



## Urban Justice Center

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### INTERNATIONAL HUMAN RIGHTS STANDARDS AND THE RIGHTS OF SEX WORKERS

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Sex Workers Project

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#### Introduction

The body of international human rights law is useful in advocating on behalf of the human rights of sex workers (even though it may not carry the force of local and federal law). A number of United Nations Conventions and other relevant documents can be used to identify violations of sex workers' rights and the duties of government, including local, state, and federal, in preventing and addressing these violations.<sup>1</sup>

International human rights treaties, such as United Nations Conventions or other formal instruments, impose a duty on states to follow and ensure respect for human rights law, including a duty to prevent and investigate violations, take appropriate action against violators and afford remedies and reparation to those who have been injured as a consequence of violations. Specifically, United Nations Treaties, Conventions, and Covenants<sup>2</sup> are binding on the countries that ratify them.<sup>3</sup> A state that only signs, but does not ratify, a Treaty is bound to refrain from doing something that proactively violates the document. States that have ratified the Treaty have the positive obligation to *prevent* and *provide remedy* for human rights violations committed not only by the state, but also by private actors. As the International Committee for Human Rights notes, "An act by a private individual and therefore not directly imputable to a State can generate international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation."<sup>4</sup>

In addition to Treaties, U.N. General Comments and Recommendations are authoritative interpretations of international agreements. U.N. Resolutions may be understood as documents of political consensus. U.N.

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<sup>1</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 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>2</sup> Treaties, Conventions, and Covenants all refer to the same thing and hold the same status.

<sup>3</sup> Though further action may be necessary to make them part of national law, this does not change the fact that these Treaties are binding international law nor does it give a country an excuse to ignore or violate Treaty obligations.

<sup>4</sup> International Committee for Human Rights, *Non State Actors and Corporate Responsibility*, (visited October 15, 2004) <[http://www.ichr-law.org/english/expertise/areas/non\\_state.htm](http://www.ichr-law.org/english/expertise/areas/non_state.htm)>.

Standards and other such rules are often developed by experts but are less authoritative. Finally, certain practices can become binding law (customary international law) where there is evidence of uniform and consistent usage among the states based on recognition that a legal norm exists.<sup>5</sup>

## **A Note about Case Studies in this Document**

Throughout this document, case studies are used to highlight the real-life relevance of international 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.

## **U.N. Declaration of Human Rights<sup>6</sup>**

The U.N. Declaration of Human Rights, the ICCPR and the ICESCR (see below) are together known as the International Bill of Rights. The Declaration is the foundation for international human rights law, and it “marked the first time that the rights and freedoms of individuals were set forth in such detail.” Articles 3-21 set out civil and political rights for all, including the right to life, liberty, and personal security. Articles 22-27 touch on economic, social, and cultural rights. “The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is therefore entitled to the realization of the economic, social and cultural rights ‘indispensable’ for his or her dignity and free and full personal development.”<sup>7</sup>

## **International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR expands upon many civil and political rights originally laid out in the U.N. Declaration of Human Rights. The United States has ratified this Covenant, but with some reservations, because the United States asserts that some of the substantive standards delineated in the ICCPR are equivalent to our own constitutional standards.<sup>8</sup> Despite these reservations, the ICCPR remains quite useful in understanding the rights of sex workers and is binding on the U.S. as a matter of international law.

Article 7 sets out the right to be free of cruel, inhuman or degrading treatment or punishment, whether by the government or individuals.<sup>9</sup> Related to this, Article 9 states that everyone is entitled to the right to liberty and security of person, and that a person shall not be arbitrarily arrested.<sup>10</sup> Article 10 builds upon this, guaranteeing those who are detained the right to humane treatment.<sup>11</sup> Article 14 guarantees that everyone is

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<sup>5</sup> National Law Center on Homelessness and Poverty, *Homelessness in the United States and the Human Right to Housing*, at 25 (2004).

<sup>6</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>7</sup> United Nations, *A United Nations Priority* (visited October 8, 2004) <<http://www.un.org/rights/HRToday/declar.htm>>.

<sup>8</sup> For example, governmental distinctions based on race, birth, etc. prohibited by the ICCPR in Articles 2 and 26 are understood by the U.S. to be acceptable distinctions if they are “at minimum, rationally related to a legitimate governmental objective . . .”

<sup>9</sup> International Covenant on Civil and Political Rights (hereinafter ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, article 7. General Comment No. 28 states, “To assess compliance with article 7 of the Covenant . . . the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape . . . The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.” *General Comment 28, Equality of Rights between Men and Women*, U.N. Human Rights Committee, 68th Sess. (2000), para. 11.

<sup>10</sup> ICCPR, article 9. General Comment No. 8 interprets the applicability of this right broadly, applying much of the article to deprivations of liberty for reasons other than criminal cases, such as “mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” *General Comment 8, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Human Rights Committee, 16<sup>th</sup> Sess. (1982), U.N. Doc. HRI/GEN/1/Rev.6 at 130 (2003), para. 1.

<sup>11</sup> ICCPR, article 10. General Comment No. 21 states that, “Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally *applicable* rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Comment also invites states to utilize the Standard Minimum Rules for the Treatment of Prisoners when officially reporting on how they treat prisoners, and states that the role of the penitentiary system should never be only retributory, but

equal before the court, and, in addition, provides for adequate understanding of criminal charges and access to legal assistance.<sup>12</sup> These Articles are useful in addressing sex workers' experience with police violence, the lack of police response to violence, and the overall criminal justice system.

- *Samantha deals with police harassment and threats of violence on a regular basis. Because she sometimes works from the streets and other times works out of a local massage parlor, local police officers know who she is and often threaten her with arrest (and several times have arrested her) even when she is not engaging in sex work—for example, when she goes to the local store or to visit a friend. Officers have physically abused her or threatened her with physical abuse on several occasions. Twice, an officer has demanded a sexual act in exchange for letting her go. Samantha has not reported these incidents to the police because she is frightened of them and is worried that it will get back to the officers who committed the crimes, with whom she deals on an almost daily basis. When she experiences violence or robbery at the hands of customers or in her own personal life, she also does not bother reporting this to the police. The one time she attempted to report a beating and robbery, officers told her that she should expect as much in her line of work and that she was lucky that they did not arrest her. Her experiences with the criminal justice system have left her confused as to what her criminal record is and what her legal rights are. She is usually told by her public defense attorney to plead guilty in order to be released quickly, but is often unsure what the ultimate conviction is for and if she has any outstanding warrants for missed community service sentences.*

### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Like the ICCPR, the ICESCR spells out in more detail the economic, social, and cultural rights originally recognized in the U.N. Declaration of Human Rights. The United States has signed, but not ratified, the ICESCR. The Covenant is useful in exploring the connection between specific problems facing sex workers and their right under the ICESCR to enjoy a standard of living that provides for food, housing, health, and education. Whether it is in accessing the services that sex workers need while engaged in sex work, or those services necessary to successfully leave sex work, the ICESCR highlights the failures of our social service system in providing a safety net for sex workers.

Article 6 recognizes the right to work, elaborating that states should take steps that “include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”<sup>13</sup> Article 11 guarantees “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>14</sup> These Articles relate to the frustration that many sex workers express with respect to difficulty in finding a job that pays them a living wage.

Article 12 sets out the right to the “highest attainable standard of physical and mental health” including “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>15</sup> Finally, Article 13 describes the right to education.<sup>16</sup>

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“should essentially seek the reformation and social rehabilitation of the prisoner.” *General Comment 21, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Human Rights Committee, 44<sup>th</sup> Sess. (1992), U.N. Doc. HRI/GEN/1/Rev.6 at 153 (2003), paras. 4 and 10.

<sup>12</sup> ICCPR, article 14.

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, article 6.

<sup>14</sup> ICESCR, article 11. General Comment No. 4 states that the human right to adequate housing is imperative for the “enjoyment of all economic, social and cultural rights.” It is not simply a right to basic shelter, but a right to live in “security, peace and dignity.” Particularly of importance for sex workers and their need for stable and secure housing, the Comment highlights the right to be free of “forced eviction, harassment and other threats” that “endanger the legal security of tenure.” *General Comment 4, The right to adequate housing*, Committee on Economic, Social and Cultural Rights, 16<sup>th</sup> Sess. (1997), para. 1, 7, and 8(a).

<sup>15</sup> ICESCR, article 12. This right is subject to its own lengthy General Comment that interprets the right to health broadly and in connection to the needs of particularly vulnerable groups. *General Comment 14, The right to the highest attainable standard of health*, Committee on Economic, Social and Cultural Rights, 22<sup>nd</sup> Sess. (2000).

<sup>16</sup> ICESCR, article 13. General Comment No. 13 recognizes this right as “an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children

- *Maria grew up in a poor neighborhood and did not complete high school. She worked numerous jobs in the service industries, ranging from waiting tables to clerical work, but was unable to make a living wage. She has suffered from severe depression for most of adulthood and has recently been battling diabetes, but has not had health insurance to access treatment. Since the depression and diabetes has worsened, she has started using drugs and alcohol quite seriously. Maria had been living doubled-up with a friend, but become homeless when the friend was evicted. She began engaging in sex work when she realized she could not get by on service industry salaries, though she wanted to go to school to become a medical assistant. She has since become increasingly involved in street-based sex work and her drug and alcohol problems have worsened. She has not been able to access treatment programs because subsidized programs are in short supply and she does not know who to talk to about finding a program. She stays in Single Room Occupancy hotels some nights, but often sleeps on the streets.*
- *Lydia lives in a working class neighborhood and began working in a massage business (where she occasionally engages in sex work) when she could not afford rent and money to feed and support her children on her secretary's salary. She occasionally works for a local escort service. Lydia has a chronic disease that is exacerbated by her lack of health insurance and regular health care. Last month she visited the emergency room and was given emergency surgery to save her life. Lydia now owes the hospital more than eighty thousand dollars. She is afraid to apply for Medicaid, due to her illegal sources of income. She also assumes correctly that she will not qualify, given that the income eligibility for Medicaid is very low, and her unlawful income is higher than this Medicaid threshold. After her landlord found out about Lydia's recent arrest for practicing massage without a license, she is at risk of losing her housing.*

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>17</sup>**

The Convention against Torture (CAT), ratified by the United States in 1994, is concerned with torture by government agents or agents acting with government sanction; importantly, it interprets state agents engaged in misconduct (e.g. physical abuse by the police, including sexual assault)<sup>18</sup> to be subject to the CAT. Article 10 of the CAT ensures that states correctly educate state agents, such as law enforcement personnel, as to the prohibition against torture.<sup>19</sup>

The U.N. Committee against Torture addressed some of the issues relevant to sex workers' experience with police abuse in an official reaction to a United States' report on its CAT progress. The Committee expressed ongoing concern for "the number of cases of police ill-treatment of civilians," and "alleged cases of sexual assault upon female detainees and prisoners by law enforcement officers and prison personnel." It continued, "Female detainees are also very often held in humiliating and degrading circumstances," and recommended that the U.S. "take such steps as are necessary to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification."<sup>20</sup>

- *Jamie was raped by a police officer while in custody for a prostitution arrest. None of the few officers to whom she reported the rape took the situation seriously or reported the incident. Jamie still sees the officer working in her neighborhood regularly.*
- *Satoko, who is a transgender male-to-female sex worker, was recently arrested. When she was brought into the police station for processing, officers argued over who would be forced to search Satoko's person, complaining that the "she-*

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can lift themselves out of poverty and obtain the means to participate fully in their communities." Education, the Comment notes, is key to empowering women and to helping prevent sexual exploitation of children. *General Comment 13, The right to education*, Committee on Economic, Social and Cultural Rights, 21<sup>st</sup> Sess. (1999), para. 1.

<sup>17</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, article 1.

<sup>18</sup> Conclusions and Recommendations of the Committee against Torture, United States of America, U.N. Doc. A/55/44, paras. 175-80, (2000).

<sup>19</sup> CAT, article 10.

<sup>20</sup> *Supra*, note 18.

*male” was disgusting. Officers placed Satoko in the male holding cell, even though Satoko identifies and dresses as a female and is designated a female on her driver’s license. She was harassed by other incarcerated males and police officers; one officer grabbed Satoko’s genitals and made degrading remarks about her transgender status.*

## **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)<sup>21</sup>**

As stated by Human Rights Watch, “CEDAW defines what constitutes discrimination against women and sets a framework for national action to end such discrimination.”<sup>22</sup> The United States has signed, but failed to ratify, CEDAW, to the great chagrin of many human rights and women’s rights organizations.<sup>23</sup> Some cities, including San Francisco, have enacted local ordinances to enact CEDAW. In New York City, the New York City Human Rights Initiative has proposed legislation that draws from broad human rights principles as well as from the two key international treaties addressing gender and race discrimination—CEDAW and CERD (the Convention on the Elimination of All Forms of Racial Discrimination), respectively.<sup>24</sup>

The U.N. Committee on the Elimination of all forms of Discrimination Against Women, a committee of experts that oversees the progress of women in countries that are the States Parties to the CEDAW, authored General Recommendation No.19 in regards to violence against women. This Recommendation interprets discrimination under CEDAW to include gender-based violence<sup>25</sup>, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

Article 6 of the CEDAW requires states to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.<sup>26</sup> General Recommendation No. 19 elaborates on the specific dangers of prostitution and the impetus behind it.<sup>27</sup>

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<sup>21</sup> Convention on the Elimination of all forms of Discrimination against Women (hereinafter CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

<sup>22</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>23</sup> The United States and Monaco are the only countries in Europe and North America who have not ratified CEDAW. Human Rights Watch writes, “Although the United States has long claimed to be at the forefront of the women’s rights movement, failing to ratify CEDAW hurts women in the U.S. and diminishes the U.S.’s credibility when it critiques other countries’ records on women’s rights. By ratifying CEDAW, the U.S. would send a strong message that it is serious about the protection of women’s human rights around the world. Ratification would also enable the U.S. to nominate experts to the CEDAW Committee, and thereby be in a position to take part in interpreting CEDAW.” *Id.*

<sup>24</sup> The New York City Human Rights Initiative is a coalition coordinated by the Human Rights Project at the Urban Justice Center, Legal Momentum, ACLU Women’s Rights Project, Amnesty International USA Women’s Human Rights Program, and the Women of Color Policy Network/Roundtable of Institutions of People of Color. The legislation would give the city practical tools to better assess how its policies affect New Yorkers, promote equality by stopping discrimination before it happens, and give city residents a greater say in solving the problems facing their communities. The legislation was introduced in New York City Council on December 7, 2004 as Intro 512. The New York City Human Rights Initiative is a citywide coalition of community-based organizations, legal advocacy groups, policymakers and human rights activists and educators, working to address systemic problems of inequality in New York City using the vision and tools of the human rights system.

<sup>25</sup> General Recommendation 19, Violence against Women, Committee on the Elimination of all forms of Discrimination against Women, 11<sup>th</sup> Sess. (1992), paras. 6 and 7. The Recommendation notes that gender-based violence is discriminatory under Article 1 of CEDAW if it impairs or nullifies the women’s enjoyment of human rights and fundamental freedoms under international law or human rights conventions that include the right to life, the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to equal protection, the right to highest standard attainable of phys and mental health, and the right to just and favorable conditions of work.

<sup>26</sup> CEDAW, article 6.

<sup>27</sup> General Recommendation No. 19 states, “Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.” *Supra*, note 25, para. 14.

The CEDAW Committee's Conclusions and Recommendations in response to a report by Germany on its progress under CEDAW highlights the CEDAW's relevance for sex workers. Specifically, in response to Germany's Act Regulating the Legal Situation of Prostitutes, which gave prostitutes in Germany more access to social insurance and the actionable right to an agreed wage, the Committee was concerned that, "although they are legally obliged to pay taxes, prostitutes still do not enjoy the protection of labour and social law. The Committee recommends that the Government improve the legislative situation affecting these women so as to render them less vulnerable to exploitation and increase their social protection."

To help effectuate implementation of the CEDAW and further define violence against women, the U.N. General Assembly adopted the Declaration on the Elimination of Violence against Women. This Declaration states that violence against women encompasses physical, sexual, and psychological violence like rape or intimidation, and also "trafficking in women and forced prostitution."<sup>28</sup> Also relevant to sex workers is the Declaration's recommendation that states ensure that law enforcement officers and public officials who are responsible for preventing, investigating, and punishing violence against women "receive training to sensitize them to the needs of women,"<sup>29</sup> and that states focus in general on eliminating "violence against women who are especially vulnerable to violence."<sup>30</sup>

### **International Convention on the Elimination of all forms of Racial Discrimination (ICERD)**

The ICERD, which was ratified by the United States in 1994, requires that States Parties to the Convention condemn racial discrimination and pursue policies that would eliminate all forms of racial discrimination based on race, color, descent, or national or ethnic origin. Many sex workers are of minority race or ethnicity or foreign birth; roughly half of the sex workers in this study are non-white and roughly one-third were not born in the United States. Article 5 guarantees that all are equal in their rights before the law, and specifically guarantees equality in regards to the civil, political, economic and social rights discussed in above sections.<sup>31</sup> In addition, while ICERD allows states to draw distinctions between citizens and non-citizens, this is not meant as a tool to restrict the rights of aliens protected under other treaties, such as the International Covenant on Civil and Political Rights and the Migrant Worker's Convention.<sup>32</sup>

### **U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol)**

Some people who engage in sex work have been the victims of trafficking.<sup>33</sup> The Trafficking Protocol is a supplement to the U.N. Convention against Transnational Organized Crime, which the United States has signed, but not ratified. Together these two documents include standards relevant to people who are trafficked.<sup>34</sup>

While the U.S. has created its own specific domestic trafficking legislation (the TVPA), the main emphasis of both the U.S. legislation and the U.N. Trafficking Protocol is as a law enforcement instrument focused

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<sup>28</sup> Declaration on the Elimination of Violence Against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), article 2.

<sup>29</sup> *Id.*, article 4(i).

<sup>30</sup> *Id.*, article 4(l).

<sup>31</sup> International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, article 5.

<sup>32</sup> Satterthwaite, *supra* note 1, at 36.

<sup>33</sup> Whether they knew that they were being trafficked for the purpose of sex work and were subject to treatment or conditions they did not expect, or whether they were totally misled as to the type of work for which they were being trafficked—both cases fall under the Trafficking Protocol.

<sup>34</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001). For more information on the Trafficking Protocol, see Global Rights (formerly the Human Rights International Law Group), *Annotated Guide to the Complete U.N. Trafficking Protocol*, (visited Oct. 8, 2004) <[http://www.globalrights.org/site/DocServer/Traff\\_AnnoProtocol.pdf?docID=203](http://www.globalrights.org/site/DocServer/Traff_AnnoProtocol.pdf?docID=203)>.

on combating perpetrators, and less as a guarantee of the human rights of trafficking victims.<sup>35</sup> However, the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*,<sup>36</sup> promulgated by the U.N. High Commissioner on Human Rights emphasize that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.” These Principles and Guidelines give important context to a reading of the Trafficking Protocol. Generally, the Guidelines state that a government should not adopt measures that violate the human rights of trafficking victims in its efforts to combat trafficking.<sup>37</sup>

- *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.*

### **U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention, or MWC)**

The Migrant Workers Convention is also useful in addressing the rights of non-citizens engaging in sex work in the United States. It recognizes the right to leave any state, the right of the individual to return to his or her state of origin, and the right to move freely within a state when he or she is there legally.<sup>38</sup> The Migrant Workers Convention notes the vulnerability of these workers and recognizes, among other rights, their right to liberty and security of person and their right to “effective protection by the State against violence, physical injury, threat and intimidation, whether by public officials or by private individuals, groups or institutions.”<sup>39</sup>

- *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 INS 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.*

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<sup>35</sup> However, Section II, Articles 6-8, deal specifically with *Protection of victims of trafficking in persons*. *Id.* articles 6-8.

<sup>36</sup> United Nations High Commissioner for Human Rights, Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1 (2002). Guideline No. 6 concentrates on the specific protection and support for trafficking victims that states must ensure.

<sup>37</sup> The Principles and Guidelines notably state that “States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made condition upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.” *Id.* para. 8.

<sup>38</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), *entered into force* July 1, 2003, article 8.

<sup>39</sup> *Id.*, article 16, para. 2.

## Standard Minimum Rules for the Treatment of Prisoners

These Standards address states' treatment of people deprived of their liberty in both a criminal or a civil context.<sup>40</sup> While these standards are not binding, U.N. Committees have looked to them for guidance in interpreting U.N. treaties. Thus, these Standards are seen as persuasive, and may be considered a source of international customary law.<sup>41</sup> Many sex workers experience multiple arrests and some experience longer-term incarceration.

The Standards note that the “purpose and justification of a sentence of imprisonment . . . is to protect society against crime. This can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.” Thus, the institution should utilize all the “remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of prisoners.” In order for treatment to “encourage self-respect and develop a sense of responsibility . . . all appropriate means shall be used . . . including education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of moral character,” which should be tailored to individual needs of the prisoner. In addition, special attention should be paid to a prisoner’s future after release, e.g. maintaining a relationship with family and establishing relationships with agencies outside of the institution that might provide the best help for family and social rehabilitation.

- *Renee 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 is supposed to use arrest as a gateway to services for people like Renee. She suffers from substance dependency, homelessness, racial discrimination, and a lack of education and marketable job skills. She 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.*
- *Paula received a longer jail sentence after her most recent arrest for prostitution. While incarcerated, she lost custody of her daughter and has fallen out with her family. She has not received any job training or counseling that addresses a possible transition out of sex work. Paula has no plans regarding where to go or what to do once she is released.*

## International Human Rights Standards

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987.

Convention on the Elimination of all forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

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<sup>40</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), para. 4.

<sup>41</sup> “In subsequent resolutions in 1971 and 1973, the United Nations urged its members to adopt and incorporate these rules into their national legislation and ‘to make all possible efforts to implement the Standards.’ These standards, while non-binding, are a source of international customary law.” Taken from Martin A. Greer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law—A Case Study of Women in United States Prisons*, 13 Harvard Human Rights Journal 71 (2000). Some U.S. Courts have looked to the Standard Rules as instructive in evaluating treatment of prisoners. See, e.g., *Lareau v. Manson*, 651 F.2d 96, 106-107 (2<sup>nd</sup> Cir. 1981).

International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), *entered into force* July 1, 2003.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).