

# **Criminalization of Transgender, Transsexual and Gender Nonconforming People of Color**

---

## **Report to the Committee on the Elimination of Racial Discrimination**

Submitted by:

Best Practices Policy Project,

Streetwise and Safe

&

Trafficking Victims Advocacy Project  
The Legal Aid Society of New York

# **Committee on the Elimination of Racial Discrimination Shadow Report: Criminalization of Transgender, Transsexual and Gender Nonconforming People of Color**

## **I. Reporting Organizations**

This shadow report is submitted by three non-profit organizations: The Trafficking Victims Advocacy Project at the Legal Aid Society,<sup>1</sup> Streetwise and Safe,<sup>2</sup> and Best Practices Policy Project.<sup>3</sup> Consistent with General Recommendation XXV, and further to the 2008 submission and testimony of U.S. civil society organizations and transgender women of color to the Committee concerning the experiences of women of color, including transgender women of color, with racial discrimination in the U.S.,<sup>4</sup> we wish to provide the Committee with additional information on the gendered nature and impact of racial profiling. This report addresses the continuing practice in the U.S. of targeting, profiling, and criminalizing Transgender, Transsexual or Gender Nonconforming<sup>5</sup> (hereinafter “TGNC”) People of Color<sup>6</sup> (hereinafter “POC”), particularly with respect to policing of prostitution and sex work, in violation of Articles 2, 5, and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

## **II. Issue Summary**

In the United States, TGNC POC experience multiple forms of discrimination at the intersections of race, gender, gender-identity, sexuality, and socio-economic status, leading to their marginalization and exposing them to violence and other safety concerns. Given the multi-faceted and persistent nature of the discrimination, TGNC POC experience barriers accessing

---

<sup>1</sup> The **Trafficking Victims Advocacy Project (“TVAP”) at the Legal Aid Society** was formed to better identify and advocate for victims of trafficking and exploitation caught in the criminal justice system. TVAP provides direct legal representation and supportive social services in cases where individuals are arrested and prosecuted for prostitution-related offenses. Annually, TVAP represents close to 2,000 individuals arrested for prostitution in New York City.

<sup>2</sup> **Streetwise and Safe (“SAS”)** is a New York based leadership development initiative that promotes the empowerment of LGBT youth of color who experience gender, race, sexuality and poverty-based policing and criminalization, particularly in the context of “quality of life” initiatives and the policing of sex work and trafficking.

<sup>3</sup> **The Best Practices Policy Project (“BPPP”)** is a national initiative dedicated to supporting organizations and advocates working with sex workers, people in the sex trade and related communities in the United States. BPPP works to protect the rights of people who engage in commercial sex in all its forms.

<sup>4</sup> See Alex Lee, Robin Levi, Chivy Sok, *Women of Color: Response to the Periodic Report of the United States to the United Nations Commission on the Elimination of Racial Discrimination*, WILD for Human Rights, Justice Now, Transgender, Gender Variant, Intersex Justice Project, available at <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd2008womenofcolor.pdf>; see also *Committee on the Elimination of Discrimination*, February 2008, Testimony to the Committee of Miss Major and Ms. Melenie Elenke.

<sup>5</sup> TGNC is an acronym used to refer to transsexual, transgender, and gender-non conforming people. These identities share the common lived experience of not conforming with societal behavioral norms and expectations of the gender they were assigned at birth. While TGNC people include individuals assigned female at birth but expressing gender on the masculine spectrum, this report focuses on the experiences of individuals assigned male gender at birth who express their genders in ways that are considered to be feminine.

<sup>6</sup> POC is a widely accepted acronym for People of Color, which is a broad term for any people who identify as non-white, including but not limited to, people of mixed-race.

employment, housing, healthcare, and education.<sup>7</sup> The inaccessibility of these resources places pressure on TGNC POC to find alternative sources of income, including sex work and other criminalized activities in order to survive.<sup>8</sup> Further, TGNC POC are commonly profiled, stopped, and harassed by the police, based on bias and stereotype, on the suspicion that they are engaged in trading sex or other illicit sexual activity, even when not engaging in prostitution or any other criminalized activity. Transgender women, in particular, are often stopped and arrested under the pretext of enforcement of anti-prostitution laws.<sup>9</sup> Thus, TGNC POC, whether or not actually engaged in sex work, are at a high risk of entering the criminal justice system.<sup>10</sup>

## A. Policing and Law Enforcement

Across the U.S., law enforcement targets, profiles, and polices individuals based on actual or perceived sexual orientation, gender identity, and gender conformity.<sup>11</sup> Because of police officers' perceptions regarding acceptable racial, gender, and sexual norms, TGNC POC experience higher rates of profiling, harassment, and stops and searches;<sup>12</sup> and are thus driven at disproportionate rates into the criminal justice system.<sup>13</sup> For example, in the last few months, in New York City:

- A transgender woman of color was approached by a police officer after hailing a taxi. The officer ordered her to get out of the taxi and demanded identification. The officer then asked why she was dressed "like that," referring to the fact that she was wearing women's clothing. They then arrested her for prostitution and detained her in a men's jail facility.
- Another NYC resident of color was stopped by the police because he wore a blonde wig. The police questioned him about what he was doing "outside" and charged him with Loitering for the Purposes of Prostitution (hereinafter "LPP"). The police report cited "wigs, shorts, and excessive makeup" as the basis for his arrest for prostitution. During the course of his arrest, the police remarked that he was going to die of AIDS.

---

<sup>7</sup> Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade, and Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, NEW YORK: CENTER FOR GENDER & SEXUALITY LAW AT COLUMBIA LAW SCHOOL 54 (2014), available at [https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap\\_for\\_change\\_full\\_report.pdf](https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf); Lee et al., *supra* note 4; Testimony, *supra* note 4.

<sup>8</sup> *Id.*; Lee et al., *supra* note 4.

<sup>9</sup> MAKE THE ROAD NEW YORK, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* 4 (October 2012), available at [http://www.maketheroad.org/pix\\_reports/MRNY\\_Transgressive\\_Policing\\_Full\\_Report\\_10.23.12B.pdf](http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf); HUMAN RIGHTS WATCH, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities* 2 (July 2012), available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf); Mogul, Ritchie and Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Beacon Press 2011); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States*, AMR 51/122/2005, 2005.

<sup>10</sup> Hanssens et al., *supra* note 6, at 58.

<sup>11</sup> MAKE THE ROAD NEW YORK, *supra* note 8, at 11-13.

<sup>12</sup> *Id.* at 16 ("While 28% of our non-LGBTQ respondents reported that they had been stopped by police, 54% of the LGBTQ residents has been stopped by the police. For transgender community members the likelihood of being stopped is greater still, with 59% of transgender respondents reporting that they had been stopped by the police"); see also Hanssens et al., *supra* note 6, at 11.

<sup>13</sup> *Id.*

- Police arrested another man of color for LPP, and relied on the fact that he was wearing “a wig for a woman, not a wig for a man,” as evidence of intent to engage in prostitution.

Law enforcement-based responses to involvement in the sex trades and trafficking in persons—which includes direct targeting through both anti-prostitution initiatives and anti-trafficking raids<sup>14</sup> further marginalize and endanger TGNC POC who are vulnerable to all forms of trafficking and police abuse.<sup>15</sup> These responses create barriers and fail to meet individuals’ basic needs, address the root causes of involvement, or reduce vulnerability to violence and exploitation.<sup>16</sup>

Additionally, anti-prostitution arrest “sweeps” of sex workers that are promoted as anti-trafficking initiatives, such as Project Rose<sup>17</sup> in Phoenix, Arizona, further encourage police profiling and unlawful arrests of transgender women of color. One such example is the case of Monica Jones,<sup>18</sup> a transgender woman of color who was arrested in a Project Rose operation while walking to a bar near her home, and who has faced repeated police harassment since challenging her unlawful arrest in court.

Law enforcement-based responses and increasingly prevalent anti-trafficking initiatives prioritize prosecution and condition access to services in ways that deny survivors of trafficking basic human rights, including the right to decide whether to seek or participate in efforts to investigate traffickers.<sup>19</sup> Further, LGBT youth and adults involved in sex work or the sex trades

---

<sup>14</sup> See C. Angel Torres and Naima Paz, *Denied Help: How Youth in the Sex Trade are Turned Away from Systems Meant to Help Us and What We are Doing to Fight Back*, YOUNG WOMEN’S EMPOWERMENT PROJECT (2012), available at <http://ywepchicago.files.wordpress.com/2012/09/bad-encounter-line-report-2012.pdf>; see also Jo Rees, *Trans Youth Involved in Sex Work in New York City: A Qualitative Study* (2010) (Ph.D. dissertation, New York University); Jazeera Iman, Catlin Fullwood, Naima Paz, Daphne W, and Shira Hassan, *Girls Do What They Have to Do to Survive: Illuminating Methods Used by Girls in the Sex Trade and Street Economy to Fight Back and Heal*, YOUNG WOMEN’S EMPOWERMENT PROJECT (2009), available at <http://ywepchicago.files.wordpress.com/2011/06/girls-do-what-they-have-to-do-to-survive-a-study-of-resilience-and-resistance.pdf>.

<sup>15</sup> A recent Canadian Supreme Court case striking down certain anti-prostitution criminal provisions recognized that criminalizing sex workers can endanger their health, safety and lives. *Canada (Attorney General) v Bedford*, 2013 SCC 72 [2013].

<sup>16</sup> Hanssens et al., *supra* note 6, at 63; see also Noy Thrupkaew, *A Misguided Moral Crusade*, N.Y. TIMES, September 23, 2012, available at [http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html?pagewanted=all&_r=0) (“Nearly 90 percent of the minors profiled in a John Jay College study indicated they wanted to leave ‘the life’—but cited access to stable housing as one of the biggest obstacles. In New York City alone, almost 4,000 homeless youths lack stable housing, yet there are barely more than 100 long-term shelter beds to serve them.”); see also Gregory Maney, Tineka Brown, et al., *Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area*, HOFSTRA UNIVERSITY (2011), available at <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf>.

<sup>17</sup> Stephanie Wahab & Meg Panichelli, *Ethical and Human Rights Issues in Coercive Interventions With Sex Workers*, 28(4) AFFILIA 344, 346 (2013), available at <http://aff.sagepub.com/content/28/4/344>.

<sup>18</sup> James Nichols, *Monica Jones, Transgender Woman, Convicted of ‘Manifesting Prostitution,’* HUFFINGTON POST (Apr. 16, 2014), available at [http://www.huffingtonpost.com/2014/04/16/monica-jones-transgender\\_n\\_5159638.html](http://www.huffingtonpost.com/2014/04/16/monica-jones-transgender_n_5159638.html).

<sup>19</sup> *Supra* note 6, at 64.

who experience abuse or violence, are met with profiling and indifference from police and service providers who do not recognize them as survivors of violence.<sup>20</sup>

The state practice of conditioning access to services on an arrest is particularly prevalent among young people under the age of 18. Beginning with the passage of the New York Safe Harbour Act for Exploited Children of 2008, as many as twenty states have adopted some form of “Safe Harbor” legislation.<sup>21</sup> A Safe Harbor law shifts prosecution of youth for prostitution-related offenses from criminal courts to court supervision proceedings under child welfare, foster care, or dependency statutes.<sup>22</sup>

While the purported intent of these laws is to treat youth as survivors rather than offenders, Safe Harbor laws rely on custodial arrests to mandate involvement in services. The use of custodial arrests and involuntary “rehabilitation” violates the Convention on the Rights of the Child, its Second Optional Protocol, and numerous international legal documents. Child protection proceedings must be mitigated by the “minimum intervention” principles of the Convention’s Article 19, specifying that judicial measures are to be used only where appropriate, as a measure of last resort, and that placements be undertaken for the shortest appropriate period of time, and subject to periodic review.<sup>23</sup> The Committee on the Rights of the Child has specifically interpreted Article 19 to call for all measures to prevent and eliminate institutional violence, especially in regards to vulnerable adolescents such as those who are homeless or who are living in institutions.<sup>24</sup> These sources treat compulsory detention and “rehabilitation” as forms of punishment that must be abolished.<sup>25</sup> In their place, the framework requires voluntary, evidence-informed, and rights-based health and social services.

---

<sup>20</sup> *Id.*, at 64.

<sup>21</sup> The Texas Supreme Court decision *In the Matter of B.W.* 313 S.W.3d 818 (2010), is an exception to the general rule that Safe Harbor policies are adopted by legislation.

<sup>22</sup> Note, however, there is no agreed upon definition of a Safe Harbor law. More broadly, Safe Harbor laws have included witness protection and appropriations for services for young people in the sex trades. *See* CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES, Institute of Medicine & National Research Council 171 (Ellen Wright Clayton, Richard D. Krugman, & Patti Simon eds., 2014).

<sup>23</sup> United Nations (1989), Convention on the Rights of the Child, art. 37(b), 20 November, A/RES/44/25; *see also* General Comment No. 10, Children’s Rights in Juvenile Justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007), *available at* [www1.umn.edu/humanrts/crc/comment10.html](http://www1.umn.edu/humanrts/crc/comment10.html); United Nations (1995), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), 29 November, A/RES/40/33, *available at* <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>; United Nations (1990), United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”), 14 December, A/RES/45/112, *available at* <http://www2.ohchr.org/english/law/juvenile.htm>.

<sup>24</sup> In its General Comment No. 4, the Committee recommends legislation and administrative measures in relation to both public and private institutions for adolescents, as well as “training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police.” Relatedly, the Committee notes that “States parties have to provide special protection to homeless adolescents, including those working in the informal sector” and in particular that “States parties are required to (a) develop policies and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials . . . .” General Comment No. 4 (Thirty-third session, 2003), Adolescent Health, *available at* [http://www.unicef-irc.org/portfolios/general\\_comments/GC4\\_en.doc.html](http://www.unicef-irc.org/portfolios/general_comments/GC4_en.doc.html).

<sup>25</sup> Global Commission on HIV and the Law, *Risks Rights and Health*, UNDP, 2012, Recommendation 3.2.7.

Moreover, Safe Harbor laws increase police presence in places where TGNC POC youth gather, exposing young people to more of the same police abuse they currently experience at the hands of law enforcement, including profiling, false arrests, homophobic and transphobic harassment and abuse, and the extortion of sex in exchange for dropping charges. Once before these courts, youth have fewer rights and court supervision may be substantially longer than in criminal court. To avoid arrest or ‘rescue’ youth may go underground, work freelance and avoid all social services, heightening their vulnerability to violence, harm and health consequences.

Policing of prostitution generally negatively impacts the health and safety of TGNC POC. For example, police routinely use the fact of possession or presence of condoms as evidence of prostitution-related offenses.<sup>26</sup> Additionally, law enforcement are frequently reported to use the presence of possession of condoms as a pretext for homophobic and transphobic harassment and invasive questioning about gender and sexuality. As a result, TGNC POC are often deterred from carrying and using condoms because they are frequently profiled for prostitution-related offenses. This leads to arbitrary police contact and harassment. For example:

- An African-American transgender woman from New Orleans remarked "[the officer] was going through my purse calling me a "thing" and asking me what I needed all those condoms for."
- Another African-American transgender woman reported, "I was leaving the drop in clinic when police stopped me, searched my purse and found the condoms I just got from the drop in clinic...[they] asked me was I working because I was arrested for prostitution in the past. They just kept trying to convince me I was working when I was really on my way back to my room."
- The police stopped a 17-year-old African American transgender young woman in New York City and asked to present her ID. When officers found no reason to further detain her, they demanded she open her purse, saw condoms in her purse, and told her they were arresting her for LPP.

## **B. Police Detention and Incarceration**

TGNC POC who are subjected to police contact frequently experience unlawful searches and sexual assaults by law enforcement officers, as well as other detainees.<sup>27</sup> Searches and assaults of TGNC people do not just occur in the prison setting when in custody; incidents of violence by law enforcement begin at the time of arrest and serve to humiliate TGNC arrestees.<sup>28</sup> For example, recently, in New York City:

- An African-American transgender woman was approached by police on the street and told to “move on.” When she did not leave, the officer demanded identification. When she attempted to exit the street encounter, the police tackled her, pushed her forcefully into a police vehicle

---

<sup>26</sup> HUMAN RIGHTS WATCH, *supra* note 8, at 29; *see also* PROS NETWORK & URBAN JUSTICE CENTER SEX WORKERS PROJECT, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City* (April 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>.

<sup>27</sup> Hanssens et al., *supra* note 6, at 16.

<sup>28</sup> *Id.*

and pulled down her underwear to remark, “look what she has,” referring to her genitals. The officers then sodomized her with an object and refused her medical treatment until she had a seizure. She was ultimately arrested and charged with disorderly conduct and resisting arrest, among other charges.

- After being arrested, another African-American transgender woman informed the police officers that she identified as female, but was nonetheless placed in a cell with cisgender men where she was sexually assaulted. The officers in charge of her custody refused to assist her and made her remain in that cell, while misgendering her and using transphobic slurs.
- A transgender Latina woman was, upon arrest, stripped of her wig and forced to walk around the police precinct as officers shouted transphobic slurs at her.
- A transgender woman was strip searched three times – once at a police precinct and twice at a central booking facility - by officers seeking to assign her a gender.

Once in custody, TGNC detainees are often subjected to isolation from other prisoners for extended periods of time for their “protection” from sexual misconduct of other prisoners—often rendering them vulnerable to abuse by police officers.<sup>29</sup> Transgender women are particularly vulnerable because they are often placed in men’s facilities, where they face harassment and violence.<sup>30</sup> Additionally, in compliance with the Prison Rape Elimination Act (PREA), TGNC prisoners are punished and placed in solitary confinement due to policies that forbid gender non-conforming behavior and punish consensual physical contact.<sup>31</sup> The conditions of solitary confinement amount to torture, and people placed in solitary are restricted from accessing education, work, and program opportunities, which in turn limits them from benefiting from good-time credit, parole, and programs and services that may reduce barriers to successful reentry to the community upon release.<sup>32</sup> Since TGNC prisoners are likely to serve much of their sentence in isolation, they are more likely to serve the maximum time, or longer sentences.<sup>33</sup>

For TGNC POC youth in the sex trades under the age of majority, Safe Harbor laws carry a particular risk. In family court, a young person may be involuntarily committed to non-secure detention facilities, group homes, or foster care, or mandated to comply with court orders governing any aspect of their lives. For TGNC POC youth in particular, court supervision often results in the regulation or punishment of gendered or sexual behavior.<sup>34</sup> Once committed, TGNC POC youth in detention or shelters are exposed to violence and other harms from those with whom they are detained, and these youth are at higher risk of abuse by staff than other youth in detention.<sup>35</sup> The Committee on the Rights of the Child has interpreted Article 19 of the

---

<sup>29</sup> Hanssens et al., *supra* note 6, at 20.

<sup>30</sup> Hanssens et al., *supra* note 6, at 22.

<sup>31</sup> *Id.* For example, as a result of a prohibition on consensual sexual contact or touching, a facility in West Virginia sentenced a prisoner to sixty days in solitary confinement. PREA also prohibits prisoners from dressing or displaying the appearance of the opposite gender. TGNC individuals are typically targeted for violating PREA mandates and are frequently punished through the use of solitary confinement. *See id.* at 21.

<sup>32</sup> Hanssens et al., *supra* note 6, at 22. TGNC prisoners are also denied access to mail while in custody.

<sup>33</sup> *Id.*

<sup>34</sup> Katayoon Majd, Jody Marksamer, & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, The Equity Project (2009) at 75, available at [http://www.equityproject.org/pdfs/hidden\\_injustice.pdf](http://www.equityproject.org/pdfs/hidden_injustice.pdf).

<sup>35</sup> *See* INSTITUTE OF MEDICINE, *supra* note 22, at 21; THE BARTON CHILD LAW AND POLICY CLINIC, EMORY

Convention to require the prevention of violence against institutionalized children, through training and monitoring of personnel.<sup>36</sup> The Convention recognizes that any child who has been institutionalized is entitled “to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”<sup>37</sup>

Though Federal courts have ruled that transition-related healthcare is medically necessary, and that government authorities are liable for any deliberate indifference to the need for such healthcare,<sup>38</sup> TGNC detainees are also frequently denied transition-related healthcare.<sup>39</sup> Corrections agencies continue to irrationally distinguish transition-related treatment from other healthcare needs. Moreover, even where certain facilities have policies in place to provide hormones and surgery to TGNC prisoners, healthcare providers who evaluate TGNC prisoners either are personally opposed to providing such care, are not qualified to make a diagnosis, or prescribe inappropriate treatment or inadequate dosages.<sup>40</sup> In other facilities, TGNC prisoners are never sent for evaluation.<sup>41</sup> Typically, once a medical determination is made that transition-related care is unnecessary, it becomes impossible to override that decision, and as a result TGNC people are denied critical medical care in detention facilities.<sup>42</sup>

### III. Concluding Observations & Recommendations

Under article 2(1)(a) of the Convention, “[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.” The Committee has interpreted this obligation to require signatory States to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s color or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.”<sup>43</sup> The Durban Declaration “[u]rges States to design, implement and enforce effective measures to eliminate the phenomenon popularly known as “racial profiling” and comprising the practice of police and other law enforcement officers relying, to any degree, on race, color, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”<sup>44</sup>

All federal law enforcement agencies should adopt anti-discrimination and anti-profiling provisions, similar to those required by recent consent decrees entered into by the Department of

---

UNIVERSITY SCHOOL OF LAW, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN GEORGIA: SERVICE DELIVERY AND LEGISLATIVE RECOMMENDATIONS FOR STATE AND LOCAL POLICY MAKERS 40 (Jan. 2008).

<sup>36</sup> General Comment No. 4 (Thirty-third session, 2003), Adolescent Health, *available at* [http://www.unicef-irc.org/portfolios/general\\_comments/GC4\\_en.doc.html](http://www.unicef-irc.org/portfolios/general_comments/GC4_en.doc.html).

<sup>37</sup> United Nations (1989), Convention on the Rights of the Child, art. 25, 20 November, A/RES/44/25.

<sup>38</sup> *Id.*

<sup>39</sup> Hanssens et al., *supra* note 6, at 20.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation XXXI, Para. 20.

<sup>44</sup> Durban Declaration (2001), World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Para. 72.



Justice (DOJ) with the New Orleans Police Department (NOPD) and the Commonwealth of Puerto Rico (PRPD). These provisions explicitly prohibit the use of race, color, ethnicity, national origin, immigration status, religion, gender, disability, sexual orientation, or gender identity as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, exercising discretion to conduct a warrantless search or seek a search warrant, or effecting arrest, except as part of an actual and apparently credible description of specific suspect or suspects in a criminal investigation.<sup>45</sup>

The DOJ should:

- Immediately adopt and enforce an updated directive on profiling by federal law enforcement agents prohibiting profiling based on actual or perceived sexual orientation, gender, gender identity and expression, disability, immigration, housing, marital and HIV status, and promptly issue and enforce an updated directive to federal law enforcement;<sup>46</sup>
- Make promulgation and compliance with policies consistent with the above referenced anti-discrimination and anti-profiling principles a condition of federal funding for local law enforcement agencies;<sup>47</sup>
- Make collection of data concerning stops, frisks, and searches of pedestrians and motorists a condition of federal funding to local law enforcement agencies, promulgate guidelines for data collection, and collect and publish this data on an annual basis;<sup>48</sup>
- Adopt policies to ensure that TGNC people are referred to by the name and gender pronoun they regularly use;
- In consultation with groups representing individuals in the sex trades and sex workers, review the DOJ's "Model State Provisions on Pimping, Pandering, and Prostitution," in order to remove provisions that criminalize and otherwise endanger sex workers and people in the sex trades;
- Offer guidance to local law enforcement agencies with respect to policies and practices that place survivors of trafficking, people in the sex trades, and sex workers at greater risk, such as the widespread confiscation and use of condoms as evidence of intent to engage in prostitution-related offenses; as well as abuse, extortion, rape, sexual assault and other violence by police officers towards sex workers and those profiled as such;<sup>49</sup> and law enforcement officers' failure to investigate and prosecute violence, including sexual assault and rape, committed against sex workers and people profiled as sex workers;

---

<sup>45</sup> Consent Decree Regarding the New Orleans Police Department, *United States v. City of New Orleans*, 12cv1924 (E.D. La. July 24, 2012) ("NOPD Consent Decree") ¶¶ 125, 127, 142, 183, 184-186.

<sup>46</sup> Hanssens et al., *supra* note 6, at 14.

<sup>47</sup> Consent Decree Regarding the New Orleans Police Department, *United States v. City of New Orleans*, 12cv1924 (E.D. La. July 24, 2012) ("NOPD Consent Decree") ¶¶ 125, 127, 142, 183, 184-186.

<sup>48</sup> Hanssens et al., *supra* note 6, at 20.

<sup>49</sup> PRESIDENT'S ADVISORY COUNCIL ON AIDS, *Resolution on Ending Federal and State Specific Criminal Laws*, DEPARTMENT OF HEALTH AND HUMAN SERVICES (2012), available at <http://aids.gov/federalresources/pacha/meetings/2013/feb-2013-criminalization-resolution.pdf>; see also HUMAN RIGHTS WATCH, *supra* note 8; see also PROS NETWORK & URBAN JUSTICE CENTER SEX WORKER'S PROJECT, *supra* note 20.

- Together with the Centers for Disease Control and Prevention and other agencies, condemn the ongoing practice of reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity;<sup>50</sup>
- Closely monitor PREA enforcement to ensure that TGNC people are not subject to discriminatory enforcement and continue to develop policy regarding the implementation and enforcement of PREA standards for police lockups and detention facilities;<sup>51</sup>
- Amend PREA regulations to include an explicit prohibition on search for the sole purpose of determining genital characteristics.

The Federal Bureau of Prisons (BOP) should:

- Ensure that all prisoners receive TGNC-inclusive healthcare and gender-appropriate clothing and grooming items;<sup>52</sup>
- Eliminate all forms of solitary confinement in federal prisons but particularly as “protective” detention for TGNC people;<sup>53</sup>
- Make transparent policy regarding housing of transgender prisoners<sup>54</sup> and enable engagement of transgender advocates in those determinations.<sup>55</sup>

Lawmakers in the United States should:

- Align anti-trafficking legislation with human rights norms, which reject the criminalization of people who may be trafficked as a method to address trafficking.
- Pass the End Racial Profiling Act, with provisions inclusive of prohibitions on profiling based on gender, gender identity and expression, and sexual orientation;<sup>56</sup>
- Develop, promote, and support legislation to remove barriers to public housing, benefits, and immigration for TGNC youth and adults as part of anti-trafficking efforts;
- Prioritize the critical needs identified by survivors of trafficking over law enforcement-based responses for the Federal Strategic Action Plan on Services for Victims of Human Trafficking;<sup>57</sup>

---

<sup>50</sup> Hanssens et al., *supra* note 6, at 18.

<sup>51</sup> Hanssens et al., *supra* note 6, at 16.

<sup>52</sup> See N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVICES, *Lesbian, Gay, Bisexual, Transgender, and Questioning Youth* 8 (2008), available at [http://srp.org/files/LGBT\\_Youth\\_Policy\\_PPM\\_3442\\_00.pdf](http://srp.org/files/LGBT_Youth_Policy_PPM_3442_00.pdf).

<sup>53</sup> Sal Rodriguez, *Frequently Asked Questions*, SOLITARY WATCH (2012), (“The Committee Against Torture, official governing body of the UN Convention Against Torture that the United States ratified in 1994, has recommended that the practice of isolation be abolished. The UN Human Rights Committee has, in 1992, suggested that prolonged isolation may amount to a violation of international human rights law. Similarly the UN committee on the Rights of the Child has urged for an end to the use of solitary confinement against minors.”), available at <http://solitarywatch.com/facts/faq/> (last accessed June 25, 2014); see also HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, *Growing up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012), available at <http://www.hrw.org/reports/2012/10/10/growing-locked-down>.

<sup>54</sup> Prison Rape Elimination Act National Standards, 28 C.F.R. § 115.42(c) (2012).

<sup>55</sup> Hanssens et al., *supra* note 6, at 25.

<sup>56</sup> Hanssens et al., *supra* note 6, at 14.

<sup>57</sup> DEPARTMENT OF JUSTICE, ET AL., *Coordination, Collaboration, Capacity: Federal Strategic Action Plan to Combat Trafficking in Persons* 9 (Jan. 2014), available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

- Develop, promote, and support an amendment to the Trafficking Victims Protection Reauthorization Act (TVPRA) to eliminate mandatory cooperation with law enforcement in order to obtain immigration relief or services. Such collaboration often presents a significant barrier to access to services for all survivors of trafficking, and particularly for LGBT youth and adults who are routinely denied help by law enforcement agencies, profiled as perpetrators of violence, or subjected to dual arrest even as they are targets of violence;<sup>58</sup>
- Involve survivors of all forms of trafficking, including TGNC youth and adults, in every aspect of implementation of the Federal Strategic Action Plan on Services for Victims of Human Trafficking. Involvement should include awareness raising, assessment and evaluation of outreach materials and identification practices, identification of barriers to housing, immigration benefits, legal services, and medical care, and identification of research priorities;<sup>59</sup>
- Establish a task force that meaningfully involves people who identify as sex workers or people in the sex trades, former sex workers or people in the sex trades, and their allies, to investigate the impact of criminalization of involvement in sex work or the sex trades on public health, safety, budgets, and the economy, and examine alternative approaches to addressing harms to individuals in the sex trades by reducing poverty, homelessness, and basic needs in groups most represented in the sex trade.<sup>60</sup>

For more information, contact:

J.M. Kirby  
 Human Rights Advocate  
 Best Practices Policy Project  
[Bestpracticespolicyproject@gmail.com](mailto:Bestpracticespolicyproject@gmail.com)

Andrea Ritchie  
 Coordinator  
 Streetwise and Safe (SAS)  
[andrea@streetwiseandsafe.org](mailto:andrea@streetwiseandsafe.org)

Kate Mogulescu  
 Supervising Attorney  
 The Legal Aid Society  
 Trafficking Victims Advocacy Project  
[kamogulescu@legal-aid.org](mailto:kamogulescu@legal-aid.org)

---

<sup>58</sup> See NATIONAL COALITION OF ANTIVIOLENCE PROGRAMS, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010* (2010), available at <http://www.lgbtqnation.com/assets/2011/07/NCAVP-hate-violence-report-2011.pdf>; see also Joey L. Mogul, Andrea J. Ritchie, Kay Whitlock, QUEER (IN)JUSTICE 61-64 (Beacon Press 2011); Katayoon Majd, Jody Marksamer, and Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, LEGAL SERVICES FOR CHILDREN, NATIONAL JUVENILE DEFENDER CENTER, AND NATIONAL CENTER FOR LESBIAN RIGHTS (2009), available at [http://www.equityproject.org/pdfs/hidden\\_injustice.pdf](http://www.equityproject.org/pdfs/hidden_injustice.pdf).

<sup>59</sup> Hanssens et al., *supra* note 6, at 65.

<sup>60</sup> *Id.*