

Questionnaire on human rights challenges and responses in the context of HIV and AIDS

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Civil Society Section, Office of the United Nations High Commissioner for Human Rights,
via email to HR&HIVconsultation@ohchr.org

This report was prepared by the Best Practices Policy Project with support from the following organizations working with sex workers, people in the sex trade and other groups in the United States: the Desiree Alliance, Bayswan, Women with a Vision, HIPS, Madre Tierra, St James Infirmary, SWOP-USA, SWOP-Tucson, SWOP-NYC and SWANK, SWOP-Colorado, SWOP-Chicago and other organizations.

This report was submitted under the following process. Human Rights Council resolution 12/27 "The promotion and protection of human rights in the context of the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)", in paragraph 17, requested the Secretary General to prepare "an analytical study based on comments from Governments, United Nations organs, programmes and specialized agencies, particularly the Joint United Nations Programmes on HIV/AIDS and its co-sponsor agencies, in cooperation with relevant bodies of the United Nations system, including the Office of the High Commissioner and international and non-governmental organization, on the steps taken to promote and implement programmes to address HIV/AIDS-related human rights".

1. **General.** *Are human rights, including but not limited to the rights to non-discrimination, privacy, health, education and information, explicitly incorporated in your existing national plan or national strategy on HIV and AIDS? Please cite the relevant text.*

The United States has only recently in July 2010 released a national HIV/AIDS strategic plan.¹ The plan acknowledges issues confronted by drug users and mentions (but does not explicitly prioritize) the importance of access to safe injecting equipment; prioritizes the prevention needs of gay and bisexual men and transgender people; and highlights the importance of racial and other disparities in the United States as important drivers of the epidemic. In terms of reducing stigma and discrimination, the plan recommends that policy makers "ensure that laws and policies support our current understanding of best public health practices for preventing and treating HIV."² However, the plan makes no mention of the barriers faced by sex workers and people in the sex trade, nor are these groups listed in prevention and treatment priorities.

It is also important to note that until recently national planning to address HIV/AIDS in the United States (which is a federation) has been extremely weak. More policy work has occurred in regards to international aid and immigration issues. Much planning and policy development about how to practically address HIV/AIDS concerns has taken place at either state or local levels.

¹ *National HIV/AIDS Strategy for the United States* (Office of National AIDS Policy, July 2010), <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

² *Ibid.*, 36.

2. Challenges: main human rights challenges in the realization of universal access to HIV prevention, treatment, care and support

2.1. Identify at least 3 key human rights challenges and the population groups particularly affected by these challenges.

The following three human rights challenges affect sex workers, people in the sex trade and people who are often profiled as prostitutes by the police even if they are not engaged in sex work (such as transgender people, immigrants, low-income people of color, youth of color).

- The policing of anti-prostitution laws, related policies and by-laws prevents sex workers and related communities from protecting themselves from HIV and from receiving holistic and rights based services to treat and prevent HIV.
- Mandatory HIV testing of people arrested on prostitution and prostitution related offenses violates the human rights of many and the imposition of higher penalties (including felonies) on people who are said to be engaging sex work while living with HIV punishes already vulnerable communities.
- Globally US policies, such as the “anti-prostitution” pledge, undermine services and support for sex workers. Similar policies within the United States do the same.

2.2 For each of the three key challenges identified, describe: (i) the main causes of these challenges, (ii) the actors that have a role to play in addressing these challenges and, (iii) the factors that may prevent them from taking effective action (capacity and institutional gaps).

1. Human rights abuses in regards to HIV due to policing

Policing in the United States directly undermines the ability of sex workers to protect themselves from HIV infection and, in a broader sense, alienates these communities from the support needed to defend their health and rights. Sex workers, and people the police assume to be sex workers, are harassed, assaulted, sexually assaulted, extorted, and falsely arrested by police.³ The law enforcement practice of using condoms as evidence and/or destroying condoms and safe sex materials directly contravenes efforts to halt the spread of HIV in the United States.⁴ The actors who can address these challenges include sex workers, organizations of sex workers, allied organizations working in harm reduction, and human rights based organizations. The major challenges preventing these groups from taking effective action to address these human rights abuses include a) the stigma and discrimination associated with sex work that prevents many groups from openly supporting sex workers; b) advocacy capacity building for sex workers and their organizations; and c) fear of reprisals from law enforcement on vulnerable communities.

2. Mandatory HIV testing of people arrested on prostitution and prostitution related offenses and harsh penalties for engaging in prostitution while living with HIV

³ See for example, Alliance for a Safe and Diverse D.C., *Move Along: Policing of Sex Work in Washington, D.C.* (Alliance for a Safe and Diverse D.C., 2008); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* (New York: Amnesty International Publications, 2005).

⁴ Melissa Sontag and Rachel Grinstein, “New York’s “No Condoms As Evidence” Bill: Exploring its Rationale & Advocacy” (presented at the Working Sex: Power, Practice, and Politics, Las Vegas, Nevada, July 26, 2010).

People arrested for solicitation or other prostitution charges in many jurisdictions in the United States are mandated to test for HIV.⁵ People testing positive face significant penalties and incarceration, even if they used condoms and engaged in less risky forms of sex with their partners. Information about their HIV status (sometimes accompanied by photographs of them) is often distributed widely in the media placing them at great risk of retaliation and other abuse. The actors who can address these challenges include sex workers; organizations of sex workers, allied organizations working in harm reduction, networks of people living with HIV and human rights based organizations. The major challenges preventing these groups from taking effective action to address these human rights abuses include a) the stigma and discrimination associated with sex work that prevents many groups from openly supporting sex workers; b) advocacy capacity building for sex workers and their organizations; c) fear of reprisals from law enforcement on vulnerable communities.

3. US policies, such as the “anti-prostitution” pledge

U.S. anti-trafficking policies undermine the health and rights of sex workers both domestically and internationally by requiring that organizations seeking funding adopt a policy against sex work (“anti-prostitution pledge”). This requirement is applied to international and almost all U.S.-based organizations seeking funds from the President's Emergency Plan for AIDS Relief (PEPFAR). Organizations within the U.S. have also been subject to the pledge under the Trafficking Victims Protection Reauthorization Act.⁶ These restrictions mean that many organizations are confused about what kinds of services they can provide to sex workers and have, in some situations, lead to excellent harm reduction services being shuttered.⁷

3. Response

3.1. Please describe key legal, policy, programming, budgeting or other measures in place to address the challenges faced by those groups or populations more severely affected by HIV, as well as the measures being taken to overcome the capacity and institutional gaps described in question 2.

Sex workers are not a priority in official documents and no federal policy measures exist to overcome the capacity and institutional gaps described in question 2. The National HIV/AIDS Strategy makes no mention of sex workers.⁸ The document emphasizes targeting resources to “vulnerable populations,” but this emphasis refers to gay and bisexual men, African-Americans and Latinos.

⁵ see for example, Dave Nether, “Local Woman With HIV Arrested For Prostitution,” *Fox 8 News*, March 2, 2010, <http://www.fox8.com/news/wjw-hiv-prostitute-txt,0,1938597.story>; Karen Bastow, “Prostitution and HIV/AIDS,” *HIV/AIDS Policy and Law Newsletter* 2, no. 2 (1995), <http://www.walnet.org/csis/papers/bastow-aidslaw.html>.

⁶ Recent policy changes now allow groups to say that they have no policy on prostitution and will remain “neutral” on this issue during the term of the grant.

⁷ Anna-Louise Crago, *Our Lives Matter: Sex Workers Unite for Health and Rights* (New York: Sexual Health and Rights Project, Open Society International, 2008).

⁸ *National HIV/AIDS Strategy for the United States*.

3.2 Please indicate whether affected persons participated in the design, implementation and evaluation of these policies, programmes or measures. If so, please describe the participation process.

Sex workers and organizations working with them do have some representation on local HIV prevention planning councils in some parts of the United States. This has meant that in some HIV planning processes better programming for sex workers has been promoted and has received support at the state level. This kind of inclusion should be prioritized and barriers (such as stigma, discrimination, laws and policies that allow for human rights abuse of sex workers) to these communities' participation in addressing the HIV/AIDS epidemic in the United States should be reduced.

4. Achievements

What are your most significant human rights achievements in the national HIV response? Please describe briefly how these achievements came about and the lessons learnt from the experience.

The recognition of the specific needs of transgender people and drug users in the United States is a significant advance for the United States. The recognition of law and policy barriers to HIV prevention and access to treatment services is also an advance.