

# Human Rights Mechanisms and Follow-Up Advocacy

**Recommendations  
for Sex Workers'  
Rights Advocates**



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# Introduction

This manual was developed as a supplement to the “Smart Sex Worker’s Guide: Rights-Affirming International Policies Relating to Sex Work.” It includes recommendations for effective forms of follow-up advocacy that sex workers’ rights advocates can utilize after engaging with international and regional human rights mechanisms. Engaging with and influencing human rights mechanisms to issue sex workers’ rights-affirming observations, recommendations, reports and judgments is an essential first step in advocacy and the realization of sex workers’ rights; however, follow-up advocacy is a critical (and often overlooked) component of the process.

This manual offers sex workers’ rights advocates practical suggestions on how to engage in comprehensive follow-up advocacy that improves the implementation of decisions made by human rights bodies. By engaging in follow-up advocacy, advocates can take advantage of the human rights mechanisms that are designed to provide them with tools to pressure states into making positive change.

This manual is divided into nine sections covering both international and regional human rights mechanisms. The international human rights mechanisms are: the Committee against Torture; the Committee on the Elimination of Discrimination against Women; the Committee on Economic, Social, and Cultural Rights; the Human Rights Committee; United Nations Special Rapporteurs; and the Universal Periodic Review. The regional human rights mechanisms are: the African Commission on Human and Peoples’ Rights; the European Court of Human Rights; and the Inter-American Commission on Human Rights. Each section covering a human rights mechanism is divided into three parts: (a) documentation of any general comments, concluding observations, recommendations, reports, and/or judgments the human rights mechanism has issued that affirms sex workers’ rights; (b) analysis and examples of the type of follow-up advocacy advocates can engage in to ensure implementation of these affirmations; and (c) a list of practical recommendations for follow-up advocacy methods.

# International Human Rights Mechanisms

**Follow-Up Advocacy**



# Committee against Torture

## BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Committee against Torture (“CAT Committee”) is responsible for enforcing the Convention against Torture (“CAT”), which entitles every person to be free from torture and cruel, inhuman or degrading treatment.<sup>1</sup> The CAT Committee reviews state parties’ compliance with CAT every four years and issues corresponding recommendations in its concluding observations.<sup>2</sup> Non-governmental organizations (“NGOs”) can engage with the CAT Committee by submitting shadow reports that detail human rights abuses in their state when it is scheduled for review.

The CAT Committee has affirmed sex workers’ rights in a number of official observations and recommendations, often in direct response to shadow reports submitted by NGOs. In the CAT Committee’s 2010 concluding observations on Austria, they described abuses of sex workers, such as involuntary medical examinations, as rising to the level of degrading treatment.<sup>3</sup> The CAT Committee drew this conclusion in response to a shadow report submitted by Sex Workers Forum of Vienna, Austria.<sup>4</sup> The report described these examinations as involving humiliating circumstances in which officials took sex workers into the public health office in handcuffs and forced them to undergo vaginal inspections as male police officers watched.<sup>5</sup>

1 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

2 *Monitoring the prevention of torture and other cruel, inhuman or degrading treatment*, U.N. Office of the High Commissioner for Human Rights, available at <https://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx> (last visited Oct. 26, 2018).

3 *CAT, Concluding Observations on the fourth and fifth periodic reports of Austria*, at 8, U.N. Doc. CAT/C/AUT/CO/4-5 (May 20, 2010).

4 Sex-Worker Forum of Vienna, Austria, Submission from Sex-Worker Forum of Vienna, Austria, to the United Nations Committee Against Torture 5-6 (2010).

5 *Id.*

In their 2015 concluding observations on China, the CAT Committee examined the secret detention of sex workers in China (which can last up to two years with no hearing or review by a judge<sup>6</sup>) and stated that such illegal administrative detention is a violation of CAT.<sup>7</sup> This finding was in response to a shadow report submitted by Amnesty International documenting the abuses.<sup>8</sup> After a 2016 visit to Romania, the CAT Committee concluded that a law enabling Romanian police to detain individuals in a police station for 24 hours was unjust, finding that it subjects vulnerable persons, including sex workers, to abuse by security personnel, and deprives them of liberty and access to a lawyer.<sup>9</sup> In its 2017 concluding observations on Rwanda, the CAT Committee addressed the illegal administrative detention of individuals suspected of “prostitution” in so-called “rehabilitation” centers, calling for the abolition of a system that allows arbitrary detention and increases sex workers’ vulnerability to abuse.<sup>10</sup>

In its 2017 concluding observations on Namibia, the CAT Committee expressed concern for the abuse of sex workers by police and medical personnel as well as for the murders of sex workers that have not been investigated or prosecuted.<sup>11</sup> The CAT Committee recommended that Namibia take all necessary measures to prevent police and medical abuse and immediately investigate the unsolved murders.<sup>12</sup> These recommendations were in direct response to the shadow report submitted by Voice of Hope Trust, Rights not Rescue Trust, and the Walter Leitner International Human Rights Clinic.<sup>13</sup>

## FOLLOW-UP ADVOCACY STRATEGIES

Sex worker advocates can pursue multiple methods of follow-up advocacy when the CAT Committee issues sex workers’ rights affirming recommendations. An effective initial method is to use the media to bring attention to the CAT Committee’s recommendations. For example, as a follow-up to their shadow report submission during the CAT Committee’s 2017 review of Namibia, advocates engaged the local Namibian press to publicize their report. The online newspaper article included direct quotes from their report regarding the mistreatment of sex workers and discussed the recommendations.<sup>14</sup>

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- 6 Amnesty International, China: Submission to the United Nations Committee Against Torture (2015).
  - 7 CAT, *Concluding observations on the fifth periodic report of China*, at 12, U.N. Doc. CAT/C/CHN/CO/5 (Feb. 3, 2016).
  - 8 Amnesty International, *supra* note 6.
  - 9 Visit to Romania undertaken from 3 to 12 May 2016: observations and recommendations addressed to the State Party Report of the Subcommittee, ¶¶ 33-34, 51.
  - 10 CAT, *Concluding observations on the second periodic report of Rwanda*, at 7-8, U.N. Doc. CAT/C/RWA/CO/2 (Dec. 21, 2017).
  - 11 CAT, *Concluding observations on the second periodic report of Namibia*, at 5, U.N. Doc. CAT/C/NAM/CO/2 (Feb. 1, 2017).
  - 12 *Id.*
  - 13 Walter Leitner International Human Rights Clinic, Voices of Hope Trust, Rights not Rescue Trust, *Torture of Sex Workers in Namibia* (2016).
  - 14 *Abuse of Sex Workers Chronic in Namibia*, The Namibian Sun (Nov. 21, 2017).

In addition, the CAT Committee has a formal follow-up procedure that sex workers' rights advocates can utilize.<sup>15</sup> During its review, the CAT Committee typically identifies three to six recommendations to include in its official follow-up procedure that are "serious, protective, and considered to be accomplished within a one year period."<sup>16</sup> The CAT Committee appoints a Follow-Up Rapporteur to monitor and analyze a state's compliance with these follow-up requests;<sup>17</sup> they will consider all sources of information, including follow-up shadow reports submitted by NGOs.<sup>18</sup> If any sex work-related recommendations are included in the three to six recommendations the CAT Committee selects for the formal follow-up procedure, sex workers' rights advocates should consider participating in this process by submitting follow-up shadow reports.

To ensure that a state is implementing the CAT Committee's recommendations, advocates should also engage with state governments and other interested stakeholders by identifying the government officials and groups responsible for implementing the recommendations and educating them on effective change.

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of the implementation of the CAT Committee's recommendations concerning sex workers' rights.
- Circulate a press release explaining the relevant recommendations issued by the CAT Committee. Discuss the positive consequences of the recommendation for sex workers.
- Partner with organizations with similar goals. Work together to develop unified media advocacy plans as well as political strategies for ensuring the implementation of the CAT Committee's recommendations.

### Formal follow-up procedures

- Engage in the CAT Committee's formal follow-up procedures by identifying official follow-up recommendations that relate to sex workers' rights (either directly or indirectly) and monitor the state's response to them.
- Draft a follow-up shadow report on the state's follow-through on recommendations as they relate to sex workers' rights.
- Ensure the follow-up shadow report includes: the specific follow-up issue; measures taken or not taken by state parties to implement the recommendation and their adherence to those measures; and an assessment of the impact of the recommendation.

### Identify and engage government actors on a national and local level

- Meet with members of the state's local government to brief them on the CAT Committee's findings concerning sex workers' rights and discuss methods for oversight.
- Share implementation strategies with state parties and urge them to involve sex workers throughout the entire implementation process.

15 *Committee Against Torture Follow-Up Procedure*, U.N. Office of the High Commissioner for Human Rights, available at <https://www.ohchr.org/EN/HRBodies/CAT/Pages/Follow-up.aspx> (Last visited Aug. 15, 2019).

16 *Id.*

17 *Id.*

18 *Id.*



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# Committee on the Elimination of Discrimination against Women

## BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Committee on the Elimination of Discrimination against Women ("CEDAW Committee") ensures that the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") is implemented and upheld by state parties. The Committee issues general recommendations and concluding observations on states to help ensure their compliance with CEDAW.

The Committee has issued several positive general recommendations that support sex workers' rights. In General Recommendation No. 19, the CEDAW Committee stated that criminalization results in marginalization of sex workers, and that the law must give sex workers equal protection against rape and violence.<sup>19</sup> General Recommendation No. 35 updated General Recommendation No. 19, urging countries to repeal any laws that tolerate or condone gender-based violence against women, including sex workers.<sup>20</sup> In General Recommendation No. 24, the Committee recognized that sex workers are particularly vulnerable to health risks and advised that special attention should be given to their health needs and rights.<sup>21</sup> In General Recommendation No. 33, the CEDAW Committee further acknowledged that criminalization prevents sex workers from gaining equal access to the justice system.<sup>22</sup>

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19 CEDAW, *General Recommendation No. 19: Violence against women*, at 3, U.N. Doc. A/47/38 (Feb. 1, 1992).

20 CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, at 10, U.N. Doc. CEDAW/C/GF/35 (July 14, 2017).

21 CEDAW, *General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women, Twentieth Session*, at 2, U.N. Doc. A/54/38 (1999).

22 CEDAW, *General Recommendation on women's access to justice*, at 4, U.N. Doc. CEDAW/C/GC/33 (2015).



The Committee has also produced sex workers' rights affirming concluding observations when reviewing states' compliance with CEDAW. These are often in response to shadow reports submitted by sex worker NGOs and allies. For example, in its concluding observations on Fiji in 2010, the CEDAW Committee recommended the decriminalization of sex work.<sup>23</sup> This CEDAW Committee made this recommendation after reviewing a shadow report by various NGOs detailing the harms of criminalization.<sup>24</sup> In its concluding observations on Tunisia in 2010, the CEDAW committee contended that compulsory medical check-ups are violations of sex workers' rights to movement and privacy.<sup>25</sup> Similarly, in its 2014 concluding observations on India the CEDAW Committee acknowledged the persecution of sex workers caused by anti-human trafficking measures<sup>26</sup> in response to a collaborative shadow report submitted by several NGOs.<sup>27</sup> In its 2015 concluding observations on Kyrgyzstan, the CEDAW committee urged the state to protect sex workers from police violence.<sup>28</sup> In its concluding observations on Russia the same year, the Committee recommended the repeal of Article 6.11, which makes sex work an administrative offense. They also advised that an oversight mechanism aimed at combating violence against sex workers be established.<sup>29</sup> These recommendations were made based on a comprehensive shadow report submitted by the Silver Rose Movement.<sup>30</sup> In 2017, the Kenya Sex Work Alliance (KESWA) submitted a shadow report detailing how stigma prevents access to justice for sex workers who are victims of violence and murder.<sup>31</sup> As a result, in its concluding observations on Kenya, the CEDAW Committee urged protection of sex workers from immediate physical violence and justice for violent crimes.<sup>32</sup> That same year, the CEDAW Committee recommended the removal of compulsory registration for sex workers in the Netherlands.<sup>33</sup> This was based on a report jointly submitted by 76 Dutch NGOs.<sup>34</sup> Finally, in 2017, the Nigeria Sex Workers Association submitted a shadow report on violence and exploitation experienced by sex workers,<sup>35</sup> and subsequently, in its concluding observations, the CEDAW Committee urged the protection of sex workers from violence, particularly at the hands of law enforcement.<sup>36</sup>

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- 23 CEDAW, *Concluding Observations on the Committee on the Elimination of Discrimination against Women, Forty-sixth session*, at 6, U.N. Doc. CEDAW/C/FJI/CO/4 (July 30, 2010).
  - 24 Coalition of Women's NGOs for the Cedaw Shadow Report et. al, *Shadow NGO Report on Fiji's Second, Third and Fourth Combined Periodic Report to the Committee on the Elimination of Discrimination Against Women* (2009).
  - 25 CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women Tunisia*, at 8, U.N. Doc. CEDAW/C/TUN/CO/6 (Nov. 5, 2010).
  - 26 CEDAW, *Concluding observations on the combined fourth and fifth periodic reports of India*, at 8, U.N. Doc. CEDAW/C/IND/CO/4-5 (July 24, 2014).
  - 27 Aarthi Pai, Meena Seshu, Manisha Gupte & Vamp, *Status of Sex Workers in India* 6-7 (2014).
  - 28 See CEDAW, *Concluding observations on the fourth periodic report of Kyrgyzstan*, at 6, U.N. Doc. CEDAW/C/KGZ/CO/4 (Mar. 11, 2015).
  - 29 CEDAW, *Concluding observations on the eighth periodic report of the Russian Federation*, at 7, U.N. Doc. CEDAW/C/RUS/CO/86 (Oct. 16, 2017).
  - 30 Silver Rose, *Submission for the 62nd Session of the Commission on the Elimination of Discrimination Against Women (CEDAW)* (2015).
  - 31 Kenya Sex Worker Alliance (Keswa) & Bar Hostess Empowerment and Support Program (BHESP), "Aren't We Also Women?" Kenya Sex Workers' Shadow Report Submission to the United Nations Committee on the Elimination of Discrimination Against Women 68th Session (2017).
  - 32 CEDAW, *Concluding observations on the eighth periodic report of Kenya*, at 8, U.N. Doc. CEDAW/C/KEN/CO/8 (Nov. 22, 2017).
  - 33 CEDAW, *Concluding observations on the sixth periodic report of the Netherlands*, at 9, U.N. Doc. CEDAW/C/NLD/CO/6 (Nov. 24, 2016).
  - 34 Global Network of Sex Work Projects, *Unfinished Business – Women's Rights in The Netherlands* (2016).
  - 35 Nigeria Sex Workers Association, *Shadow Report on the Situation of Sex Workers in Nigeria* (2017).
  - 36 CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Nigeria*, at 9, U.N. Doc. CEDAW/C/NGA/CO/7-8 (Feb. 1, 2017).

## FOLLOW-UP ADVOCACY STRATEGIES

After the CEDAW Committee has reviewed a state's record and issued recommendations, the CEDAW Committee begins a formal follow-up procedure, informing the state how to implement specific recommendations. Within two years, the state must report back on their implementation. The Committee's Follow-Up Rapporteur and a Deputy Rapporteur use the state's follow-up report as well as follow-up reports from NGOs and other sources to assess whether the state has addressed the issues identified by the CEDAW Committee.<sup>37</sup>

Sex workers' rights advocates can pursue multiple methods of follow-up advocacy after the CEDAW Committee issues a positive recommendation related to sex work, including the CEDAW Committee's formal follow-up procedure. Like a shadow report, sex worker advocates may submit a follow-up report assessing a state's effectiveness in implementing any sex work-related recommendations. The Global Network of Sex Work Projects ("NSWP") and the International Women's Rights Action Watch Asia Pacific ("IWRAP-AP") have created a set of shadow report guidelines on CEDAW for sex workers rights' advocates.<sup>38</sup> NSWP also developed a Smart Sex Workers' Guide to CEDAW, an advocacy tool specific to using CEDAW to advocate for sex workers' rights.<sup>39</sup>

Advocates can also utilize the media to bring attention to CEDAW's affirmation of sex workers' rights.<sup>40</sup> Sex Workers' Rights Advocacy Network recommends developing a media and political strategy that takes full advantage of the CEDAW Committee's positive feedback and CEDAW's international influence.<sup>41</sup>

Before directly engaging with domestic governments, advocates should identify which individual government actors are responsible for implementing the recommendations at the national and local levels so they can engage directly with these personnel. For example, the Canadian Alliance for Sex Work Law Reform ("CASWLR") has used the Committee's positive recommendations in a report on sex workers' safety, enhancing their domestic advocacy.<sup>42</sup> In addition, CASWLR regularly distributes information sheets and advocacy guides to lawmakers in Canada to continuously promote sex workers' rights as a critical issue.<sup>43</sup>

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- 37 Other sources of consideration include other treaty bodies, special procedures, the Universal Periodic Review, the United Nations system, regional human rights mechanisms, national human rights institutions and non-governmental organizations.
  - 38 Global Network of Sex Work Projects & IWRAP, *Shadow Report Guidelines on Cedaw & Rights of Sex Workers* (2018).
  - 39 Global Network of Sex Work Projects, *The Smart Sex Worker's Guide to the Convention on the Elimination of All Forms of Discrimination Against Women* (2018); see also Global Network of Sex Work Projects & IWRAP, *supra* note 38.
  - 40 Telephone Interview with Tomas Zapata, Regional Advisor Human Resources for Health, World Health Organization in Namibia (Oct. 25, 2018).
  - 41 Sex Workers' Rights Advocacy Network, *Reporting From the Shadows* (2013).
  - 42 Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada* (2017).
  - 43 Telephone Interview with Jenn Clamen, Coordinator, Canadian Alliance for Sex Work Law Reform (Nov. 14, 2018).

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of the implementation of the CEDAW Committee's recommendations.
- Circulate a press release explaining the specific positive context of the recommendations as they relate to sex work, and the positive consequences for sex workers.
- Partner with diverse stakeholders and plan to effectively utilize the CEDAW Committee's recommendations, developing strategies by sharing expertise, ideas, and information.

### Formal follow-up procedure

- Submit a follow-up shadow report to the CEDAW Committee, focusing on sex worker rights-related recommendations, assessing their implementation and evaluating their impact.

### Identify and engage government actors on a national and local level

- Organize advocacy meetings with members of the state's parliament, judiciary, and legal profession to brief them on relevant CEDAW Committee recommendations.
- Develop a comprehensive action plan that identifies the government actors responsible for implementing the CEDAW Committee's recommendations and reform measures, followed by engagement in advocacy meetings.
- Provide trainings, roundtables, and seminars or guides on implementing changes based on the CEDAW Committee's recommendations to state professionals, including lawmakers, law enforcement personnel, healthcare professionals, and legal professionals.



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## Committee on Economic, Social, and Cultural Rights

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Committee on Economic, Social and Cultural Rights ("CESCR Committee") monitors states' implementation of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and issues general comments, concluding observations, and recommendations addressing its concerns.<sup>44</sup>

The CESCR Committee has affirmed sex workers' rights on several occasions. The CESCR Committee's General Comment 22 on the right to sexual and reproductive health notes that states must protect sex workers from violence, coercion, and discrimination, and ensure their full access to sexual and reproductive healthcare services.<sup>45</sup> The CESCR Committee's 2014 concluding observations on Indonesia expressed concern that Indonesia's local laws discriminate against marginalized groups including sex workers. The CESCR Committee recommended stricter review mechanisms for local laws and the repeal of laws that discriminate against women and marginalized groups.<sup>46</sup> The CESCR Committee relied on a shadow report submitted by the Indonesian Civil Society Network on Economic, Social and Cultural Rights Advocacy.<sup>47</sup>

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44 *Committee on Economic, Social and Cultural Rights*, U.N. Office of the High Commissioner for Human Rights, available at: <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> (Last visited Aug. 15, 2019).

45 CESCR, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health*, at 9, U.N. Doc. E/C.12/GC/22 (May 2, 2016).

46 CESCR, *Concluding Observations on the initial report of Indonesia*, at 2, U.N. Doc. E/C.12/IDN/CO/1 (June 19, 2014).

47 Indonesian Civil Society Network on Economic, Social and Cultural Rights Advocacy, *Indonesia's Civil Society Responses on the List of Issue* (2014).

In its 2017 concluding observations on Russia, the CESCR Committee noted its concern regarding Russia's lack of anti-discrimination legislation, listing sex workers as one of several populations that are harmed as a result. The CESCR Committee further described criminalization as the cause of various harms to sex workers, all of which were detailed in the Silver Rose Movement's shadow report, including: lack of access to social security, vulnerability to police violence, barriers to accessing healthcare, and labor and housing discrimination.<sup>48</sup>

### FOLLOW-UP ADVOCACY STRATEGIES

Sex workers' rights advocates can conduct follow-up advocacy to compel states to implement CESCR Committee recommendations that affirm sex workers' rights. They can engage in media advocacy to publicize the relevant concluding observations.<sup>49</sup> For instance, sex workers' rights advocates publicized the CESCR Committee's 2017 concluding observations on Russia in press releases and on social media.<sup>50</sup> Publishing and distributing media advocacy in local languages further increases awareness.<sup>51</sup>

Sex workers' rights-based organizations can also work together to pursue CESCR recommendations. For example, advocates in Russia met and discussed strategies for using the CESCR Committee's 2017 concluding observations on Russia at a three-day forum in St. Petersburg in October 2017.<sup>52</sup> Advocates can also strategically partner with other civil society actors as suggested by a follow-up advocacy guide created by the Office of the United Nations High Commissioner for Human Rights ("OHCHR").<sup>53</sup> This OHCHR guide recommends that NGOs consider partnering with: civil society actors from varied sectors; donors and the diplomatic community; media; trade unions and professional associations; thematic networks; state structures, including parliaments and relevant parliamentary commissions; national human rights institutions; international organizations; and academic institutions.<sup>54</sup>

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- 48 CEDAW, *supra* note 30; Silver Rose, Submission for the Committee on Economic, Social and Cultural Rights on the Implementation of the International Covenant on Economic, Social and Cultural Rights in the Russian Federation with regards to sex worker population (2016).
- 49 Telephone Interview with Penelope Saunders, Coordinator, Best Practices Policy Project (Oct. 24, 2018); Interview with Gay McDougall, Vice-Chairperson, Committee on the Elimination of Racial Discrimination, in New York, NY (Oct. 30, 2018).
- 50 See *UN Committee on Economic, Social and Cultural Rights Recommends Russia Decriminalise Sex Work*, Sex Workers' Rights Advocacy Network (October 23, 2017), <http://www.swannet.org/en/content/un-committee-economic-social-and-cultural-rights-recommends-russia-decriminalise-sex-work> (last visited Aug. 6, 2019).
- 51 Djamin, Rafendi, *HRWG's Experiences on the ESCR Advocacy: Indonesia's Civil Society Experiences on the ESCR Advocacy to ASEAN and UN Human Rights Bodies*, Human Rights Working Group (October 8, 2014), available at <https://hrwg.org/indonesias-cso-experiences-on-the-escr-advocacy/> (Last visited Aug. 15, 2019).
- 52 *UN Committee on Economic, Social and Cultural Rights Recommends Russia Decriminalise Sex Work*, Global Network of Sex Work Projects, available at <https://www.nswp.org/news/un-committee-economic-social-and-cultural-rights-recommends-russia-decriminalise-sex-work> (Last visited Aug. 15, 2019).
- 53 United Nations Office of the High Commissioner for Human Rights, *A Practical Guide for Civil Society: How to Follow Up on United Nations Human Rights Recommendations* (2013).
- 54 *Id.*

Sex workers' rights advocates can also push for meetings with government representatives and insist they take responsibility for implementing sex work-related recommendations. Involvement in the CESCR Committee's process in Geneva—especially when state government representatives are present—can help sex workers' rights advocates identify who to engage with within state governments.<sup>55</sup> If sex workers are able to secure their attendance in meetings with government representatives, they can then share implementation strategies and ideas with the state and urge them to involve sex workers throughout the implementation phase.<sup>56</sup> Alternatively, sex workers' rights advocates can prioritize meetings with local government actors who may have more power to influence implementation.<sup>57</sup> Advocates can also create indicators that measure successful implementation to increase government accountability.<sup>58</sup>

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of the implementation of the CESCR Committee's recommendations.
- Circulate a press release explaining the specific positive context of the recommendations as they relate to sex work, and the positive consequences for sex workers.
- Partner with diverse stakeholders to develop implementation strategies by sharing expertise, ideas, and information.

### Identify and engage government actors on a national and local level

- Develop a comprehensive action plan that identifies the government actors responsible for implementing the CESCR Committee's recommendations and reform measures, followed by engagement in advocacy meetings.
- Continue monitoring and researching human rights violations against sex workers in the state, assessing the implementation of the CESCR Committee's recommendations or findings. Issue updates on the state's progress through media and communication tools.

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55 Interview with Joey Lee, former Asia Law and Justice Program Director, Leitner Center for International Law and Justice, in New York, NY (Nov. 8, 2018).

56 OHCHR, *supra* note 53.

57 McDougall, *supra* note 49.

58 OHCHR, *supra* note 53.



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## Human Rights Committee

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Human Rights Committee is responsible for overseeing implementation of the International Covenant on Civil and Political Rights (“ICCPR”). It evaluates state reports, individual complaints and inter-state complaints, and prepares general comments, substantive statements, and general discussions on topics addressed in the ICCPR.<sup>59</sup> Sex workers' rights advocates can engage with the HRC by submitting shadow reports that discuss states' implementation of the ICCPR. In addition, they can input into the HRC's future lists of issues, and report on states' progress regarding previous concluding observations.<sup>60</sup>

In its 2016 concluding observations on Ghana, the Human Rights Committee took a stance on discrimination and abuses against sex workers. While acknowledging Ghana's efforts to train police officers to protect sex workers, they described continuing police abuse. The Human Rights Committee ultimately recommended continued efforts to protect sex workers from all forms of discrimination, including physical attacks.<sup>61</sup> In developing these concluding observations, the Human Rights Committee relied on a collaborative shadow report submitted by the Human Rights Advocacy Centre and other organizations, which outlined the frequent abuse against sex workers perpetrated by the Ghanaian police.<sup>62</sup>

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59 *Human Rights Committee*, International Justice Resource Center, available at [https://ijrcenter.org/un-treaty-bodies/human-rights-committee/#civil\\_society\\_participation](https://ijrcenter.org/un-treaty-bodies/human-rights-committee/#civil_society_participation) (Last visited Aug. 15, 2019).

60 *Id.*

61 CCPR, *Concluding observations on the initial reports of Ghana*, at 13, U.N. Doc. CCPR/C/GHA/CO/1 (Aug. 9, 2016).

62 Human Rights Advocacy Centre, *Civil Society Report on the Implementation of the ICCPR (Contribution to the List of Issues)* (2015).



In its 2017 concluding observations on Honduras, the Human Rights Committee expressed overall concern with violence against women— particularly violence against sex workers.<sup>63</sup> The Human Rights Committee’s statement came in response to a shadow report submitted by RedTraSex, Akahata, and the Global Initiatives for Human Rights. The report explained that under legalization, sex workers face the same police abuse, marginalization, discrimination, and humiliation by health professionals as those working under criminalization in other countries.<sup>64</sup>

Finally, in its 2018 concluding observations on El Salvador, the Human Rights Committee described the persistent discrimination against women engaged in sex work, especially in the areas of education, health, housing and employment.<sup>65</sup> This was likely in response to a submission from sex workers’ rights groups RedTraSex, Synergia, and Akahata, which called for the prevention of discrimination and all forms of violence against sex workers as well as the establishment of effective mechanisms to protect sex workers from security forces.<sup>66</sup>

## FOLLOW-UP ADVOCACY STRATEGIES

Sex workers’ rights advocates can engage in various methods of follow-up advocacy related to their work before the Human Rights Committee. For example, they can publicize their efforts and the Human Rights Committee’s responses on their organizational websites. During the Human Rights Committee’s 2014 review of the United States, sex workers’ rights organizations Best Practices Policy Project (“BPPP”) and SWOP-Phoenix submitted a shadow report regarding the mistreatment of sex workers in Phoenix, Arizona, which BPPP published on its website the day after the recommendations were released.<sup>67</sup> The report described BPPP and SWOP-Phoenix’s efforts— representatives were present when the Human Rights Committee was conducting its review of the United States and the shadow report was subsequently submitted. It goes on to describe the outcome: the Human Rights Committee questioned the U.S. Justice Department about their position that criminalization of sex work is an effective means of combating human trafficking, and asserted that criminalization is harmful.<sup>68</sup>

63 CCPR, *Concluding Observations on the Second Periodic Report of Honduras*, at 3, U.N. Doc. CCPR/C/HND/CO/2 (Aug. 22, 2017).

64 RedTraSex, Akahata, and Global Initiatives for Human Rights, *Human Rights Situation for Women Sex Workers in Honduras* (2016).

65 CCPR, *Concluding Observations on the Seventh Periodic Report of El Salvador*, at 2-3, U.N. Doc. CCPR/C/SLV/CO/7 (May 9, 2018).

66 RedTraSex, Synergia, and Akahata, *Human Rights Situation of Sex Workers in El Salvador* (2018).

67 *UN Human Rights Committee Questions US’s Criminalization of Sex Workers as Method to Fight Trafficking*, The Best Practices Policy Project, available at <http://www.bestpracticespolicy.org/2014/03/28/un-human-rights-committee-questions-u-s-s-criminalization-of-sex-workers-as-method-to-fight-trafficking/> (Last visited Aug. 15, 2019).

68 *Id.*



The Human Rights Committee employs a formal follow-up procedure to monitor the recommendations it finds “urgent, [a] priority, or protective.”<sup>69</sup> States are required to report to the Human Rights Committee within one year on the measures taken in response to these urgent recommendations. Using this information, the Follow-Up Rapporteur assesses whether the state has addressed the issues of concern<sup>70</sup> and then sends a letter informing them of the outcome, noting whether the state’s response is satisfactory, if additional action is needed, if the measures taken were effective, and if the measures taken go against the Human Rights Committee’s recommendations.<sup>71</sup>

Sex workers’ rights advocates can participate in this process by submitting follow-up shadow reports. The Centre for Civil and Political Rights provides information and support to NGOs that wish to submit these types of reports.<sup>72</sup> Its website includes examples of NGO follow-up shadow reports in multiple languages.<sup>73</sup> Their samples suggest that reports should include a chart of each of the Human Rights Committee’s follow-up recommendations and a summary of the measures the state has taken or failed to take to implement the recommendations.<sup>74</sup>

To ensure that a state is implementing the Human Rights Committee’s recommendations, it is crucial that advocates engage with state governments and other interested stakeholders by identifying the government officials and groups responsible for implementing the recommendations and working with them to educate them on effective change and outlining mechanisms for monitoring on a domestic level.

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69 *Follow-Up to Concluding Observations*, United Nations Office of the High Commissioner on Human Rights, available at <https://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx> (Last accessed Aug. 15, 2019).

70 *Id.*

71 *Id.*

72 *Follow-up to Concluding Observations*, Centre for Civil and Political Rights, available at <http://ccprcentre.org/follow-up-to-concluding-observations> (Last visited Aug. 15, 2019).

73 China Human Rights Defenders & Globe International, *Mongolia: NGO report on the Follow-Up to the Concluding Observations* (2012).

74 *Id.*

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of the implementation of the Human Rights Committee's recommendations.
- Circulate a press release explaining the specific positive context of the recommendations as they relate to sex work, and the positive consequences for sex workers.
- Partner with allied organizations to develop unified media advocacy plans and political strategies for implementing the Human Rights Committee's recommendations or observations.

### Formal follow-up procedures

- Engage in the Human Rights Committee's formal follow-up procedures by identifying official follow-up recommendations that relate to sex workers' rights (either directly or indirectly) and monitoring the state's response to them.
- Draft a follow-up shadow report on the state's follow-through on recommendations as they relate to sex workers' rights. Ensure the report includes: the specific follow-up issue; measures taken or not taken by state parties to implement the recommendation and their adherence to those measures; and an assessment of the impact of the recommendation.

### Identify and engage government actors on a national and local level

- Develop an action plan that identifies the government departments responsible for implementing the Human Rights Committee's recommendations and urge the state to involve sex workers throughout the process.



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## United Nations Special Rapporteurs

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

United Nations Special Rapporteurs (“UN Special Rapporteurs”), also known as the Special Procedures of the Human Rights Council, are independent experts who report and advise on human rights.<sup>75</sup> UN Special Rapporteurs conduct country visits and produce thematic studies. They bring alleged violations to the attention of states, and they can act in individual cases. Sex workers’ rights advocates can engage with rapporteurs by providing them with information and analysis on human rights violations, and then helping to disseminate their findings. They can assist in follow-up activities, and help to develop and implement national policies and programs for human rights education, working together to improve circumstances in target countries and states.<sup>76</sup> Sex workers’ rights advocates can also meet with rapporteurs when they convene in Geneva and New York, as well as during field missions.<sup>77</sup>

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75 *Special Procedures of the Human Rights Council*, Office of the United Nations High Commissioner for Human Rights, available at <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (Last visited Aug. 15, 2019).

76 Office of the United Nations High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008).

77 *Id.*

Special Rapporteurs have included sex workers' rights affirmations in their official reports. The Special Rapporteur on violence against women's 2000 report explores the four primary legal frameworks used to regulate sex work. They refer to full decriminalization as "decriminalization with a human rights approach." This approach calls for the decriminalization of sex work and for existing human rights and labor rights to apply to sex work.<sup>78</sup> In 2011, the Special Rapporteur on violence against women noted that female migrants in Zambia, particularly those who engage in sex work, are often subject to sexual abuse, and are at risk of contracting HIV because they are unable to negotiate safe sex. They also noted that sex workers are reluctant to seek healthcare due to their irregular status.<sup>79</sup>

The Special Rapporteur on the right to health issued a report in 2010 calling for the decriminalization of sex work and attributing the denial of sex workers' right to health to the criminalization of sex work.<sup>80</sup> The report also describes how stigma leads to physical violence, public humiliation, and extreme harassment toward sex workers, and prevents sex workers from accessing safe and healthy working conditions. A 2013 report highlighted similar themes.<sup>81</sup>

In 2013, the Special Rapporteur on torture issued a report on the treatment of sex workers in both healthcare and education settings, referencing the Committee against Torture's categorization of the humiliating circumstances surrounding sex workers' forced medical exams as degrading treatment.<sup>82</sup> Their 2016 report again discussed the harmful treatment of sex workers in healthcare settings.<sup>83</sup>

The Special Rapporteur on extreme poverty issued a report in 2013 calling for the full decriminalization of sex work in Namibia following meetings with sex worker organizations during her visit to the country.<sup>84</sup> Her report states that the climate of stigma, discrimination and violence surrounding sex work is largely due to Namibia's criminalization of sex work.<sup>85</sup> It also details the recurring police abuse and high levels of violence experienced by Namibian sex workers, including the confiscation of condoms, arbitrary detention, and rape.<sup>86</sup>

In 2014, the Special Rapporteur on violence against women issued a country-condition report on India that acknowledged widespread violence against sex workers. In the report, the Special Rapporteur also denounced unlawful detention and compulsory rehabilitation of sex workers.<sup>87</sup>

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- 78 Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, at 26, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000).
- 79 Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, at 15-16, U.N. Doc. A/66/215 (Aug. 1, 2011).
- 80 Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, at 27-50, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010).
- 81 Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, at 18-19, U.N. Doc. A/HRC/23/41 (May 15, 2013).
- 82 Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez*, at 18, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).
- 83 Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez*, at 13, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016).
- 84 Magdalena Sepulveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, U.N. Doc. A/HRC/23/36/Add.1 (May 17, 2013).
- 85 *Id.*
- 86 *Id.*
- 87 Rashida Mango, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to India*, at 6, U.N. Doc. A/HRC/26/38/Add. 1 (Apr. 1, 2014).

## FOLLOW-UP ADVOCACY STRATEGIES

Sex workers' rights advocates can engage in follow-up advocacy in response to Special Rapporteurs' activities by using the media to highlight relevant recommendations from rapporteurs. For example, in 2018, a group of organizations conducting environmental advocacy (Human Rights Watch, Amnesty International, Earthjustice, and the Center for International Environmental Law) published a joint press release that commended the Special Rapporteur on hazardous substances and wastes for his recommendations regarding "the situation of workers affected by occupational exposure to hazardous substances."<sup>88</sup> The release also criticized the Human Rights Council's response to these recommendations and called for all UN member states to act on the rapporteur's recommendations.<sup>89</sup> Sex workers' rights advocates can engage in similar activities when rapporteurs issue sex workers' rights affirming recommendations. They can also use media advocacy to urge the Human Rights Council to renew Special Rapporteur appointments when individuals have shown receptiveness to sex workers' rights issues.

As members of civil society, sex workers' rights advocates can engage in follow-up advocacy with Special Rapporteurs in a number of other ways. They can request that rapporteurs visit a particular country and provide supporting information for their request.<sup>90</sup> Advocates can also encourage and prepare rapporteurs for follow-up country visits, which help monitor a country's progress on implementing recommendations. When limited resources make follow-up visits difficult, sex workers' rights advocates can provide on-the-ground information that helps rapporteurs to write follow-up reports from abroad. Further, sex workers' rights advocates can participate in and, when possible, organize follow-up events that bring together experts to discuss how recommendations from a rapporteur's country visit can be implemented.<sup>91</sup>

Advocates can bring relevant recommendations made by rapporteurs to the attention of national and local government officials.<sup>92</sup> For example, after the UN Special Rapporteur on extreme poverty recommended that Namibia fully decriminalize sex work,<sup>93</sup> Namibian sex workers' rights advocates used the rapporteur's report to engage in a dialogue with Namibia's parliament.<sup>94</sup> Bringing recommendations to local officials' attention is increasingly beneficial as their authority is increasing in many countries due to decentralization.<sup>95</sup>

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88 *Statement on the Report of the SR on the implications for Human Rights of hazardous substances and wastes*, (2018), Human Rights Watch, available at <https://www.hrw.org/news/2018/09/12/statement-report-sr-implications-human-rights-hazardous-substances-and-wastes> (Last visited Aug. 15, 2019).

89 *Id.*

90 OHCHR, *supra* note 53.

91 *Id.*

92 Lee, *supra* note 55; McDougall, *supra* note 49; Zapata, *supra* note 40; Saunders, *supra* note 49.

93 Carmona, *supra* note 84.

94 Zapata, *supra* note 40.

95 McDougall, *supra* note 49.

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Through media advocacy, publicly commend Special Rapporteurs that address sex worker abuse, while also urging the Human Rights Council and UN member states to act on rapporteurs' sex work-related recommendations.
- Write and publicize open letters requesting the Human Rights Council renew appointments for rapporteurs who have highlighted sex workers' rights in their reports and findings.
- Utilize local media to publicize and explain the findings of rapporteurs concerning sex workers' rights.

### Follow-up visits

- Encourage and prepare rapporteurs to make follow-up visits to monitor the progress and/or setbacks regarding the treatment of sex workers—using their initial observations as a benchmark.
- Provide updated information to rapporteurs so that they can write follow-up reports even if they cannot make follow-up visits.

### Annual thematic reports

- Publicize the findings and recommendations of rapporteurs' thematic reports that include issues concerning sex workers' rights

### Communication reports

- Regularly check Special Rapporteurs' communications reports, which are issued three times per year to the Human Rights Council at each regular session; widely disseminate communications reports that involve sex work.
- Provide updates to rapporteurs so they can issue follow-up communications reports (which is common practice). If a communications report involves a country where you know sex workers suffer abuse, highlight this abuse in your update so that the rapporteurs can include that information in the follow-up report.

### Identify and engage government actors on a national and local level

- Engage in advocacy meetings to brief members of national and local governments on rapporteurs' findings regarding sex workers' rights, and discuss the process of implementing those recommendations.



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## Universal Periodic Review

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Universal Periodic Review (“UPR”) is a process used by the UN Human Rights Council to review the human rights records of all UN member states.<sup>96</sup> The reviews are conducted by a UPR Working Group comprised of the 47 members of the Human Rights Council.<sup>97</sup> During this process, NGOs can submit shadow reports regarding state compliance with human rights norms for review. Any of the states in the UPR Working Group can raise issues of concern—including issues mentioned in NGO reports—and make recommendations to the state party under review.<sup>98</sup>

Several sex workers’ rights affirming recommendations have emerged from the UPR process. In the 2010 UPR of the United States, Uruguay put forth Recommendation 86, which urged the United States to address sex workers’ vulnerability to violence and human rights abuses.<sup>99</sup> This recommendation was based on the report submitted by the BPPP, Desiree Alliance, and the Sexual Rights Initiative, which detailed civil and human rights violations against sex workers in the United States.<sup>100</sup> In response, the United States released a report to the UN formally endorsing Recommendation 86.<sup>101</sup>

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96 *Universal Periodic Review*, United Nations Human Rights Council, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (Last visited Aug. 15, 2019).

97 *Id.*

98 *Id.*

99 United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review United States of America*, at 19, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011).

100 See Best Practices Policy Project, Desiree Alliance, & Sexual Rights Initiative, *Report on the United States of America, 9th Session Universal Periodic Review – November 2010* (2010).

101 *UPR Recommendations Supported by the U.S. Government*, U.S. Dep’t of State, available at <https://2009-2017.state.gov/j/drl/upr/recommendations/index.htm> (Last visited Aug. 15, 2019).

In the 2015 UPR of Jamaica, Mexico issued a recommendation urging the country to support HIV/AIDS awareness and prevention campaigns, focusing on marginalized groups such as sex workers.<sup>102</sup> For this recommendation, Mexico relied on a report by a group of NGOs outlining the human rights violations sex workers experience relating to the HIV/AIDS pandemic.<sup>103</sup> Jamaica accepted the recommendation, describing its pre-existing implementation of awareness campaigns.<sup>104</sup>

### FOLLOW-UP ADVOCACY STRATEGIES

Sex workers' rights advocates can utilize various advocacy methods to compel states to accept and implement relevant UPR recommendations. Advocates can engage in media advocacy to publicize relevant recommendations.<sup>105</sup> For instance, during their campaign to have the United States adopt the UPR's Recommendation 86, sex workers' rights advocates created a video called "86 the Violence" to help raise awareness<sup>106</sup> and held public demonstrations to bring attention to the issue.<sup>107</sup>

Sex workers' rights advocates should consider partnering with diverse stakeholders to develop implementation strategies by sharing expertise, ideas, and information.<sup>108</sup> For example, in 2011, a group of U.S. sex workers' rights advocates joined with allied stakeholders to form a working group called Human Rights for All, which coordinated outreach activities that put pressure on the U.S. government to adopt Recommendation 86.<sup>109</sup> These activities included:

- the garnering of support from high-profile leaders in the fields of health, criminology, and women's rights;
- the development of a policy brief tailored to the US federal government context, including a refined set of policy-amenable recommendations;
- and an educational campaign to inform congressional leaders about the critical issues sex workers face and offer some potential viable solutions.<sup>110</sup>

102 HRC, *Report of the Working Group on the Universal Periodic Review, Jamaica*, at 19, U.N. Doc. A/HRC/30/15 (July 20, 2015).

103 Jamaica AIDS Support for Life, Submission by Stakeholder LGBTI, Sex Workers and PLWHIV Coalition for The Universal Periodic Review of Jamaica (2015).

104 HRC, *Report of the Working Group on the Universal Periodic Review, Jamaica, Addendum, Views on conclusions and/or recommendations, voluntary commitments, and replies presented by the State under review*, at 6, U.N. Doc. A/HRC/30/15/Add.1 (Sept. 25, 2015).

105 Saunders, *supra* note 49; McDougall, *supra* note 49.

106 Saunders, *supra* note 49.

107 *Id.*

108 Diana Carolina Prado Mosquera, SOGIESC UPR Advocacy Toolkit: A Guide for Defenders Working on Sexual Orientation, Gender Identity and Expression and Sex Characteristics (2017).

109 *Article: Using Human Rights to Hold the US Accountable*, Best Practices Policy Project (Sept. 1, 2012), available at <http://www.bestpracticespolicy.org/2012/09/01/using-human-rights-to-hold-the-us-accountable-for-its-anti-sex-trafficking-agenda/> (Last visited Aug. 15, 2019). Recommendation 86 states that "[n]o one should face violence or discrimination in access to public services based on . . . their status as a person in prostitution." Kari Lerum, Kiesha McCurtis, Penelope Saunders, and Stephanie Wahab, *Using Human Rights to Hold the US Accountable for Its Anti-Sex Trafficking Agenda: The Universal Periodic Review and New Directions for US Policy*, 1 *Anti-Trafficking Review*, 80, 95-96, (2012). It is important to note that even if a country accepts or adopts its recommendations, it still needs to prove implementation of those recommendations.

110 *Id.* at 95-96.



Advocates can also meet directly with the state under review to encourage them to implement sex work-related UPR recommendations. Direct, in-person involvement in the UPR's process in Geneva— especially when representatives from the state's government are present — can help, advocates identify who to meet within a state's government for follow-up advocacy.<sup>111</sup> During the follow-up phase for Recommendation 86, Penelope Saunders of BPPP met with Harold Koh, then legal advisor to the Department of the State.<sup>112</sup> Advocates should also consider meeting with local government actors.<sup>113</sup>

Sex workers' rights advocates can share implementation strategies with the state and urge them to involve sex workers throughout the process.<sup>114</sup> It could also be helpful for advocates to meet with the embassies of states that have made recommendations supporting sex workers' rights during the UPR process.<sup>115</sup> During a meeting with those embassies, advocates should encourage continuous dialogue between both countries involved.<sup>116</sup> Another strategy is to request that UN Special Rapporteur staff speak with the state government under review on behalf of sex workers' rights advocates.<sup>117</sup>

Finally, advocates can monitor states' progress in implementing relevant UPR recommendations.<sup>118</sup> They can create indicators to measure the government's progress in meeting the recommendations.<sup>119</sup> The UPR has a tool that helps advocates review a state's implementation of their recommendations two years after they are issued.<sup>120</sup> Advocates should publicize developments (or lack thereof) to ensure accountability.<sup>121</sup> For example, even though the U.S. formally accepted Recommendation 86, it has remained slow to implement it in practice.<sup>122</sup> For the last five years, sex workers' rights advocates have pushed for the UPR to issue a further recommendation highlighting the U.S.'s failure to implement Recommendation 86.<sup>123</sup>

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111 Lee, *supra* note 55.

112 Saunders, *supra* note 49.

113 McDougall, *supra* note 49.

114 OHCHR, *supra* note 53.

115 *Id.*

116 *Id.*

117 Lee, *supra* note 55. The UN Special Rapporteurs and experts have staff at the Office of the High Commissioner for Human Rights in Geneva and sometimes also have staff working remotely at U.S. universities such as New York University.

118 OHCHR, *supra* note 53.

119 *Id.*

120 *Id.*

121 Mosquera, *supra* note 108.

122 Saunders, *supra* note 49.

123 *Id.*

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of the implementation of the UPR's recommendations.
- Circulate a press release explaining the specific recommendations by the UPR as they relate to sex work, and the positive consequences for sex workers.
- Partner with diverse stakeholders to develop implementation strategies by sharing expertise, ideas, and information.

### Identify and engage government actors on a national and local level

- Meet with members of the state's national and local government, as well as embassies to brief them on the UPR's recommendations and findings concerning sex workers' rights.
- Develop an action plan that identifies the government departments responsible for implementation of the UPR's recommendations and findings; urge the state to involve sex workers throughout the process.
- Continue monitoring conditions and issue updates on the state's progress in implementing the UPR's recommendations through media and communication tools.

# Regional Human Rights Mechanisms

**Follow-Up Advocacy**



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## African Commission on Human and Peoples' Rights

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The African Commission on Human and Peoples' Rights ("ACHPR") is responsible for ensuring the implementation of the African Charter on Human and Peoples' Rights. Independent commissioners review the state of human rights in Africa via country reviews, special rapporteurs, investigations, and by reviewing shadow reports submitted by NGOs.

The ACHPR has issued several sex workers' rights affirming general comments and guidelines. Most significantly, in 2002, the ACHPR adopted the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms ("Ouagadougou Declaration"), which includes a recommendation for the decriminalization of sex work.<sup>124</sup> In addition, in its General Comments on Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol"), the ACHPR stated that sex workers are entitled to the right to know their own health status.<sup>125</sup> In its 2015 Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, the ACHPR promoted special measures to protect sex workers' basic rights, and protection against discrimination by law enforcement.<sup>126</sup>

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124 *Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa*, African Commission on Human and Peoples' Rights, available at: <http://www.achpr.org/instruments/ouagadougou-planofaction/>.

125 *General Comments on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2012), available at: <http://www.achpr.org/instruments/general-comments-rights-women/>

126 African Court of Human Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (2015).

In its 2017 Guidelines on Combating Sexual Violence and its Consequences in Africa, the ACHPR again named sex workers as a vulnerable group and advocated for basic protection of their human rights.<sup>127</sup> Similarly, in 2017, the ACHPR issued an extensive report on HIV and human rights in Africa, recognizing sex workers as a vulnerable group and urging the repeal of laws that criminalize people living with HIV to ensure equal access to adequate healthcare.<sup>128</sup> That same year, the ACHPR also called for decriminalization of sex work in its Draft Principles on Decriminalization of Petty Offences.<sup>129</sup>

These steps forward for sex workers' rights have been made possible by the continuing advocacy of NGOs. For example, in 2015, the ACHPR issued a report on the Joint Promotion Mission to Sudan acknowledging the work of local NGOs in providing access to HIV treatments for sex workers despite criminalization.<sup>130</sup> In 2016, a group of NGOs submitted a shadow report to the ACHPR concerning the violence, extortion, and denial of healthcare experienced by sex workers in Namibia.<sup>131</sup> In response, the ACHPR urged Namibia to end discrimination against sex workers and ensure access to adequate healthcare.<sup>132</sup> Finally, in 2018, the ACHPR's delegation to Botswana documented their concern that legal restrictions prevent sex workers from receiving adequate access to healthcare, particularly for HIV prevention and treatment.<sup>133</sup>

## FOLLOW-UP ADVOCACY STRATEGIES

Sex workers' rights advocates can publicize relevant ACHPR recommendations using media and communication tools. Media advocacy raises awareness of the ACHPR's findings and promotes local and international oversight, encouraging implementation by state parties. For example, in 2002, the ACHPR adopted the Ouagadougou Declaration, which recommends human rights training for government officials, including training aimed at protecting victims of sexual violence and vulnerable groups (including sex workers).<sup>134</sup> Afterwards, several NGOs including the African Policing Civilian Oversight Forum and Advocaid gathered in Sierra Leone to call on the state to decriminalize and declassify petty offenses in accordance with the Ouagadougou Declaration.<sup>135</sup>

127 African Court of Human Rights, *Guidelines on Combating Sexual Violence and its Consequences in Africa* (2017).

128 African Court of Human Rights, *HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses* (2017).

129 African Court of Human Rights, *Draft Principles on the Declassification and Decriminalisation of Petty Offences in Africa* (2017).

130 African Court of Human Rights, *Report of the Joint Promotion Mission to the Republic of Sudan* (2015).

131 Out-Right Namibia, Rights not Rescue Trust et. al, Report on Human Rights Issues for LGBTI Persons and Sex Workers in Namibia Under the African Charter on Human and Peoples' Rights in Response to the 6th Periodic Report of the Government of Namibia Presented at the 58th Ordinary Session of the Commission (2016).

132 African Court of Human Rights, *58th Ordinary Session 6-20 April 2016 in Banjul, Islamic Republic of Gambia, Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2013)* (2016).

133 African Court of Human Rights, *Press Statement at the Conclusion of the Promotion Mission of the African Commission on Human and Peoples' Rights to the Republic of Botswana* (2018).

134 ACHPR.ORG, *supra* note 124.

135 *Sierra Leone News: Rights activists unite to decriminalize petty offenses*, Awoko Newspaper (Nov. 24, 2017).

In particular, they highlighted the discrimination faced by sex workers, who are frequently arrested for loitering. Working with local media, they had an article about decriminalization published in *Awoko*, an independent newspaper in Sierra Leone. It is important that all populations, especially those who are personally affected by the recommendations and decisions, can understand the impact of the ACHPR's work and the Ouagadougou Declaration. This can be achieved by issuing a plain English press release explaining the recommendations. For example, the ACHPR issued a detailed report on "HIV, the Law and Human Rights in the African Human Rights System" that discussed their concerns and recommendations regarding sex workers' rights in terms of access to HIV-related healthcare. The report referenced a case in the High Court of Malawi, which ended mandatory HIV testing for sex workers.<sup>136</sup> The Southern Africa Litigation Centre, an NGO actively involved in this case, issued a press release aimed at the sex worker community, explaining the positive outcome of the case and its expected impact.

To ensure a state is implementing the ACHPR's recommendations and judgments, sex workers' rights advocates should identify and collaborate with state governments and National Human Rights Institutions ("NHRIs") — once the ACHPR has issued a positive recommendation or decision, advocates can work with NHRIs to report updates. Advocates should also identify the government officials and groups responsible for implementing these changes and collaborate with them, instructing and educating them on effective change, and establishing local government mechanisms for monitoring.

For example, when the NGO African Men for Sexual Health and Rights learned of ACHPR's work developing the HIV report mentioned above, it developed a companion booklet for policymakers and parliamentarians and NHRIs that provided information while educating them on sex workers' rights.<sup>137</sup>

Additionally, engaging with influential actors and institutions such as parliament, the judiciary and the legal profession is a powerful advocacy tool that can increase oversight of the state's implementation of ACHPR recommendations.

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136 African Commission on Human and Peoples' Rights & UNAIDS, *HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses* 24-25 (2017).

137 The African Men for Sexual Health and Rights, *Understanding Sexuality, Human Rights and HIV: A Guide on Rights* (2015).

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of implementation of the ACHPR's recommendations.
- Circulate a press release explaining the specific recommendations by the ACHPR as they relate to sex work, and the positive consequences for sex workers.
- Identify NHRIs that are involved with both the ACHPR and the government and collaborate with them to issue reports and updates on implementation of the recommendations, establishing domestic follow-up mechanisms.
- Prepare and distribute companion guides to NHRIs, policymakers, and parliamentarians that outline the fundamental concepts and objectives of the sex workers' rights movement. Include the expected positive impact of ACHPR recommendations.

### Identify and engage government actors on a national and local level

- Develop an action plan that identifies the government departments responsible for implementation of relevant ACHPR recommendations and the required time frames for implementing these changes. Disperse this action plan to relevant NHRIs, domestic organizations, and the state.
- Meet with members of the state's parliament, judiciary, and legal profession to brief them on the ACHPR's positive findings concerning sex workers' rights and methods for oversight.
- Continue monitoring conditions and issue updates on the state's progress in implementing the ACHPR's recommendations through media and communication tools.
- Partner with local NGOs and grassroots organizations to provide training to state professionals including lawmakers, law enforcement personnel, healthcare professionals, and legal professionals on implementing changes based on the ACHPR's recommendations and findings.



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## European Court of Human Rights

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The European Court of Human Rights (“ECHR”) is an international court established to uphold the European Convention on Human Rights (“the European Convention”).<sup>138</sup> Individuals, groups or participating states can lodge applications to the ECHR if they believe a participating state breaches one or more of the European Convention’s provisions. The ECHR then issues judgments accordingly.<sup>139</sup> In *B.S. v. Spain*, an African sex worker complained of repeated harassment, physical and verbal abuse, and discrimination by police officers in Spain. The ECHR ruled that Spain violated Articles 3 and 14 of the European Convention when it “failed to take account” of the sex worker’s “particular vulnerability inherent in her position as an African woman working as a prostitute.”<sup>140</sup> International NGO Women’s Link Worldwide played a key role in litigating this case.<sup>141</sup>

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138 *How the Court Works*, European Ct. of Hum.Rts, available at <https://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c=> (Last visited Aug. 15, 2019).

139 *Id.*

140 European Ct. of Hum. Rights, *B.S. v. Spain*, Oct 24, 2012, App. No. 47159/08, Eur. Ct. H.R. at 8-10 (2012).

141 *Gender Justice Observatory, B.S. v. Spain* (2012), Women’s Link Worldwide, available at: <https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/b-s-v-spain> (Last visited Aug. 15, 2019).



## FOLLOW-UP ADVOCACY STRATEGIES

The ECHR is responsible for reviewing cases concerning violations of the European Convention on Human Rights. If a state fails to secure human rights for all individuals in its care, and therefore fails to uphold the convention, the ECHR will make judgements that ensure: (1) the violation ends; (2) reparations are made; and (3) measures are taken to prevent similar violations in the future.<sup>142</sup> Monitoring compliance with the ECHR's judgments frequently falls to NGOs and local organizations that are active within the state. Such follow-up monitoring and advocacy is crucial to ensure states act on ECHR judgments.

When a sex workers' rights affirming judgement is made, a key action available to advocates is to file a Rule 9 Submission.<sup>143</sup> A Rule 9 Submission refers to Rule 9 of the Rules of the Committee of Ministers of the Council of Europe— it allows international organizations to submit information to the Committee of Ministers ("CoM") concerning the execution of judgments by the ECHR.<sup>144</sup> The CoM is the body responsible for monitoring implementation of ECHR judgments. Rule 9 submissions allow advocates to participate in the monitoring process and to make recommendations to the CoM for comprehensive reform measures.

Advocates can also work directly with the state, providing support and guidance on implementing ECHR judgments and reform measures. Identifying the government departments and officials responsible for implementing and monitoring change is crucial to ensure action and also to provide support, education, and training on effectively enacting change.

Additionally, advocates can follow the work of the ECHR and use other positive judgements to further support their cause. For example, in *Sidiropoulos and Others v. Greece*, the ECHR ruled that the Greek Court's refusal to approve the registration of a Macedonian non-profit association violated their right to freedom of association under Article 11 of the European Convention.<sup>145</sup> Based on this ruling, Silver Rose, a sex workers' rights group in Russia, applied for official registration with the Ministry of Justice citing their right to freedom of association. Similarly, in *B.S. v. Spain*, the ECHR ruled that Spain violated Article 14 of the European Convention on Human Rights when it failed to recognize the vulnerable status of an African sex worker;<sup>146</sup> Women's Link Worldwide issued a statement on this judgment that other sex workers' rights advocates have since relied on in their advocacy.<sup>147</sup>

142 Elisabeth Lambert Abdelgawad, *The execution of judgments of the European Court of Human Rights* (2008).

143 Information about the process of filing a Rule 9 submission is available at European Implementation Network, *Implementation of Judgements of the European Court of Human Rights* 8-17 (2018).

144 "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies)." *Rules of the Committee of Ministers for the supervision of the execution of judgements and the terms of friendly settlement*, RM.COE.INT, available at: <https://rm.coe.int/16806eebf0> (Last visited Aug. 15, 2019).

145 *Case of Sidiropoulos and Others v. Greece*, App. No. 57/1997/841/1047, Eur. Ct. HR (1998).

146 *B.S. v. Spain*, *supra* note 140.

147 Women's Link Worldwide, *supra* note 141.

## FOLLOW-UP ADVOCACY RECOMMENDATIONS

### Engagement with Committee of Ministers

- Continue monitoring conditions in the state to ensure the implementation of ECHR decisions and maintain records for continued submission and updates to the CoM.
- Prepare and file a Rule 9 Submission to the CoM that details relevant judgments by the ECHR, the current situation in the state, and a list of recommendations for the CoM to ensure comprehensive reform.

### Media and collaborative advocacy

- Utilize local media to publicize any follow-up advocacy, encouraging continued exposure and oversight of implementation of the ECHR's judgements.
- Circulate a press release explaining the specific recommendations by the ECHR as they relate to sex work, and the positive consequences for sex workers.

### Identify and engage government actors on a national and local level

- Meet with members of the state's parliament, judiciary, and legal profession to brief them on relevant ECHR judgements concerning sex workers' rights.
- Identify and engage with the government institutions that work directly with the state on reform measures to encourage oversight.
- Partner with local NGOs and grassroots organizations to provide training to state professionals including lawmakers, law enforcement personnel, healthcare professionals, and legal professionals on implementing changes based on ECHR's judgments.



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## Inter-American Commission on Human Rights

### BACKGROUND: SEX WORKERS' RIGHTS AFFIRMATIONS

The Inter-American Commission on Human Rights (“Inter-American Commission”) is responsible for enforcing the rights described in the American Convention on Human Rights and the American Declaration of Rights and Duties of Man.<sup>148</sup> The Inter-American Commission can make country visits to states who are signatories to these treaties, hold thematic hearings, receive individual complaints, and investigate human rights abuses. They also publish reports and refer cases to the Inter-American Court of Human Rights (the “Court”) for adjudication.<sup>149</sup>

The Inter-American Commission has addressed the abuse of sex workers in several instances. In a 2017 thematic hearing, the Commission—for the first time in a hearing—acknowledged the systemic abuse against sex workers in the Americas.<sup>150</sup> A shadow report submitted by RedTraSex prior to the hearing influenced Commissioner Margarette Macaulay to call for the full decriminalization of sex work in the Americas.<sup>151</sup> The RedTraSex report highlighted the intense discrimination created by the criminalization of sex work and the resultant high incidence of murder and stigmatization.<sup>152</sup>

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148 Lisa J. Reinsberg, *Advocacy before the Inter-American System* (2014).

149 *Id.*

150 *IACHR Holds First Hearing on the Rights of Sex Workers in the Americas*, The Organization of American States, [http://www.oas.org/en/iachr/media\\_center/preleases/2017/036.asp](http://www.oas.org/en/iachr/media_center/preleases/2017/036.asp) (last visited Aug. 4, 2019).

151 *Id.*; see also Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras* 33

152 Inter-American Commission on Human Rights, *supra* note 168.

In 2015, the Inter-American Commission issued a Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas.<sup>153</sup> This report highlighted the intersectional discrimination faced by transgender sex workers in the form of frequent arbitrary detention, police abuse, community violence, and murder.<sup>154</sup> The report concluded with recommendations, including a call for the Americas to review legislation that criminalizes sex work.<sup>155</sup>

Several of the Inter-American Commission's country reports have highlighted the enhanced discrimination faced by transgender sex workers. The Inter-American Commission's 2012 country report on Jamaica addressed the increased vulnerability and abuse of transgender sex workers as well as the government's interference with organizations that attempt to provide them with access to healthcare.<sup>156</sup> The 2013 country report on Colombia and the 2015 country report on Honduras highlighted police abuse against transgender sex workers.<sup>157</sup> Further, in its 2015 country report on Mexico, the Inter-American Commission expressed their concern for the frequent arbitrary detention, torture, cruel, inhumane and degrading treatment inflicted on marginalized groups in Mexican society, including transgender sex workers.<sup>158</sup> This report also expressed concern regarding mandatory HIV testing and abuse of transgender sex workers by medical personnel and the police.<sup>159</sup> Finally, the Inter-American Commission's 2017 country report on Guatemala described concern for the safety of transgender sex workers— addressing the murder of sex workers at the hands of clients, gangs and other criminal groups.<sup>160</sup>

## FOLLOW-UP ADVOCACY STRATEGIES

Follow-up advocacy helps ensure states comply with the Inter-American Commission's recommendations and is crucial to ensuring states implement positive judgments by the Court. Media advocacy is a useful tool for publicizing findings by the Commission that support sex workers' rights. Sex workers' rights advocates should identify which individual actors within their national and local governments are responsible for implementation, connect with them, and educate them on the necessary changes for meeting the Inter-American Commission's recommendations. Advocates can engage with the judiciary and the legal profession to encourage additional oversight. During the Inter-American Commission's hearing weeks, sex workers' rights advocates can engage in unofficial conversations with Commission representatives to increase interest in sex workers' rights and identify future opportunities for the Inter-American Commission to act in support of their movement.<sup>161</sup>

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153 Inter-American Commission on Human Rights, Violence Against LGBTI Persons 15, 65, 68, 86, 91, 96, 159, 160 (2015).

154 *Id.*

155 *Id.*

156 Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Jamaica 102,103 (2012).

157 Inter-American Commission on Human Rights, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia 409 (2013); Inter-American Commission On Human Rights, *supra* note 168.

158 Inter-American Commission on Human Rights, The Human Rights Situation in Mexico 123.

159 *Id.*

160 Inter-American Commission on Human Rights, Situation of Human Rights in Guatemala 191 (2017).

161 Columbia Law School Human Rights Institute, Using Thematic Hearings at the Inter-American Human Rights Commission to Advance U.S. Human Rights Accountability (2017).

The Inter-American Commission will sometimes assess a state's compliance with their recommendations.<sup>162</sup> If that state has accepted the jurisdiction of the Court and has not complied with the recommendations, the Inter-American Commission may refer the case to the Court. Court judgments are final and not subject to appeal, however if disagreement exists, parties may request that the Court provide further detail about a judgment.<sup>163</sup>

## **FOLLOW-UP ADVOCACY RECOMMENDATIONS**

### **Media advocacy**

- Develop and circulate press releases publicizing and explaining the recommendations or thematic hearings by the Inter-American Commission that impact sex workers.
- Utilize local media to publicize any follow-up advocacy, encouraging continued transparency and oversight of implementation of the Inter-American Commission's recommendations and Court judgments.

### **Identify and engage government actors on the national and local levels**

- Identify the government institutions and actors responsible for implementation of the Inter-American Commission's recommendations and Court judgments and urge the state to involve sex workers throughout the process.

### **Informal follow-up**

- Engage in unofficial conversations with the Inter-American Commission's representatives to increase interest in sex workers' rights issues and identify future opportunities for the Commission to act in the interest of sex workers' rights.

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162 See e.g., Inter-American Commission on Human Rights, Annual Report of the IACHR 2007 – Chapter IV – Haiti (2007).

163 Reinsberg, *supra* note 148.