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February 23, 2011

To:

Michael Posner
Assistant Secretary of State
Bureau of Democracy
Labor and Human Rights
U.S. Department of State

Harold Hongju Koh
Legal Adviser
Office of Legal Adviser
U.S. Department of State

David Sullivan
Attorney-Adviser
Office of the Legal Adviser
U.S. Department of State

Scott Busby
Director for Human Rights
Office of Multilateral Affairs
and Human Rights
National Security Council
The White House

Re: Responding to the United Nations Human Rights Council

Dear Mr Posner, Mr. Koh, Mr. Sullivan and Mr. Busby,

We are writing from the Sex Workers Project at the Urban Justice Center (SWP), the only legal and social services organization in the U.S. that specifically serves sex workers, to encourage the U.S. State Department to ACCEPT Universal Periodic Review recommendation #92.86.

SWP represents individuals who are involved in the sex industry, whether they became involved by choice, because of their limited circumstance, or because of force, fraud or coercion. We see around 150 clients per year, and around half of our clients are survivors of human trafficking. Therefore, we have the opportunity to work on the myriad legal and policy issues that affect those involved in commercial sex, including violence, abuse and harassment; employment and housing discrimination; criminal arrest and conviction; and difficulty regularizing immigration status. We also provide trauma counseling, psychotherapy and case management to our clients, whose mental health needs would

otherwise go unmet. Our clients include minors and adults, men, women and transgender people, immigrants and citizens. SWP has been recognized as an expert in best practices providing services to sex workers and survivors of trafficking in the ten years since its founding.

In Universal Periodic Review recommendation #92.86, member state Uruguay called on the United States to “ensure access to public services paying attention to the special vulnerability of sexual workers to violence and human rights abuses.” We write this letter to strongly urge the State Department to accept this recommendation. Sex workers are members of families and communities in all parts of the United States. The rights to life, safety, free speech, political action, health, and education, guaranteed in the Universal Declaration of Human Rights and the International Covenant on Economic and Social Rights, are as important to sex workers as to anyone else. Unfortunately, sex workers in the United States are subject to widespread abuses of civil and human rights. Accepting this recommendation would demonstrate that the United States is ready to lead in the arena of human rights, and would be meaningful as there are many reforms the Federal Government can undertake to pursue its implementation. Below we have outlined areas where the United States falls short of ensuring human rights to sex workers, based on 10 years of research and client testimony.

1. Address the Harms of State Level Criminalization of Prostitution

Sex work is almost universally criminalized in the United States, with those actually providing sexual services experiencing the majority of arrests. People of color from the lowest income communities are disproportionately targeted by the police. Transgender women are profiled, targeted, and falsely arrested by the police as sex workers for simply walking outside. Arrest and subsequent conviction for prostitution and prostitution-related offenses makes it more difficult for sex workers to obtain stable housing or employment. It is clear that criminalization has failed to eliminate the sex industry or abuses and harms against sex workers; in fact, sex workers are more vulnerable to violence where they are forced to work underground. The United States government has not adequately studied or attempted to remedy the negative effects of criminalization on the human rights of vulnerable sex workers.

2. Improve Police Response to Violence against Sex Workers, Eliminate Police Brutality Towards Sex Workers

It is indisputable that sex workers, especially street-based sex workers, face extraordinarily high rates of violence, harassment and abuse. This abuse is magnified by the fact that many of sex workers fear arrest, further victimization and abuse by police if they come forward to report crimes. A qualitative study that we conducted of 30 street-based sex workers in New York City in 2003, entitled “Revolving Door,” supports this conclusion.¹ One woman said that the police dismissed her rape complaint, stating “you

¹ Urban Justice Center, Sex Workers Project (2003), *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, available at: www.sexworkersproject.org/downloads/RevolvingDoor.pdf.

shouldn't have been out there in the first place.”² Thirty percent of all interviewees had been threatened with violence by police, and twenty-seven percent had been subject to physical and/or sexual violence by police.³ Transgender workers reported police checking their genitals and making comments about their gender status.⁴ The United States has not adequately trained or monitored incidents of police misconduct towards sex workers, or ensured that sex workers can report crimes to law enforcement without fear.

3. Address Impact of Anti-Trafficking Polices on Human Rights of Sex Workers

At the Sex Workers Project we serve both survivors of trafficking and sex workers who engage in commercial sex for other reasons, including to meet survival needs. Unfortunately, some current policies that seek to end human trafficking adversely impact the rights of all of our clients. Our 2009 study, “The Use of Raids to Fight Trafficking in Persons,”⁵ found that crackdowns on prostitution often result in arrests of unidentified trafficked individuals, and violations of their human rights.⁶ Some anti-trafficking initiatives have resulted in large scale arrests and possible deportation of sex workers and unidentified trafficked persons as collateral damage. Finally, the law contains a requirement, infamously known as the “anti-prostitution pledge,” that all federally funded anti-trafficking service providers pledge not to help sex workers, and not to speak about different legal approaches to prostitution. The United States must address the unintended negative effects of some current approaches to human trafficking.

4. Increase Access to Healthcare, Especially HIV/AIDS Treatment and Prevention

In our research and experience, one of the most pressing needs sex workers identify is access to appropriate healthcare. Sex workers often have negative experiences with health care providers because of negative attitudes towards sex workers. Our federal policies do not effectively address the fact that sex workers may be at increased vulnerability to HIV transmission and other health risks. In fact, the U.S. National HIV/AIDS Strategy does not include sex workers as an at risk population, resulting in a lack of prevention and harm reduction services for this community. Instead, several policies actually work against sex workers' efforts to protect themselves and the public health. The formerly mentioned “anti-prostitution pledge” requirement also applies to U.S. Global AIDS recipients, blocking organizations that support sex workers from receiving aid. Some states disproportionately punish sex workers who are HIV positive through increased criminalization, and state and local police regularly confiscate condoms for use as evidence in prostitution cases. Through these polices, the United States has been working against best practices for providing healthcare and preventing HIV transmission.

² Id. At 47.

³ Id. At 7.

⁴ Id.

⁵ Urban Justice Center, Sex Workers Project (2009), *The Use of Raids to Fight Trafficking in Persons*, available at: <http://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-exec-summary.pdf>.

⁶ Id. at 2-3.

5. Prevent Discrimination Against Sex Workers

Because of criminalization, sex workers are often unable to access benefits that could help them have more opportunities. For example, persons with criminal records for prostitution may be barred from public housing, student loans, public benefits, or certification and employment in many different professions, including education, healthcare, financial services, or law. These policies further punish sex workers who have already served their sentences, isolate them from the mainstream and make it more difficult to transition out of sex work.

6. Protect Migrant Sex Workers

Migrants come to this country for a variety of reasons: to flee persecution, to seek a better life for themselves and their families, or because they were forced or trafficked into the country. Migrants with no legal status to work may turn to sex work for survival. This population is especially vulnerable to abuse because they are even less likely to report crimes against them, out of fear of deportation. U.S. law contains special provisions to bar persons with a history of sex work from entering the country or gaining immigration status or citizenship, even when they have no criminal convictions. Green card holders can be deported only for prostitution convictions. These laws exclude sex workers from access to immigration status for which they would otherwise qualify, barring them from legal work authorization and making it more likely that sex work is their only option. These laws also exclude sex workers from participating in dialogues where their rights are at stake: for example, persons with past involvement in sex work will be unable to attend the International AIDS Conference in D.C. in 2012. Sex workers are critical allies in the fight against HIV/AIDS and the loss of their voices will be great disservice to the larger public health community.

The U.S. Federal Government can show progress in addressing human rights abuses against sex workers by 1) accepting recommendation #92.86, and 2) engaging in concrete steps that to minimize human rights abuses. Please do not hesitate to reach out to us for more information about these issues. The Sex Workers Project would be honored to offer our expertise to the process of reform.

Sincerely,

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