

Input from the Black Sex Worker Collective, Best Practices Policy Project, the Outlaw Project, Desiree Alliance and New Jersey Red Umbrella Alliance for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers”

Date: 4 Dec 2020

In 2011 the United States accepted UPR Recommendation 86, requiring it to take action to address the vulnerability of sex workers and transgender people to violence and human rights abuses. The United States has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Yet, the U.S pursues policies that directly contradict these commitments, specifically targeting Black sex workers--sex workers of African descent--with excessive use of force and other human rights violations by law enforcement officers. The United States has also put in place new federal laws that silence online communication about health and rights of sex workers and prevent sex workers from organizing. These policies deeply limit the right to association and assembly and right to health (through sharing information) of Black sex workers, in particular Black trans sex workers.

Context: People involved in sexual trade or sex work in the U.S. are found in a wide array of settings, perform a variety of services, and communicate with clients through social media, clubs, on the street, advertisements, and the internet. They include people of all gender identities who work in clubs, in brothels, in their or others' homes, in hotels, outdoors, and other spaces. While sex work is stigmatized and aspects of it criminalized, street-based or outdoor workers, transgender or gender non-conforming people, people of color (in particular Black sex workers), migrants, youth, and incarcerated sex workers, consistently bear a particularly heavy burden of law enforcement abuse and harassment, institutional discrimination, and violence. Sex workers as well as their families are targeted due to the illegal status of sex work and because of laws against “pimping” or living off the earnings of a sex worker. In instances where a sex worker is the primary breadwinner, sex work offers a means of survival. Every person has the right to make a living and to survive under capitalism. The U.S.' policies are hostile to human rights, violating in particular the rights of migrants and transgender people.

Legal and Institutional Framework: Criminal prohibition of prostitution, whether monetary, trade, or survival, exists in all fifty states (with the exception of some counties in the state of Nevada, where it is heavily regulated). Some forms of sexual commerce, such as dancing, may not be prohibited by state legislation but are almost always heavily regulated by state and municipal policies, which may, for example, mandate registration through a law enforcement database. Many other laws are used to criminalize the lives of sex workers including restrictions on being in public space (anti-loitering, anti-camping, and trespass statutes) and providing services such as massage “without a license.” In 2018 the U.S. passed federal restrictions via the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) limiting the sharing of vital safety information for sex workers online and causing economic harm and social marginalization. Online platforms shuttered by these laws were essential to ensuring sex workers’ control over their advertising and clientele. They offered an affordable platform that, when used in conjunction with other verification methods, decreased the risk posed to sex workers on the job. The changes brought about by SESTA/FOSTA shuttered websites pushing sex workers into less safe spaces in order to attract clients. “A lot of the tools that I used to engage with people are not up and if they are I don't trust them. The ability to screen clients is gone as is the ability to have community, the forums have gone down ... These issues for sex workers of color are more intense. The first people affected by SESTA/FOSTA were those on free or low cost online platforms, which were primarily low income people of color.”

Violations by Law Enforcement: Research shows that in jurisdictions in the U.S., Black sex workers at times make up the overwhelming majority of people arrested under loitering and anti-prostitution statutes (in some cases more than 90%). Policing specifically targets Black sex workers with extreme violence and rights violations but this is often not highlighted as Black sex workers are considered disposable and violations against Black sex workers are accepted as ‘routine’. Sex workers’ greatest fear is abuse by law enforcement and other state agents. Our organizations have documented a pattern of practice by police towards sex workers which includes but is not limited to: assault, sexual harassment, public “gender searches” (police strip searches for the purpose of viewing genitalia), trafficking and rape, that constitutes torture and cruel, inhuman and degrading treatment. It is often extremely difficult or impossible for sex workers to access justice in these cases.

Black sex workers and Black transgender people are surveilled in public space. Statutes and policies mandating the “banishment” of people from certain areas or eroding the reasonable suspicion standard for arrest and conviction violate due process rights. Law enforcement officials routinely invoke such concepts to threaten people they profile as sex workers--often using race as part of this profiling--subjecting them to degrading and violent treatment such as removal of wigs or clothing, confiscation or destruction of property, and verbal abuse including homophobic, anti-transgender, and racist slurs and sexual harassment. The U.S. government is engaged in a sustained campaign to roll back the

rights of transgender people, worsening already pervasive gender and racial profiling of Black transgender women of color, Black transgender men and gender non-conforming people across the country. Trans people, especially those of African descent, are profiled, targeted, harassed, cited and/or falsely arrested by the police as sex workers for simply walking outside.

Specific Recommendations

We recommend that the United States:

- Cease the racist profiling of Black people, vigorously investigate police misconduct and put an end to policing practices targeting Black sex workers.
- Vigorously investigate and put an end to policing practices targeting transgender people of African descent.
- End the criminalization of Black sex workers lives by repealing federal laws, federal, state, and local laws that criminalize sex work, and eliminate anti-prostitution policies that undermine protection for human rights of sex workers. At a minimum, the US should immediately stop arresting and incarcerating people in sex trades.
- Repeal legislative barriers, including FOSTA/SESTA, that violate the freedom of assembly and association of sex workers so that they may organize in defense of their health and rights. Stop the passage of the EARN IT ACT.
- Demilitarize and defund police, border agents, and other state agents who are using military grade armaments against vulnerable populations such as sex workers, immigrants and transgender people, and protestors.

For additional information about the information provided here, please view these full reports:

<http://www.bestpracticespolicy.org/2020/10/19/updated-upr-statement/>

http://www.bestpracticespolicy.org/wp-content/uploads/2019/10/SWCoalition_UPR36_USA_2019.pdf

http://www.bestpracticespolicy.org/wp-content/uploads/2013/01/CERD_Shadow_Report_BPPP-SAS-TVAP.pdf