



## Report on Sex Workers Rights in the U.S. Under CEDAW for the 39<sup>th</sup> Session of the Committee

**Sex workers the world over, regardless of the legality or illegality of their profession, maintain their status as human beings possessed with inalienable rights that must be acknowledged and maintained.**

As the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) “defines what constitutes discrimination against women and sets a framework for national action to end such discrimination,”<sup>1</sup> it is imperative that this existing human rights instrument be unconditionally applied to sex workers to ensure that the dignity and safety of women and transgender women working in the sex sector is upheld.<sup>2</sup> Due to political, social and cultural norms around the globe, sex workers endure harsh discrimination and “lack of equality before the law” as mandated for all persons in **article 15(1)** of CEDAW. These violations of the Convention manifest in violence and misconduct from state actors and citizens with impunity, a criminalized and/or stigmatized status that keeps sex workers contained in an isolated sub-group of society, and discriminatory funding restrictions that hinder access to health and other services.

Sex workers are often not welcome in conversations around violations of their own civil, political and social rights. The discrimination directed at women and transgender persons who work in the wide array of sexual services by both state and non-state officials goes on unabated. In fact, many sex worker activists have over the decades expressed their concern regarding the global condition of violence and discrimination against sex workers, which includes police harassment, lack of access to life-saving information about their health, particularly reproductive and sexual health, and the general criminalization and stigmatization of sex workers which continues to keep women and transgender women who engage in sexual services underground.

### Sex Workers Project

The Sex Workers Project (SWP) is a project based at the Urban Justice Center (UJC). UJC is an independent nongovernmental organization (NGO) with ECOSOC consultative status. The SWP has prepared this report<sup>3</sup> to provide independent information that identifies violations of sex workers’ rights under numerous articles outlined by CEDAW and the duties of governments, including local, state, and federal, in preventing and addressing these violations.<sup>4</sup> While the U.S. has not ratified CEDAW, we

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<sup>1</sup> Human Rights Watch, *CEDAW: The Women’s Treaty*, (last modified on Oct. 1, 2003) <<http://www.hrw.org/campaigns/cedaw/>>. It also is important to note that discrimination against women under the CEDAW includes discriminatory impact without intent, which runs counter to the current legal treatment of discrimination against women in the United States.

<sup>2</sup> We recognize and reiterate that men are also involved in the sex sector and experience many of the same abuses as women and transgender women. However, as CEDAW addresses the rights of women, in this report, we focus on female and transgender female sex workers.

<sup>3</sup> Throughout this document, case studies are used to highlight the real-life relevance of human rights for sex workers. Some specific details and all names in these case studies have been changed to protect the privacy of the people involved.

<sup>4</sup> In looking for international law applicable to sex workers’ rights, it is helpful to keep in mind that sex workers are not defined by one single trait—there is no U.N. Convention on the Rights of Sex Workers. Instead, a more appropriate framework is to understand a sex worker as an intersection of many different traits; his or her rights are more effectively and holistically addressed at this intersection. For example, sex workers are not simply “women,” or “trafficking victims,” or “a minority race”, but often possess several such variables that simultaneously implicate different international laws and standards. A useful

strongly believe that the Convention contains standards of human rights to which all states must be beholden.

The SWP created two substantial reports based on interviews with diverse groups of sex workers and outreach conducted in the New York City area, *Behind Closed Doors* and *Revolving Door*. *Behind Closed Doors* reports on the circumstances of sex workers who work indoors, while *Revolving Door* provides information on the lives of street-based sex workers.<sup>5</sup>

### **Spectrum of Sex Work**

The Sex Workers Project conducts direct services for *all* sex workers regardless of the manner of entry into the industry. The SWP takes a non-judgmental approach and uses a harm reduction and human right model. We recognize that sex workers can exist anywhere on the spectrum from trafficked persons, to those who practice sex work by circumstance due to financial or social impetus, to those who do it for personal choice. The SWP routinely emphasizes the diverse conditions under which individuals become involved in sex work and refuses to group all sex workers as one holistic body with the same needs and wants.

The following sections list the rights of sex workers being violated in the U.S. The abuses described in sections I – IV demonstrate the absence of rule of law for sex workers in the U.S. We urge the Committee to stress these points when engaged in informal dialogue with the U.S. Delegation to the United Nations:

#### **I. Right to Livable Wage/Right to Livelihood**

As stated in **article 11(a)** of the Convention, state parties shall ensure the **right to work** as an inalienable right of all human beings<sup>6</sup>. In the U.S., many persons, especially undocumented workers, cannot earn a livable wage within mainstream job sectors. Thus, many women are forced by circumstance to turn to sex work in order to provide financial sustenance for themselves and family members. In addition, consenting adults must be allowed to earn a livelihood by means they deem appropriate for themselves without States interfering through criminalization and harassment and thus violating the rights of sex workers. For sex workers who continue in the work by either choice or circumstance, the current U.S. economic and criminalization policies and laws violate the **right to work and earn a livelihood** as mandated by CEDAW.

Overall, entry into sex work is largely marked by a lack of access to living wage jobs and/or dissatisfaction with wages and working conditions in other industries and sectors. As reported in *Behind Closed Doors*,<sup>7</sup> 67% of respondents reported not making enough money to survive in the jobs that they held prior to their involvement in sex work, which included waitressing, food service, retail work and domestic work. Respondents expressed a willingness at this point in their lives to do anything that might improve their economic situation.

Many SWP clients that were trafficked return to sex work after their escape because it is the only option for a livable wage. Even though they earn more money in sex work than they would in other jobs that are

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discussion of a “framework of intersectionality” is found in Margaret L. Satterthwaite, *Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 Yale Human Rights and Development Law Journal 1 (2005).

<sup>5</sup> Both reports can be found on the Sex Workers Project website at [www.sexworkersproject.org](http://www.sexworkersproject.org).

<sup>6</sup> CEDAW, Article 11(a)

<sup>7</sup> *Behind Closed Doors: An Analysis of Indoor Sex Work in New York City*, Sex Workers Project at the Urban Justice Center. 2005. pg.

available to them, most of these sex workers still cannot afford health insurance, childcare and basic necessities in order to maintain financial viability.

In this way, the U.S. violates the inalienable **right to work** for many by providing a minimum wage standard that is significantly below the wage needed in order to maintain a life above poverty - in effect, causing persons to work in sex work by circumstance.

In addition, in the U.S., sex workers right to a livable wage and livelihood is being undermined by the criminalization and harassment of consenting adults in the commercial sex industry. For example, for sex workers who choose the profession out of no pressing financial need [for example those sex workers who have a high educational status, marketable skills and alternative means of income, yet continue to work in sex work], the criminalization of sex work violates **article 11(a)** in ceasing the **right of consenting adults to work and earn a livelihood**.

## II. Harassment and Abuse by State Officials

Violence against sex workers stems from severe levels of discrimination at the local, state and national levels against this population. In the U.S., sex workers, regardless of the reasons for their entry into the industry, are seen as less than human and without any rights or protections from violence. This distorted and stigmatized view by certain members of law enforcement is in direct violation of CEDAW **article 2(d)** which mandates **that State parties ensure that public authorities and institutions act in conformity with the obligation to refrain from engaging in any act or practice of discrimination.**

Both *Behind Closed Doors* and *Revolving Door*<sup>8</sup>, reporting on indoor and outdoor sex work respectively, found disproportionate amounts of violence from state actors, in particular city police, both as direct actors and as officials who should be investigating crimes against sex workers. The criminalization of prostitution, the social stigma of all sex workers and subsequent law enforcement responses in the United States fosters a climate in which discrimination and thus violence thrives, often with impunity. The harassment and hostility endured by sex workers signals disinterest by State parties in refrain[ing] from engaging in any act or practice of discrimination against women and ensuring that public authorities and institutions act in conformity with this obligation.<sup>9</sup>

In *Behind Closed Doors* and *Revolving Door*, indoor and street-based sex workers commented on high rates of violence:

14% of indoor sex work respondents in experienced incidents of police violence, and victims of such violence felt they had no recourse.<sup>10</sup> Angie<sup>11</sup> described her encounters with police violence:

*I got beat up twice, both times by a cop. Both of them wanted me to suck their [xx]<sup>12</sup> for free, right in the car. I said no, because I really don't like being in the cop cars. But, they said I had to and pulled their [xx] out and just grabbed my head and pushed me down there. The first time I bit the guy on his [xx]. He just screamed and started beating me with his stick. I passed out. I don't know for how long. I was just laying there and when I woke up it was almost morning. I*

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<sup>8</sup> *Behind Closed Door: An Analysis of Indoor Sex Work in New York City*, 2005, pgs. 11, 49, and 70 and *Revolving Door: An Analysis of Street- Based Prostitution in New York City*, 2003, pgs. 8, 11 and 34-47. Sex Workers Project at the Urban Justice Center.

<sup>9</sup> CEDAW Article 2 (d)

<sup>10</sup> *Behind Closed Doors*, 48

<sup>11</sup> All names in this report are aliases, used to protect the identity of sex workers who shared their information with the SWP.

<sup>12</sup> In our reports, SWP does not censor informants' language. However, for the purpose of this document, we replaced all strong sexual language with "[xx]".

*told my momma I got robbed. She was at home with my kids. She didn't believe me because I said I didn't want to call the cops. But, I know that if we went down [to the station], we would see the guy.*<sup>13</sup>

16% of respondents have been involved in sexual situations with the police.<sup>14</sup> One sex worker, Jessica, experienced two sexual encounters with police on their encouragement in order to avoid arrest.

*Once, the police offered not to arrest me if I gave them a [xx]. A cop drove me to an alley and said, 'What will you do not to get arrested?' I offered a [xx]. He said, 'No, I want to [xx] you.' So I did, I let him [xx] me and he let me go. I told all of my friends. I saw him later as an undercover and he reminded me [of what he did.] He let me out of the car and nothing happened.'*<sup>15</sup>

Celeste worried about violence from the police:

*I would be most worried about being abused by the police, being raped or hurt or just treated badly is my worst fear. I feel like the legal consequences I could probably deal with or manage. I've definitely heard plenty of stories about police having sex with girls and arresting them or arresting them and forcing them to have sex, even in the car.*<sup>16</sup>

Another sex worker, Leticia, said that the police threaten her approximately once every three months:

*Police officers around here sometimes spit on you, harass you, call you a [xx]. One likes to beat me now and then, or he wants me to suck his [xx]. I mean, its crazy. He hits me with his gun and gives me these marks on my legs and my back. I can't call the other cops. I did once and they asked this guy to stop beating me. But, he got so mad that he came around and beat me up even worse. So, I really have to get out of here. Now he wants me to give him 25% of what I make! There ain't nothing I can really do because he is a police officer and I can't do nothing about it.*

Leticia later commented, "I had to go to the hospital because I got beat [by the police] so bad."<sup>17</sup>

Leticia explained the need to find alternatives to working with the police:

*Just find a way to help us with the police. You have lots of women that have nobody to help them. We don't need lawyers; we need somebody to protect us when we get beat up, when police mess with us. Around here, they don't arrest you, they just mess with you like they own you.*

**Transgender Women:** On numerous SWP street outreach sessions, transgender women in particular tell of harsh and consistent verbal harassment from police officers and lack of action on their complaints of violence. One person stated that she had seen a police car drive by a transgender woman who was being beaten with a baseball bat, and the officers offered no assistance.<sup>18</sup>

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<sup>13</sup> Id. 48

<sup>14</sup> Id. 48

<sup>15</sup> Id. 48-49

<sup>16</sup> Id. 46

<sup>17</sup> Id. 48

<sup>18</sup> *Unfriendly Encounters: Street-Based Sex Workers and Police in Manhattan*, Factsheet. Available on the SWP website at <http://www.sexworkersproject.org/downloads/SWPOutreach2005FS.pdf>, 2005

Extensive training that would address the issues surrounding sex work by taking all appropriate measures to eliminate discrimination against women by any person, organization or enterprise<sup>19</sup> is not a priority for the New York City Police Department (NYPD), despite attempts by the SWP to engage the NYPD in concrete discussions of these concerns. Therefore, officers who routinely engage in misconduct against predominantly female and transgender female sex workers are not held accountable for engaging in such acts.

### III. False Arrests

False arrests of sex workers violates **article 2(d)** of the Convention which states **that State parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institution shall act in conformity with this obligation.** Sex workers are routinely arrested as individuals and in sweeps, often to appease the surrounding community members who enjoy the public service of law enforcement as “protectors” from non-violent sex workers. Almost a quarter of respondents<sup>20</sup> from *Revolving Door* reported being falsely arrested while not engaged in sexual services at the time but rather going about their daily lives, such as grocery shopping. These sex workers were arrested for being “known prostitutes” without conducting any immediate criminal activity, despite the fact that prostitution is not a status crime in the U.S.

Charlotte attributed her false arrests to her transgender identity:

*There are times I could be coming out of the subway, and they just snatch you coming out of the subway, just because you're a [transsexual].*

Charlotte added that she always pleads guilty in order to be released as quickly as possible.<sup>21</sup>

Avery felt it was difficult to counter false arrests because:

*The judge is always, 'well, the police is here to tell the truth and that's what they're hired for, to abide by the law and to make sure that the laws are enforced.' It's just not true.*<sup>22</sup>

At an April 2007 legal training that the SWP conducted at a Queens-based NGO, numerous transgender female sex workers complained of being stopped on the street by police for no reason. They were not engaging in any unlawful activity—they were simply walking down the street to a particular destination. These individuals believed they were being stopped by police and discriminated against for being transgender and Latina. Such incidents cause much distress in their lives and inhibit their ability to enjoy their human rights.

In addition to arrests, 29% of respondents<sup>23</sup> in the report, *Behind Closed Doors*, stated that they had at times been taken into police custody, but then released instead of being arrested. For some, this meant that they were ordered to appear in court at a later date, and in some cases, they were completely free to go. While being taken into custody without being arrested was clearly seen as preferable to arrest, the lack of police follow-up implies that there was no real basis for these people to be taken into custody in the first place.

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<sup>19</sup> CEDAW Article 2 (e)

<sup>20</sup> *Revolving Door*, 40

<sup>21</sup> *Id.* 41

<sup>22</sup> *Id.* 41

<sup>23</sup> *Behind Closed Doors*, 47

The U.S. violates **article 2(d)** of the Convention by allowing local police, particularly in the New York area but likely all over the U.S., to use their authority to harass and falsely arrest sex workers with impunity. Again, the U.S. must ensure that their public officers refrain from engaging in any act or practice of discrimination against all women, and in fact, use their positions of authority to protect the rights of women.

#### **IV. Discriminatory State Protection for Victims of Violence/State Inaction**

Existing laws against rape, assault, robbery and harassment are often made not applicable to sex workers, signifying a lack of adherence to standards outlined by CEDAW **articles 1, 2, 3, 15(2)**. These articles in which States parties **prohibit all discrimination against women<sup>24</sup>, establish legal protections of the rights of women on an equal basis with men<sup>25</sup> and ensure the effective protection of women against any act of discrimination<sup>26</sup>** are violated by the U.S.'s refusal to take crimes against sex workers seriously.

Local law enforcement routinely asserts that sex workers have put themselves into dangerous situations by the mere nature of their work and therefore no recourse is necessary against violence perpetrated against them. In no other profession is the blame taken away from the aggressor in a given situation to this same degree.<sup>27</sup> The criminalized and/or stigmatized identity of sex workers serves to strip them of their human rights and in seeking protection of such.

The most egregious example is the Rape Shield Law in New York State.<sup>28</sup> Generally, this is a well-meaning statute that aims to provide a certain measure of confidentiality to victims of sexual assaults and is an effort to keep their sexual histories from public and legal scrutiny. However, the New York state law condones discrimination against those with a record of prostitution convictions or of presumed commercial sex acts in the previous three years before an alleged assault, by allowing such information to be offered as evidence to eliminate credibility of the victims of sexual assault.<sup>29</sup> This exception plays into the prevailing myth of women, especially women involved in sex work, as sexually available at all times and the impossibility of rape. The exception contained in this law is particularly damaging to sex workers coming forward with complaints of assault and should be repealed as State parties should modify or abolish existing laws, regulations, customs and practices which constitute discrimination against all women.<sup>30</sup>

An increasing pattern of violence directed against sex workers with impunity has most recently been revealed with the found bodies of four women in Atlantic City, New Jersey on November 20, 2006. That three of the four murder victims had past prostitution arrests is indicative of a larger pattern of violence against people working in the sex industry. In fact, serial killers have often targeted those working in the sex industry as a vulnerable population. In pleading guilty in 2003 to the murders of 48 prostitutes, Gary

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<sup>24</sup> CEDAW, Article 2(b)

<sup>25</sup> Id. Article 15(2)

<sup>26</sup> Id. Article 2(c)

<sup>27</sup> *Revolving Door*, 11. *Behind Closed Doors*, 13

<sup>28</sup> New York Criminal Procedure Law Section 60.42(2).

<sup>29</sup> Id. "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for an offense or an attempt to commit an offense defined in article one hundred thirty of the penal law unless such evidence: 1. proves or tends to prove specific instances of the victim's prior sexual conduct with the accused; or 2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior to the sex offense which is the subject of the prosecution."

<sup>30</sup> CEDAW, Article 2 (f)

Leon Ridgway, from the U.S. Pacific Northwest, told a judge he targeted streetwalkers “because I thought I could kill as many as I wanted to without getting caught.”<sup>31</sup>

This chilling statement is all too indicative of the pervasive discrimination against sex workers, in which they are literally perceived by many, including State actors, as inhuman.

## V. Effects of Criminalization of Sex Work

The cycle of arrests that corresponds to the criminalization of sex work makes it extremely difficult for those wishing to begin or return to work in legal sectors and, in violation of CEDAW **article 3**, hinders their ability to **enjoy their fundamental freedoms in the political, social, economic and cultural fields**.<sup>32</sup> A criminal record of prostitution compounds issues of economic survival, making it far more difficult to find work in the mainstream economy. This is particularly dangerous for transgender persons, who routinely face discrimination when applying for work.

In the U.S., there is a prevalent assumption that arrests for prostitution are a gateway to services for sex workers. However, the experiences of the SWP’s clients and of those sex workers whom we have interviewed in our reports clearly show the opposite—that the criminal justice system inadequately addresses their needs, and instead offers only moral judgment and a criminal record.

Despite the fact that they experience less police interference and a lower rate of arrest than street-based sex workers, indoor sex workers whom we have interviewed<sup>33</sup> were extremely concerned with and vigilant about the issue of criminal justice contacts. They were fearful of the consequences of arrest, such as having a criminal record, stigma, impact on housing and family members, and immigration consequences, such as possible removal from the country. Many indoor sex workers also found their treatment by police during the arrest process to be disrespectful and sometimes dangerous.

Louise felt that an arrest would affect her ability to find mainstream work:

*I see all this stuff about job training and this arrest would eliminate all the jobs you could want if you ever do want to leave [sex work.]*<sup>34</sup>

Participants in both SWP reports were arrested on various charges relating to prostitution, including: soliciting prostitution; prostitution; maintaining a house of prostitution; loitering; and false arrest.

In the vast majority of cases where a respondent had been arrested, 88% were offered neither services nor alternative sentencing by the criminal court.<sup>35</sup> Of the three people who had been offered services, only one, Jessica, received any services that were remotely substantive. She received five days of job training instead of 15 days in jail. While she thought that the job training “would be good,” Jessica found that “the help was not professional, there were no proper tools given, and the organization was not prepared.”<sup>36</sup>

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<sup>31</sup> Barnes, Edward and George Kindel, ‘Ipswich Ripper’ Prostitute Murder Investigators Eye Atlantic City Cases for Possible Link, foxnews.com, December 14, 2006.

<sup>32</sup> CEDAW, Article 3

<sup>33</sup> *Behind Closed Doors*, 11

<sup>34</sup> Id. 47

<sup>35</sup> Id. 11

<sup>36</sup> Id. 46

Connie's alternative sentencing entailed watching a two-hour health film, while another sex worker was given a piece of paper with references for jobs, "but the first 5 numbers were no longer in service."<sup>37</sup>

Renee, an SWP client, has been arrested multiple times for different offenses relating to sex work. Most recently, she was arrested in a raid on the strip club in which she worked. Renee appeared before the New York Midtown Community Court, which aims to use arrest as a gateway to services for sex workers. She suffers from homelessness, racial discrimination, and a lack of education and marketable job skills. Renee has been funneled through the Midtown court several times and released back onto the streets where she is often arrested shortly thereafter for another sex work-related offense. The only service Renee has ever been offered by the Midtown Court system was a two-hour health class focusing on sexual health and STD prevention.

**Trafficked Persons in Criminal System:** The criminalization of sex work causes severe consequences for those persons who have been trafficked. Many trafficked persons are arrested on average 4-5 times for prostitution without anyone in the criminal justice system identifying them as being trafficked. This causes trafficked persons to be even more afraid of law enforcement and reduces likelihood of them coming forth to seek help.

For example, undocumented sex workers Kristina, Pilar, Belinda and Raquel, working with the SWP, have been designated as victims of trafficking in persons by the federal government and have received assistance with housing, attaining temporary legal status, finding legal work, and receiving public benefits. Belinda and Raquel had been arrested in an immigration raid and were initially detained. However, they ultimately received this assistance as a result of the government's decision that they were trafficked persons. These services did not come through the usual arrest processes in the criminal justice system. Even in this case, both women expressed dismay that they had to be arrested and detained before the authorities realized that they needed help, and were more distrustful of law enforcement as a result.<sup>38</sup>

The arrest of sex workers is counter-productive to identifying, helping and rehabilitating trafficked persons in clear violation of **article 6** of the Convention, which mandates **that State parties take measures to suppress all forms of traffic in women.** The criminalization of sex work, leads the industry to go underground making persons more vulnerable and exploitable to being trafficked. [Further discussion of the violation of rights of trafficked sex workers is described under roman numeral VII.]

Finally, the criminalization of sex work and subsequent stigmatization, discrimination and mistreatment is firmly rooted in the U.S. government's insistence on the policing of morality. This is in clear opposition to **article 5** of the Convention, which requires **States to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and all other practices based on the idea of inferiority or on stereotyped roles for men and women.**<sup>39</sup> Sex workers are seen as persons who step far outside the proposed margins of gender and sexuality and as such are relegated to a second class citizenship. For persons of color, transgender and/or immigrant populations, this discrimination is compounded.

## **VI. Discrimination Against Sex Workers Seeking Access Social Services**

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<sup>37</sup> Id. 47

<sup>38</sup> *Behind Closed Doors*, 47

<sup>39</sup> *CEDAW*, Article 5



Precisely because of the criminalization and stigma involved in sex work, sex workers face great danger, discrimination and backlash when they try to seek or accept help from social service agencies required to condemn and reject them as a condition of continued funding.

In the United States, police harassment has limited the rights of sex workers from achieving their **rights to health** in violation of **article 12**. Police violence against sex workers exacerbate the risks for suffering violence as well as sexually transmitted infections, including HIV/AIDS.

Outreach to street-based sex workers is critical to providing links between them and service providers in order to ensure access to condoms and information about legal rights. However, police harassment of outreach workers as well as sex workers prevent these relationships to develop.<sup>40</sup> The increased policing on the streets drives sex workers to work later at night and in more remote areas, isolating them from crucial services.

The confiscation of condoms from suspected sex workers as evidence in criminal cases<sup>41</sup> is not only unnecessary and insufficient, but sends an odd message to the community. Historically, sex workers have been wrongfully seen as vectors of disease, but in such instances, the very tools for HIV/STI prevention are taken away.

Sex workers have a variety of health concerns, not strictly sexual health. There are very few health service providers that cater directly to the sensitive and holistic needs of this population. St. James Infirmary, a non-judgmental, occupational health and safety clinic for sex workers and their partners, located in San Francisco, California, should be looked upon as a model for such services.

**Anti-Prostitution Pledge:** The Anti Prostitution Pledge contained in the requirements for U.S. Agency for International Development (USAID) funding requires condemnation of the very population organizations are trying to empower and serve, rather than eliminating discrimination against women to ensure equal access to health care services.<sup>42</sup> When sex workers are empowered and their rights are protected, sex workers are able to insist on condom use and take on the role of health educators and prevention advocates. It is difficult, if not impossible, for sex workers to mobilize when they are being demonized. The real human impact of this pledge is that at the hands of the United States, people around the world are being denied the healthcare, rights and services they deserve.

- Brazil was forced to reject approximately \$40 million in USAID money because signing the Pledge would interfere with its highly successful anti-AIDS program<sup>43</sup>;
- A class that taught English to sex workers in Thailand in order for them to enter the mainstream tourism industry had to seek other funding as a result of this policy<sup>44</sup>;
- In Bangladesh, 16 drop-in centers for sex workers lost funding when the agency that supported them signed the Pledge—the sex workers affected by this describe it as having lost their home, their family, and their sense of community and safety;<sup>45</sup> and

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<sup>40</sup> *Revolving Door*, 73

<sup>41</sup> As experienced by sex workers who reported to SWP that condoms were being used by police officers as incriminating evidence against them in prostitution cases.

<sup>42</sup> *CEDAW*, Article 12 (1)

<sup>43</sup> Reel, Monte. *Where Prostitutes Also Fight AIDS: Brazil's Sex Workers Hand Out Condoms, Crossing U.S. Ideological Line*. Washington Post, March 2, 2006.

<sup>44</sup> Empower Foundation Home Page, <http://www.empowerfoundation.org/> (last visited Mar. 28, 2007); *See also*, Video: Taking the Pledge, <http://sexworkerspresent.blip.tv> (The video discusses the current situation in Thailand and the work of Empower).

<sup>45</sup> *Taking the Pledge*, Panel presentation of Hazera Bagum, Director of Bangladesh's Durjoy Nari Shangho,

- Organizations in India that work to empower and organize sex workers have been falsely accused of trafficking the very women that they are helping.<sup>46</sup>

International organizations working on HIV/AIDS and anti-trafficking are so fearful of the political backlash and potential loss of U.S. funding for all their programs, even those not specifically aimed at working with sex workers, that many organizations are going further than the Pledge may require because they do not understand what kinds of programs are banned. For example, some groups have dismissed sex workers, claiming that they can no longer keep them on staff, and other groups have distanced themselves from sex workers' groups with whom they had previously worked and supported.

## **VII. Persons Trafficked into Sex Work**

The SWP raises particular concern for undocumented, migrant and trafficked sex workers who not only face police harassment and violence based on their gender, economic and social identities but also because of their lack of citizenship or trafficked statuses.

The United States, in the last seven years, vigorously initiated national legislation to combat trafficking. The main legislation, the Trafficking Victims Protect Act (TVPA) of 2000, offers strong, but flawed protections for trafficked persons, including the possibility of obtaining a nonimmigrant visa, access to healthcare, and services such as mental health counseling, job training, and English as a Second Language classes.

While this legislation has helped a number of formerly trafficked prostitutes, it is still very difficult for many people who have been trafficked into the sex industry to benefit from the new law. In order to be in compliance with **article 6** of the Convention, the U.S. needs a more productive and effective national law against trafficking that does not further exacerbate the rights of trafficked persons.

**Cooperation:** Problematically, the TVPA requires that trafficked persons over the age of 18 who seek legal status or government-sponsored benefits must cooperate with federal law enforcement in the investigation or prosecution of acts of trafficking.<sup>47</sup> The difficulty stems from the fact that this cooperation requirement includes mandatory contact with law enforcement and questioning by police and immigration authorities.

Immigrant sex workers are often afraid to come forward and do not trust law enforcement to assist them. Many people who have been trafficked are afraid of police and immigration agencies because they have engaged in unlawful behavior (for example, they may be in the U.S. unlawfully or been forced to work in prostitution), arrested in the past, or told that they will be deported if they come forward with their complaints.

Most trafficked persons who fall under the radar of the police live in constant fear that they will not only be arrested but be deported back to their home countries and face immeasurable discrimination and high risk of violence based on their status as deported sex workers and escaped trafficked persons.

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2007. Available at <http://www.sexworkersproject.org/>

<sup>46</sup> *Taking the Pledge*, Interview with Meena Seshu, activist working with sex workers in Sangli, India,

2007. Available at <http://www.sexworkersproject.org/>

<sup>47</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA].

*Alicia came to the United States from Mexico two years ago. Through her boyfriend, Carlos, she found work in a brothel, where she earns \$30 for every customer. However, instead of keeping her half of these earnings, Carlos takes all of the money and “holds it” for her. Whenever Alicia demands her share of the money or threatens to leave him and go off on her own, Carlos reminds her that if she disobeys him, she will not be allowed to see her son, who lives with Carlos’ mother in Mexico. One day, the brothel is raided by immigration agents, and Alicia is held in an immigration detention center while the government interviews her to decide whether she has been trafficked, or whether she is working on a voluntary basis. This detention center houses people who have been convicted of violent crimes and Alicia is scared. Alicia is afraid to tell the immigration agents that she may never see her son again if she gives them any information. She is held in the federal detention center for a month before she is deported by the government because she is not a cooperative witness and will not admit to being trafficked.*

*Sara came to the United States from Russia on a student visa ten years ago, which has long since expired. Because she is now here illegally and lacks proper working papers, Sara took an under-the-table housecleaning job, where she is subject to long hours and consistent under-payment. One of her bosses recently threatened to fire her and report her to immigration authorities if she did not begin providing entertainment at his parties for a little extra cash; this has included sex acts. Sara feels that she cannot risk deportation by reporting or refusing his demands.*

In addition, trafficked persons in the New York City area are willing to cooperate once they realize they can apply for a visa, but now federal agents are not cooperating with trafficked persons. For example, Immigration and Customs Enforcement Agents in New York are requiring more stringent standards, such as the known location of the trafficker, and incidents must occur within the last five years, in order for them to certify trafficked persons for immigration purposes. This denial and the lack of interest in investigating and prosecuting particular traffickers causes a huge barrier to securing crucial legal rights and benefits for survivors of human trafficking and promotes mistrust and frustration against law enforcement. In some instances, trafficked persons feel re-victimized by this forced cooperation especially when no benefits are produced from this interaction.

**Inaccurate Conflation of Prostitution and Trafficking:** In the last seven years, the U.S. focused solely on trafficking into sex work largely ignoring the large numbers of people entering the country due to being trafficked into the general labor sector – agriculture, domestic work, restaurants, etc. This skewed analysis of trafficking minimizes the debate around migrant workers’ human rights.

In a July 2006 study, the U.S. Government Accountability Office (GAO) found that estimates of the number of people trafficked into any kind of work, including sex work, were questionable: “The accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies. For example, the U.S. government’s estimate was developed by one person who did not document all his work...”<sup>48</sup> Some policymakers and advocates have been misled by these unreliable estimates into the belief that human trafficking and sex work are inextricably linked and that all sex work is coerced. The reality is very different. We urge the U.S. to suppress *all* forms of traffic in women as **article 6** of the Convention mandates.<sup>49</sup>

Given the hysteria around trafficking, there is still a lack of providing appropriate services, particularly in the initial and essential step of issuing T-Visas for trafficked persons. The U.S. allows 5,000 per year to be issued, yet has only issued 729 visas to human trafficking survivors, and another 645 T-visas to members

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<sup>48</sup> United States Government Accountability Office (USGAO), “Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad,” (Washington, D.C.: 2006), pg. 2.

<sup>49</sup> CEDAW, Article 6

of their family to date.<sup>50</sup> The GAO report states that “more than five years after the passage of the landmark anti-trafficking law [Trafficking Victims Protection Act of 2000], the U.S. government has not developed a coordinated strategy to combat trafficking in persons abroad...or evaluated its programs to determine whether projects are achieving the desired outcomes.”<sup>51</sup>

Many of the trafficked clients at SWP have escaped from trafficking through their own means and with assistance of others, often others who work in a brothel, or their clients through sex work. In this instance, the survivor has empowered herself to be ready to leave the situation and acquire needed services. As they are escaping from the most oppressive of situations, it is imperative that survivors are able to implement action based on their own decisions. The government’s insistence on raids and rescues is problematic due to law enforcement misconduct during the raids as well as improper training on how to identify and be sensitive to the needs of trafficked persons. Trafficked persons are often traumatized repeatedly by being held in immigration detention or hotel rooms for interrogation. Law enforcement changes roles from that of ‘protector’ and ‘rescuer’ to that of yet another oppressor.

**New York State Anti-Trafficking Legislation:** For the last two years, the New York State government has been deliberating over Anti-Trafficking Legislation to address the lack of conformity and efficiency among local, state and federal authorities in trafficking cases. After more than two years of advocacy by members of the New York Anti-Trafficking Network, New York State agreed on legislation that addresses the problem of trafficking in persons. The bill includes provisions regarding: forced labor into industries such as agriculture, construction, and domestic work; services and benefits that will assist trafficked persons by creating stability in their lives; and ensuring that state and local law enforcement provide necessary documentation for immigration relief.

However, the current legislation calls for greater penalties for trafficking involving prostitution, minimizing the prevalence of labor servitude. This difference in the treatment of trafficked persons is unacceptable.

Moreover, the New York Anti-Trafficking Legislation fails in a crucial manner, in that it does not take the important step of offering survivors of trafficking access to civil remedies that would allow them to pursue justice on their own. It is our experience that civil litigation brought by trafficking survivors is an important tool to combat these abuses. It is also the only tool that allows the survivor to take direct action against those responsible for the trafficking, and therefore it can be a critical tool in the empowerment and healing of the survivor.

### **Recommendations to Ensure the Protection of Rights for Sex Workers**

To secure the human rights of sex workers and ensure their equality before the law, the SWP provides the following recommendations to the U.S. government:

- Informed and fact-based public discussion to erase the social and cultural norms that perpetuate the idea of prostitution as a criminal justice issue. Instead, the U.S. must focus on the real economic needs of sex workers and to find ways for police and other state actors to be productive in ensuring the safety of sex workers as stated in **article 2**.
- Complaints by sex workers should we be met with the same respect and regard that would be given to any other crime victim. Complaints must be addressed and investigated by law

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<sup>50</sup> *Trafficking in Persons Report*. Office to Monitor and Combat Trafficking in Persons  
<http://www.state.gov/g/tip/tls/tiprpt/2007/82811.htm>

<sup>51</sup> USGAO Report, pg. 3.

enforcement agencies without penalty to these victims, even if they were subjected to such acts while committing prostitution. It is critical that police assure prostitutes that they will not be investigated or arrested for illegal behavior if they come forward to report a crime of violence against them.

- Police who commit violence or other crimes against sex workers must be held accountable for their abusive acts. Police leadership must make it known that they take such exploitation seriously. In addition, police and the courts must aggressively investigate and punish police officers who engage in sexual harassment or violence of any kind against sex workers.
- Law enforcement must be trained and willing to identify trafficked and other sex workers who are in violent or coercive situations and refer them to agencies that can assist them.
- Trafficked sex workers should not be arrested or held in detention. Instead, they should be directly referred to safe housing, service providers, and attorneys who can assist them.
- Trafficked persons should not be compelled to cooperate with law enforcement in order to access services and legal immigration status. Many trafficked persons are willing to cooperate in investigations and prosecutions. However, they should not be expected to do so until they are emotionally and financially stable, physically well, and safe. Even those trafficked persons who never feel able to cooperate with law enforcement deserve necessary services and legal protections.
- Funding streams for anti-trafficking and HIV/AIDS efforts should not restrict recipients' advocacy on behalf of people in the sex industry. Sex workers and other persons should be recognized as potential allies in the ongoing struggle against human trafficking and the stem of HIV/AIDS. Workers and clients in the sex industry have assisted trafficked sex workers in escaping coercive situations, and some trafficked persons return to the sex industry for economic reasons. Therefore, organizations should be able to continue to assist them.
- Create and expand desperately needed services for sex workers which include mental health and counseling, appropriate and sustainable job training; language classes, financial management training and healthcare.
- Service providers in all sectors must train their staff to be sensitive and open to sex workers and to understand the stigma and discrimination to which this population is exposed. A negative climate maintains a fear of seeking help.
- Funding should be re-directed from arrests and incarceration to appropriate and realistic service provisions to ensure equal access to the enjoyment of sex workers' human rights and freedoms and be free of undue discrimination as outlined in CEDAW.