to access these crucial services.<sup>lxxxi</sup> 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.<sup>lxxxii</sup>

## **Recommendations**

The United States of America should:

31. Immediately implement Recommendation 86 from the first cycle of the UPR, by engaging in concrete, politically-feasible steps that can minimize human rights abuses, including at a minimum:

- A. Building capacity for state and local governments to address human rights violations through research and dialogue;
- B. 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;
- C. Investigating and preventing human rights abuses perpetrated by government officials, such as law enforcement officers;
- D. Investigating the impact of criminalization, including state level criminal laws, on sex workers and other groups.

32. Vigorously investigate and put an end to discriminatory policing practices based on race, gender (including gender identity and expression), sexual orientation, homelessness, and other categories.

33. 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, gender identity/expression, sexual orientation, 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.

34. 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 able to report police misconduct and violence while being protected from retaliation or further criminalization.

34. Repeal laws, including laws against prostitution and prostitution-related offenses, and eliminate policies, such as “zero tolerance” of prostitution, “prostitution free zones,” and loitering measures, that undermine protection of 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. At a minimum, the U.S. should stop arresting and incarcerating people in sex trades.

35. 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.

35. Remove any and all sex offender registration requirements of those arrested for engaging in prostitution, “crime against nature” or “unnatural copulation,” “aggravated prostitution” or other laws that criminalize an HIV positive person for having sex; expunge the records of those arrested for sex work and charged under laws that mandate sex offender registration; and remove people charged under these laws from sex offender registries. In addition, the U.S. Government should adopt bill H.R.1843/S.1790 REPEAL HIV Discrimination Act, in order to bring the U.S. in line with international law standards to end criminalizing based on HIV status.

36. 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.

37. 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. Such programs must be inclusive of and meet the needs of LGBTQ communities, especially LGBTQ youth and transgender individuals.

38. Provide funding for harm reduction and rights-based health care services for sex workers of all genders (including men and women, those who are transgender, and gender non-conforming people) and all ages. Lift all restrictions on federal funding for harm reduction programs, including the ban on syringe exchange programs. Expand funding for evidence-based health approaches to drug use, including harm reduction and drug treatment.

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

40. 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.

41. End the use of money for bail, or at the very least ensure that bail amounts are proportionate to the criminal charge and are not discriminatory in their application.

42. Eliminate requirements for mandatory collaboration with law enforcement as a prerequisite for survivors of human trafficking to obtain immigration relief or services.

43. Provide comprehensive services and legal support for migrant sex workers, including language interpretation in the criminal justice system. Remove “participation in prostitution” as grounds for removal from the country, from the category of “crimes of moral turpitude” and as grounds for denying visas/legal status to individuals seeking to visit, reside in, or become citizens of the United States.

44. Reorient anti-trafficking campaigns to be in line with the standards set by the UN High Commissioner on Human Rights. Repeal laws, including those alleged to address human trafficking, which criminalize commercial sex, advertising of commercial sex, or the ability of sex workers to work with each other or others for safety. Cease the practice of basing evaluations of other countries’ anti-trafficking efforts in their level of criminalization of sex trades.

45. Repeal and remove “anti-prostitution pledge” requirements for U.S. global AIDS funds and anti-trafficking funds.

## **ENDNOTES**

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<sup>i</sup> The Best Practices Policy Project ([www.bestpracticespolicy.org](http://www.bestpracticespolicy.org)) was founded in 2005 to provide capacity building support for organizations working with sex workers in the United States. P. Saunders ([penelope.saunders@gmail.com](mailto:penelope.saunders@gmail.com)), J. Kirby, D. Hickey & K. Thomas have collaborated as writers.

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- <sup>ii</sup> The Desiree Alliance ([www.desireealliance.org](http://www.desireealliance.org)) was founded in 2005 to create a space for sex workers, allies and their organizations to work for sex worker rights. C. Sardina has collaborated as a writer.
- <sup>iii</sup> Sex Workers Outreach Project-New York City (SWOP-NYC) ([www.swop-nyc.org](http://www.swop-nyc.org)) is a grassroots organization founded in 2007 as part of a national network dedicated to improving the lives of current and former sex workers/those with experience in the sex trade in the New York metro area, on and off of the job. K. D'Adamo has collaborated as a writer.
- <sup>iv</sup> HUMAN RIGHTS WATCH, *IN HARMS WAY: STATE RESPONSE TO SEX WORKERS, DRUG USERS, AND HIV IN NEW ORLEANS 2-3, 26-28* (2013) available at <http://www.hrw.org/node/121178/>; PHX., ARIZ., CODE § 23-52(A)(3) (2013) (AZ police can find “manifested” intent if “the person repeatedly beckons to, stops or attempts to stop or engage passersby in conversation or repeatedly, stops or attempts to stop, motor vehicle operators by hailing, waving of arms or any other bodily gesture;” or if that person asks someone if they are a police officer or “searches for articles that would identify a police officer.”); *See also*, ALLIANCE FOR A SAFE & DIVERSE DC, *MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C.*, 13-14 (2008).
- <sup>v</sup> Interview with Jacqueline Robarge, Power Inside, Baltimore, MD, (Sept. 7, 2014).
- <sup>vi</sup> Interview with Lindsay Roth, Project SAFE, Philadelphia, PA, (Aug. 22, 2014).
- <sup>vii</sup> For example, in Arizona a first offense under ARIZ. REV. STAT. §13-3214(A) carries a mandatory minimum 15-day jail sentence, and in West Virginia, a first offense carries a mandatory minimum 60-day jail sentence, W. VA. CODE §61-8-5(b).
- <sup>viii</sup> Interview with Wesley Ware, BreakOUT!, New Orleans, LA, (Aug. 19, 2014); *For example*, Under Louisiana State Law, a second conviction for prostitution is a felony, (LA. REV. STAT. ANN. §14:82), a third prostitution conviction is a felony in Florida (FL. STAT. ANN. §796.07(4)(c)), and under Arizona law, a fourth prostitution conviction constitutes a felony (ARIZ. REV. STAT. ANN. § 13-3214 (2006) (West)).
- <sup>ix</sup> United States Department of State, “UPR Recommendations Support by the US Government” (June 2011) <http://www.state.gov/j/drl/upr/recommendations/>
- <sup>x</sup> 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>
- <sup>xi</sup> Melissa Gira Grant, *California’s Prop 35: A Misguided Ballot Initiative Targeting the Wrong People for the Wrong Reasons*, RH Reality Check (November 1, 2012); Black Women for Wellness, Black Women for Wellness Opposed Prop 35 (October 2012); Lane, Emily, New Orleans’ Lawmaker’s Bill Banning Solicitation Cracks Down on Panhandlers, Prostitutes, New Orleans Times-Picayune (April 24, 2014); Christie Thompson, *Escorted to Jail*, Chicago Reporter (November 1, 2012).
- <sup>xii</sup> Eve Batey, *Safety of sex workers questioned after Feds shut down MyRedbook.com*, SFIST.COM (June 25, 2014); Christie Thompson, *Escorted to Jail*, Chicago Reporter (November 1, 2012); Emi Koyama, *Operation Cross-Country VIII: Round-up and Comments*, EMINISM.ORG (July 3, 2014).
- <sup>xiii</sup> 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).
- <sup>xiv</sup> 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).
- <sup>xv</sup> Global Commission on HIV and the Law, Rights, Risks and Health, 38-43 (July 9, 2012).
- <sup>xvi</sup> UN Women, “Note on Sex Work, Sexual Exploitation and Trafficking,” United Nations Entity for Gender Equality and the Empowerment of Women (2014).
- <sup>xvii</sup> 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).
- <sup>xviii</sup> International Labor Organization, “Leaving No One Behind: Reaching Key Populations through Workplace on HIV and AIDS,” International Labour Organization, 34 – 36 (2014).
- <sup>xix</sup> 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).
- <sup>xx</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>xxi</sup> MARIE CLAIRE TRAN-LEUNG, SHRIVER CENTER, WHEN DISCRETION MEANS DENIAL (2011); JENNIFER LANGDON, JENNIFER, ET AL, MARYLAND TASK FORCE ON PRISONER REENTRY, RESEARCH REPORT ON PUBLIC HOUSING POLICIES REGARDING CRIMINAL BACKGROUNDS OF APPLICANTS (September 2011).
- <sup>xxii</sup> Interview with Ruby Corado, Casa Ruby, Washington, D.C., (Sept. 13, 2014).
- <sup>xxiii</sup> Interview with Cheryl Courtney Evans, Transgender Living Their Truth, Atlanta, GA, (Aug. 19, 2014); *See*, BIENESTAR, INTERACTIONS OF LATINA TRANSGENDER WOMEN WITH LAW ENFORCEMENT, 1-2 (April, 2012); MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012); Interview with Mitchyll Mora, Streetwise and Safe, New York (Sept. 7th, 2014).
- <sup>xxiv</sup> Chase Strangio, *Arrested for Walking While Trans: An Interview with Monica Jones*, ACLU.org (Apr. 2, 2014); Mike Ludwig, “*Walking While Woman*” and the Fight to Stop Violent Policing of Gender Identity, TRUTHOUT.COM (May 7, 2014); BIENESTAR, *supra* note xxiii; MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012).
- <sup>xxv</sup> Ware, *supra* note viii.
- <sup>xxvi</sup> Make the Road New York, Testimony before the NYC Council’s Committee on Public Safety September 8, 2014.
- <sup>xxvii</sup> Strangio, *supra* note xxiv.
- <sup>xxviii</sup> Armando Trull, *D.C. Gay Activists Fighting Prostitution-Free Zone Bill*, WAMU, January 24, 2014; Baltimore, Maryland, City Code §19:27-11.
- <sup>xxix</sup> Morse Diggs, *Atlanta police chief seeks to ban convicted prostitutes from city*, January 28, 2013, <http://www.myfoxtatlanta.com/story/20756038/atlanta-police-chief-seeks-to-banish-convicted-prostitutes-from-city>; La. Rev. Stat. Ann. §14:107.5.
- <sup>xxx</sup> Interview with Catherine Paquet, HIPS, Washington, D.C. (Sept. 2, 2014); *Supra* note 11, Christie Thompson, (November 1, 2012); Ware, *supra* note viii.
- <sup>xxxi</sup> Ruby, *supra* note xxii; Robarge, *supra* note v; Roth, *supra* note vi.
- <sup>xxxii</sup> Best Practices Policy Project and SWOP Phoenix, *Civil Rights Violations in Phoenix, AZ Through Anti-Sex Work Laws and Practices*, (2014). <http://www.bestpracticespolicy.org/wp-content/uploads/2014/01/BBPPSWOP-ICCP-Submission-12.23.14.pdf>
- <sup>xxxiii</sup> Jordan Flaherty, *Her Crime? Sex Work in New Orleans*, COLORLINES, (January 13 2010) [http://www.colorlines.com/archives/2010/01/her\\_crime\\_sex\\_work\\_in\\_new\\_orleans.html](http://www.colorlines.com/archives/2010/01/her_crime_sex_work_in_new_orleans.html); Flaherty, Jordan, *Reform of Louisiana Crime Against Nature Law Creates Little Actual Change*, (July 8, 2010) <http://louisianajusticeinstitute.blogspot.com/2010/07/reform-of-louisiana-crime-against.html>
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- <sup>xxxv</sup> Goldstein, Nancy, *Getting Away with Murder on Long Island*, THE AMERICAN PROSPECT (Apr. 21, 2011).
- <sup>xxxvi</sup> Robarge, *supra* note v; Roth, *supra* note vi; Paquet, *supra* note xxx.
- <sup>xxxvii</sup> Personal Email Communication with Anonymous Member of SWOP-NYC, Aug 21, 2014.
- <sup>xxxviii</sup> Interview with Chai Jindasurat, National Coalition of Anti-Violence Projects, New York (Aug. 20, 2014); National Coalition of Anti-Violence Project, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2013* (May 29, 2014).
- <sup>xxxix</sup> YOUNG WOMEN’S EMPOWERMENT PROJECT, BAD ENCOUNTER LINE SURVEY (June 2011).
- <sup>xl</sup> *Id.*
- <sup>xli</sup> Mora, *supra* note xxiii.
- <sup>xlii</sup> *Id.*
- <sup>xliii</sup> SEX WORKERS PROJECT, THE ROAD NORTH 28-30 (2012).
- <sup>xliv</sup> Hickey, Darby and Cassandra Warren, *Why Are Sex Workers Being Banned from the International AIDS Conference?*, RH REALITY CHECK (July 3, 2012).
- <sup>xlv</sup> Sex Workers Project, *supra* note xliii; Communities United Against Violence, *LGBTQ Communities Come Out for the Immediate Elimination of ICE’s “Secure Communities” Program* (August 30, 2011).
- <sup>xlvi</sup> ALLIANCE FOR A SAFE & DIVERSE DC (2008).
- <sup>xlvii</sup> 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).
- <sup>xlviii</sup> Sex Workers Project, *supra* note xliii, at 28 – 29.
- <sup>xliv</sup> Interview with Shira Hassan, Young Women’s Empowerment Project, Chicago, IL (Aug. 21, 2014).
- <sup>i</sup> *Id.*
- <sup>ii</sup> Rachel Lovell, *Mug Shots: Transgender “Johns”*, RE/SEARCH (July 24, 2012).
- <sup>iii</sup> Jordan Flaherty, *Arizona’s tenacious laws against sex workers*, Al-Jazeera America, November 14, 2013; Wahab, Stephanie & Meg Panichelli, *Ethical and Human Rights Issues in Coercive Interventions With Sex Workers*, 28(4) AFFILIA 344, 346 (2013); INCITE, NO SIMPLE SOLUTIONS (2011).
- <sup>iiii</sup> Jessica Mason Pieklo, *Supreme Court Strikes Anti-prostitution Pledge for American Organizations Fighting HIV/AIDS*, RH REALITY CHECK (June 30, 2013). This requirement applies to international organizations seeking funds from the President’s Emergency Plan for AIDS Relief (PEPFAR). After a Supreme Court decision, this restriction no longer applies to U.S.-based organizations but continues to apply to NGOs outside of the United States. *Id.*

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- <sup>liv</sup> Global Alliance Against Trafficking in Women & Freedom Network, *US bill to pressure countries that do not criminalise the purchase of sex must be dropped, say rights groups* (July 24, 2014).
- <sup>lv</sup> Roth, *supra* note vi.
- <sup>lvi</sup> JUSTICE POLICY INSTITUTE, *BAIL FAIL: WHY THE U.S. SHOULD END THE PRACTICE OF USING MONEY FOR BAIL* (2012).
- <sup>lvii</sup> Ware, *supra* note viii; Robarge, *supra* note v.
- <sup>lviii</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. 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.”).
- <sup>lix</sup> YOUNG WOMEN’S EMPOWERMENT PROJECT, *supra* note xxxix; Robarge, *supra* note v; Ware, *supra* note viii; Mora, *supra* note xxiii; Interview, Anonymous, New Jersey, Sept. 13, 2014.
- <sup>lx</sup> Interview, Anonymous, New Jersey, Sept. 13, 2014.
- <sup>lxi</sup> HUMAN RIGHTS WATCH, *SEX WORKERS AT RISK: CONDOMS AS EVIDENCE OF PROSTITUTION IN FOUR US CITIES* (July 2012); Robarge, *supra* note v; Ware, *supra* note viii.
- <sup>lxii</sup> BIENESTAR, *supra* note xxiii, at 6.
- <sup>lxiii</sup> Roth, *supra* note vi; Robarge, *supra* note v; Ware, *supra* note viii; Metropolitan Police Department (Washington D.C.), *Hate Crimes Assessment Task Force Report*, 19-20 (February 2014).
- <sup>lxiv</sup> Interview with Anonymous, New Jersey, (Sept. 13, 2014).
- <sup>lxv</sup> Roth, *supra* note vi; Robarge, *supra* note v; *Supra* note 31, Goldstein, Nancy (April 21, 2011).
- <sup>lxvi</sup> Robarge, *supra* note v.
- <sup>lxvii</sup> Mora, *supra* note xxiii.
- <sup>lxviii</sup> JAIME GRANT, ET AL, NATIONAL CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE, *INJUSTICE AT EVERY TURN* 158, 163-169 (2011).
- <sup>lix</sup> 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](http://data.unaids.org/Publications/IRC-pub07/JC1252-InternGuidelines_en.pdf).
- <sup>lxx</sup> Tenn.Code Ann. §39-13-521 (2012); Tenn. Code Ann. § 40-39-201 (2012).
- <sup>lxxi</sup> BPPP Interview, “Cassie”, August 2014 (on file with authors). The name of the victim has been changed to protect her identity.
- <sup>lxxii</sup> Colo. Rev. Stat. §§ 18-7-201.5, 18-7-205.5.
- <sup>lxxiii</sup> Robin, D, *Outdated Fear: Criminalizing HIV+ Sex Workers, Tits and Sass*, April 24, 2014. <http://titsandsass.com/gross-miscarriages-of-justice-criminalizing-hiv-sex-workers/>; Michael Roberts, *Prostitution with knowledge of HIV/AIDS law is unjust, out of date, attorney says*, WESTWORD.COM, June 30, 2014 [http://blogs.westword.com/latestword/2014/06/prostitution\\_with\\_knowledge\\_of\\_hiv\\_aids\\_law\\_unjust.php](http://blogs.westword.com/latestword/2014/06/prostitution_with_knowledge_of_hiv_aids_law_unjust.php).
- <sup>lxxiv</sup> Kiesha McCurtis, Sharmus Outlaw, Cristine Sardina & Penelope Saunders, Report to the Global Commission on HIV, Aug. 7, 2011, <http://www.bestpracticespolicy.org/2011/08/07/globalcommissionrep2011text/>.
- <sup>lxxv</sup> Robarge, *supra* note v; City of Baltimore Health Department, *Jurisdictional Plan for HIV Prevention in Baltimore City*, January 1, 2012-December 31, 2016 (Updated September 2014).
- <sup>lxxvi</sup> *Supra* note 46, HUMAN RIGHTS WATCH (July 2012); PROS NETWORK & URBAN JUSTICE CENTER SEX WORKERS PROJECT, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City* (April 2012); HUMAN RIGHTS WATCH, *IN HARM’S WAY* (December 2013).
- <sup>lxxvii</sup> Mora, *supra* note xxiii. While the New York Police Department recently announced it would stop utilizing condoms as evidence, it excluded the use of condoms in “promotion” cases, meaning that for youth under eighteen, who are automatically defined as “trafficked” if trading sex, the presence of condoms can still be used as evidence in a criminal case. *Id.*
- <sup>lxxviii</sup> Persist Health Project, *No Lectures or Stink-Eye: The Healthcare Needs of People in the Sex Trade in New York City*, 15-18, 2014.
- <sup>lxxix</sup> Roth, *supra* note vi; Paquet, *supra* note xxx.
- <sup>lxxx</sup> Molly Crabapple, *Project ROSE is arresting sex workers to save them*, VICE MAG., February 2014; *Supra* note 15, BEST PRACTICES POLICY PROJECT and SEX WORKERS OUTREACH PROJECT--PHOENIX; *Supra* note 43, Flaherty, Jordan (November 14, 2013).
- <sup>lxxx</sup> HUMAN RIGHTS WATCH, *supra* note lxxvi; Roth, *supra* note vi; Paquet, *supra* note xxx; Evans, *supra* note xxiii.
- <sup>lxxxii</sup> Flaherty, *supra* note liii; Wahab, Stephanie & Meg Panichelli (2013).