

Attn Mark Taylor
U.S. Department of State
Office to Monitor and Combat Trafficking in Persons
1800 G Street, NW, Suite 2148
Washington, DC 20520

March 6, 2013

RE: Request for Information for the 2013 Trafficking in Persons Report

Dear Mr Taylor,

The Best Practices Policy Project (BPPP), the Desiree Alliance and SWOP-NYC/SWANK are pleased to provide the following information for the annual Trafficking in Persons Report. BPPP is dedicated to supporting organizations and advocates working with sex workers, people in the sex trade and related communities in the United States. BPPP produces materials for policy environments, addresses research concerns and provides organizations and advocates with technical assistance. Everything that BPPP does is guided by principles that protect the human rights of people who engage in commercial sex in all its forms. The Desiree Alliance is a diverse, sex worker-led network of organizations, communities and individuals across the US working in harm reduction, direct services, political advocacy and health services for sex workers. The Desiree Alliance provides leadership and creates space for sex workers and supporters to come together to advocate for human, labor and civil rights for all workers in the sex industry. SWOP-NYC/SWANK are grassroots organizations of sex workers and allies working to improve the lives of those in the sex trade on and off the job in the New York metropolitan area. To support this work, SWOP-NYC and SWANK engage in community building, peer support and political advocacy.

We thank you so much for taking the time to meet with representatives of the Desiree Alliance and BPPP last year to hear our concerns about the impact of anti-trafficking policies on communities in the United States and globally. Like many others in the human rights community, we value the fact that an assessment of the US is now included within the TIP report as a matter of course. We would also like to reiterate how pleased we are that the State Department has indicated its support for the rights of sex workers and people in the sex trade by accepting UPR recommendation 86 that requires the US to “undertake awareness-raising campaigns for combating stereotypes and violence against gays, lesbians, bisexuals and [transgender people], **and ensure access to public services paying attention to the special vulnerability of [sex] workers to violence and human rights abuses**”.

We hope that the information we provide below will be useful in ensuring that sex workers and people in the sex trade are not made further vulnerable to violence or marginalized from public services due to anti-trafficking efforts.

1. Adopting a Human Rights Approach

In March 2011 the US Department of State accepted UPR recommendation 86 agreeing that, “no one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution.” In the 2012 the Department of State also affirmed that it is committed to a “rights-based approach of the modern era” and that “governments should not base their response on nineteenth-century laws that viewed trafficking in persons as the transnational movement of prostituted women, and traffickers as violating state sovereignty by bringing “immoral” persons over the borders” (Trafficking in Persons Report, June 2012: 13). Our organizations strongly encourage the US Department of State to include information in the 2013 TIP report about anti-trafficking policies that have violated the spirit of Recommendation 86 leading to violence and discrimination against sex workers, people in the sex trade and people who are profiled as engaging in prostitution even when they are not. Such policies include the use of anti-trafficking funding to arrest, detain, incarcerate, deport and harass sex workers and people presumed to be sex workers, their families, and people who are presumed to be their customers. Within the United States these misguided “anti-trafficking” actions have long-term collateral effects due to conviction statuses affecting access to housing, employment, and federal assistance programs. Communities of color and immigrants are disproportionately affected. We also encourage the Department of State to clearly report the negative impact of similar “anti-trafficking” actions globally including information, for example, from the reports we cite from Thailand and Hungary below.

In recent consultations in February 2013 with civil society organizations regarding the International Covenant on Civil and Political Rights, representatives of the US Department of State reported that the US is either in compliance with UPR recommendations accepted in March 2011 or has implementation plans for specific recommendations needing additional actions. Our organizations encourage the US Department of State to publicize information about the ways in which US anti-trafficking policies have been or will be updated to “ensure access to public services paying attention to the special vulnerability of [sex] workers to violence and human rights abuses” (Recommendation 86) and to ensure that “no one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution.” (US Department of State, March 2011). An implementation plan for Recommendation 86 is crucial in order to defend the human rights of sex workers, people in the sex trade and related communities. A rights based approach also must include communities affected by policies in the creation of solutions. Our organizations and the networks we belong to are eager to participate in the development of human rights based approaches and encourage the US Department of State to provide us with the dates that such consultations will occur.

2. Legislative restrictions on funding continue to hinder anti-trafficking efforts by excluding groups that are in the best position to identify and protect survivors of trafficking

The US government still falls short of implementing comprehensive efforts by placing politically-driven restrictions on the criteria for organizations that may receive grants under the Trafficking Victims Protection Reauthorization Act TVPRA and President's Emergency Plan for AIDS Relief (PEPFAR). These restrictions also undermine the access of sex workers to services both domestically and internationally and therefore violate the spirit of Recommendation 86. US lawmakers should amend the law to ensure that evidence-based programs can receive funding to ensure the most effective response to human trafficking and ensure human rights protections for all.

Groups that are active in promoting the rights, safety, health and well-being of persons in the sex trade are well positioned to report on incidents of trafficking and support responses for victims of human trafficking in the sex sector. Sex worker groups, in particular, are essential partners for identifying when any person has been trafficked into the sex sector (*Report from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 2010, A/HRC/14/20, para. 48). For example, many rights-based anti-trafficking groups have taken on highly effective methods for addressing human trafficking by instituting peer education programs and self-regulating boards. These initiatives are successful because they enlist stakeholders, such as peer educators, sex workers, and service providers to provide immediate assistance and “safe exits” when a trafficked person has been identified. (A. Crago, *Our Lives Matter: Sex Workers Unite for Health and Rights*, New York, Open Society Institute, 2008, pp. 36. <http://www.opensocietyfoundations.org/reports/our-lives-matter-sex-workers-unite-health-and-rights>)

However, in accordance with current US policy these groups are identified as “supporting, promoting, or advocating” for the practice prostitution, and therefore have suffered severe resource and funding losses that prevent them from carrying out successful trafficked victim protection programs (A. Crago pp.15). The Congressional Research Service (CRS)—an agency within the US Library of Congress that provides policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation—recently acknowledged the “Anti-Prostitution Loyalty Oath” restriction on funding “excludes the people who are most able to report and combat abuses within the sex industry-including prostitutes themselves-and may hinder the success of well-established anti-TIP programs.” (Congressional Research Service, *Trafficking in Persons: U.S. Policy and Issues for Congress*, December 2012).

This year 2013 is an ideal time for the US to re-consider the “Anti-Prostitution Loyalty Oath” restriction on funding because PEPFAR is due to be reauthorized this year. Furthermore, civil society organizations within the United States continue challenge the restriction on First Amendment grounds (in April 2013 the Supreme Court will consider *USAID v AOSI*).

3. Harms caused by Law Enforcement/Immigration Approaches

Governments around the world continue to rely inappropriately on law enforcement and immigration measures as the principal tools for combating human trafficking. Despite an emphasis in past TIP reports that such approaches do not adequately address the issues, these measures continue to be key components of anti-trafficking efforts and pose significant barriers to the success of those efforts.

Research released this year highlights how over-emphasis on the enforcement approach, coupled with continued inappropriate focus on trafficking in the sex sector, is harming trafficking victims and others:

In spite of the near-exclusive focus of the US government on sex trafficking, the experiences of those trafficked into commercial sex and the services and remedies they need are still not widely understood. For example, US federal and local anti-trafficking policies are largely dependent on law enforcement raids, with an overwhelming focus on sex work. This strategy has proven ineffective in the effort to identify trafficking victims, and to lead to human rights violations of sex workers and survivors of trafficking. Anti-Trafficking task forces are federally funded and often consist of both local and federal law enforcement personnel, with a focus on raids.

The Road North, Urban Justice Center's Sex Workers Project
<http://www.sexworkersproject.org/downloads/2012/swp-2012-the-road-north-en.pdf>

In addition, the US continues to fail to meet minimum standards by pursuing a haphazard and indiscriminate approach to immigration laws, creating the precise circumstances in which people are put at risk for trafficking:

In addition to infringing upon civil liberties and human rights, critics of 287(g) and Secure Communities find issue with identifying undocumented immigrants through focusing on non-threatening legal offenses, such as minor traffic violations, and more disturbingly through tracking undocumented immigrants who are victims of crimes. Furthermore, although the programs' intent is to enhance community safety and security, they have actually had the opposite effect, creating mistrust in the relationship between local law enforcement agencies and immigrant communities. For example, in communities where 287(g) is active there has been an uptick in racial profiling and illegal search and seizures. In addition, many of those identified, detained and eventually deported are far from dangerous or severe criminal offenders.

The Road North, Urban Justice Center's Sex Workers Project

The US government also continues to require cooperation with law enforcement as a prerequisite for trafficking victims to remain in the country. This approach coerces immigrants who fear deportation and other negative consequences such as being imprisoned separating them from family and loved one, should they fail to cooperate.

At the state governmental level, the US continues to enact damaging laws and law enforcement and lawmakers pursue non-evidentiary campaigns that have deleterious effects on trafficking victims and others. For example, Proposition 35, an “anti-trafficking” initiative which passed in California in November 2012, is so broad and unclear in its scope that youth under the age of 18 who are in the sex trade can be charged as traffickers themselves for sharing food, shelter and resources [Black Women for Wellness Opposes Prop. 35, October 31, 2012, <http://www.bwwla.org/wp-content/uploads/2012/10/Prop-35-letter.pdf>]. Penalties include mandatory lengthy sentences as well as having to register as a sex offender. Proposition 35’s definition of “sex offender” is so broad that it includes people charged with indecent exposure, a statute frequently used against homeless people for public urination. The harms caused by registering people in the sex trade as “sex offenders” were documented by civil society organizations during the UPR of the United States in 2010 and this concern is therefore directly addressed by Recommendation 86.

The inadequacy of enforcement-focused is also evident in international contexts where both civil society and academic researchers identify combating discrimination against and social exclusion of sex workers/those involved in commercial sex as critical to ending coercion, force and fraud in the sector. From a shadow report submitted under CEDAW, the Hungarian group Szexmunkások Érdekvédelmi Egyesülete (SZEXE- Association of Hungarian Sex Workers) highlights this dynamic:

In SZEXE’s experience working with victims of trafficking in the sex industry, a large number of women worked consensually in sex work prior to being trafficked. This is echoed by research by the European Roma Rights Centre in 2011 that also found that previous involvement in sex work is linked to being in situations of trafficking. It is not involvement per se in sex work that places sex workers at higher risk of being in situations of trafficking. *Rather, sex workers’ lack of equal access to police protection, due to discrimination and police repression, creates a climate of impunity for abuse against sex workers, including but not limited to trafficking.* [emphasis added] Sex workers are often approached with offers of new job in the sex industry but deceived as to the conditions under which they will be working, ending up in exploitative or coercive situations...

The European Roma Rights Centre further found that Roma individuals are more likely to become victims of trafficking in Hungary due to the following factors: living in poverty, social exclusion, limited or lack of education, illiteracy, growing up in state care, being indebted. SZEXE’s experience confirms that Roma sex workers are disproportionately targets for human rights abuses, including trafficking, due to their social exclusion and perceived lack of recourse to police protection. Discrimination based on ethnic origin and on involvement in

sex work are compounded for Roma sex workers making them all the more vulnerable to abuse. The government must address discrimination based on ethnic origin and sex work experience as well as police repression against sex workers if it wishes to suppress trafficking and exploitation in prostitution.

Report on Violence and Discrimination against Female Sex Workers by State and Non-State Actors in Hungary, submitted by Szexmunkások Érdekvédelmi Egyesülete (SZEXE- Association of Hungarian Sex Workers) to the Committee on the Elimination of All Forms of Discrimination against Women on January 16 for the 54th CEDAW session (11 February - 1 March 2013)

http://www2.ohchr.org/English/bodies/cedaw/docs/ngos/SZEXE_ForTheSessionCEDAW54.pdf

Due to the global influence of the United States, and the government's outspoken position on issues of human trafficking, it is particularly important that officials are consistent and clear about what interventions are evidence-based, effective and in-line with human rights standards. This dynamic gives the US government, and by extension the State Department and the Office to Combat Trafficking in Persons, a heightened obligation to ensure that human rights abuses are not committed in the course of anti-trafficking efforts. A disturbing report from Thailand—researched and written by local civil society group Empower with support from international human rights organizations—reveals how even the impression of US support for a certain tactic can result in damaging situations:

It is recognized internationally that anti-trafficking law, policy and practice should adhere to core human rights principles and at the very least do no harm to victims or others who might be caught up in trafficking interventions. Despite this principle our research has shown that since the enactment of the Thai Suppression of Human Trafficking Act BE 2551, July 2008, dozens of the fundamental human rights to women are violated by its implementation. These violations have been perpetrated by both State and non-state actors against migrant sex workers, as well as women who were classified as victims of trafficking. Our findings revealed that these violations are embedded in the interpretations or practices of 10 sections of the Suppression of Human Trafficking Act, they occur regularly and are nationwide.

Hit and Run: The impact of anti trafficking policy and practice on Sex Worker's Human Rights in Thailand, Empower Foundation, 2012

http://www.nswp.org/sites/nswp.org/files/Hit%20and%20Run%20%20RATSW%20Eng%20online_0.pdf

The Thai government—and others which commit similar abuses—should be held accountable and the TIP report should make clear how these actions are examples of what governments should not be doing in the course of anti-trafficking work. Such abuses should be specifically noted as reasons for lower TIP report rankings. Indeed, researchers

at Empower attributed many of these violations to policies and practices implemented in an effort to get a better assessment in the TIP report, rather than being based in evidence:

The confused and frantic efforts to comply with US requirements has led to a punitive, criminal justice response to women, men and communities who live and work within the sex industry in Thailand. While this approach has allegedly led to the rescue of women and girls, who were judged to be trafficked into the sex industry, it has also led to unacceptable human rights violations against an even larger number of women sex workers, their families and communities.

Hit and Run, Empower Foundation, 2012

3. Negative impacts of “End Demand” approaches, notably on transgender people

In 2012 research findings have been released illustrating the extremely negative consequences of laws and policies that attempt to “punish the purchasers” of sexual services. These approaches are also known as “ending demand” for commercial sex. Purchasers are presumed to be male and efforts made under the rubric of “ending demand” include heightened policing of people profiled as “male customers”, new laws targeting purchasers, and public shaming campaigns by placing photos of “offenders” on billboards and online. However, end demand policies simply replicate the harms of enforcement approaches noted above and provide new opportunities for the arrest of sex workers, people in the sex trade, and people profiled as sex workers by the police (such as transgender people and homeless communities). For example, research by the Social Science Research Center at DePaul University has revealed however that at least 10 percent of mug shots of people presumed to be “male purchasers of commercial sex” posted online by the Chicago Police Department were likely transgender women, 92 percent of whom were African-American (Rachel Lovell, *Mug Shots: the charge fits the crime?* July 2012, <http://ssrcdepaul.wordpress.com/2012/07/24/mug-shots-part4/>).

Another study examining the results of “end demand” approaches found that an evaluation of San Francisco’s “First Offender Program” failed to provide reliable evidence to back claims that the program was effective. The program, also known as the “johns school” and is one of many across the US, purports to address human trafficking by reducing recidivism among men arrested for seeking to purchase sex services. Researchers noted that, “No study to date has documented a causal connection between a john school program and a decline in recidivism (re-arrest) rates among male purchasers of commercial sex or a reduction in the incidence of prostitution or human trafficking.” (Ann Jordan and Rachel Lovell, *Do John Schools Really Reduce Recidivism?*, July 2012, <http://rightswork.org/wp-content/uploads/2012/09/John-Schools.Lovell.Jordan.7.12.pdf>) The fact that local governments in the US continue to implement such programs amounts to a waste of resources and a failure to meet the minimum standards of the TVPA.

Internationally the utility of “end demand” approaches has been questioned and analysis of the way in which the approach has been implemented in Sweden has found it to violate

rights. For example, the Canadian HIV/AIDS Legal Network found that the this approach “violates the right to the security of the person” by preventing sex workers from working collectively and ensuring safety (*Sex Work and Law Reform in Canada: Considering Problems with the Nordic Model*, January 2013, <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=2103>). The Global Commission on HIV and the Law found that, “Since its enactment in 1999, the law [in Sweden] has not improved — indeed, it has worsened — the lives of sex workers” (Global Commission on HIV and the Law, *Risks, Rights, and Health*, July 2012, p. 38).

4. Anti-trafficking responses based on erroneous data lead to human rights abuses

Governments have failed to take a firm stand against hype around large sporting events and their supposed link to human trafficking. Instead, governments in the United Kingdom, Poland, Ukraine and the United States continue to use ineffective techniques such as brothel raids/closures and street sweeps under the guise of fighting trafficking. These actions directly impacted the human rights of people involved in commercial sex and contravene the best practices described in past TIP reports.

An expert and leading social service provider describes the dynamic in London leading up to the 2012 Olympics, with inaccurate messages about human trafficking and media hype influencing the government’s actions:

In 2010, the implementation of the [UK Crime and Policing Act](#) plus the brothel closures in the Olympic host boroughs meant that the disruption for sex workers in London had become intolerable. Of course, the sex industry didn’t go away. Instead, it (as we knew it would) simply stopped contacting services to support them. Getting access into flats and saunas for sex worker support services became more and more difficult. And worse, *when women were robbed, or beaten, or raped by criminals, they were too frightened of the police’s reaction to them as sex workers that these serious and vicious crimes went unreported.* [emphasis added]

A two-tier notion of victimhood became apparent in London. A ‘real’ victim was one who was trafficked or involved in prostitution against her will; she would accept being rescued and was willing to cooperate with the police or anti-trafficking agencies. A criminal was a prostitute who, regardless of the law and prevailing moral attitudes, continued to sell sex and came to the attention of the police if she tried to report a crime against her, resulting (more often than not) in the examination of her behaviour, finances and relationships to such an extent that to report a crime – however serious– was simply too much of a risk.

Over time at the prostitution/trafficking meetings we saw the rhetoric change from the description of measures aimed at ‘anti-trafficking for the purposes of sexual exploitation’ to ‘anti-prostitution’.

Georgina Perry, *Sex work and the London 2012 Olympics – How was it for you?*
September 14, 2012
<http://thetraffickingresearchproject.wordpress.com/2012/09/14/sex-work-and-the-london-2012-olympics-how-was-it-for-you/>

Not only do such practices and rhetoric result in human rights violations against people involved in commercial sex, they distract from effective efforts to address the needs of those who are actually affected by human trafficking. The shift in approaches described above, from “anti-trafficking” to “anti-prostitution,” diverts resources, public support and media attention from addressing human trafficking.

Research in Poland and Ukraine conducted in the run-up to the 2012 European Football Championship finals (the UEFA EURO 2012) reached similar conclusions including three key recommendations that warrant inclusion in the TIP report:

1. Since there is no proven connection between major sports events and human trafficking, prostitution and sex tourism, we recommend that UEFA EURO 2012 should not be publicly linked with these themes.
2. Experts from non-governmental organizations should receive (financial) support to help them deal seriously with the themes of prostitution and human trafficking in the media in the run-up to UEFA EURO 2012. They must be able to react to a media onslaught in order to ensure that sex work is not confused with human trafficking and that football events are not linked to human rights violations. They must coordinate views and information, particularly figures, with each other, the police and the state authorities.
3. The physical safety of sex workers will be threatened if they are forced into dangerous peripheral areas by citycentre cleaning-up operations designed to separate fan milieus for tourists from existing red light districts. This should be deliberately avoided.

Martina Schuster, Almut Sülzle, Agnieszka Zimowska, *Discourse on prostitution and human trafficking in the context of UEFA EURO 2012*,
http://www.nswp.org/sites/nswp.org/files/uefa_2012_EN.pdf

Within the United States efforts to shutter locations where sex workers are said to advertise their services—such as Craigslist and Backpage—have similarly been based on erroneous information/hype and the conflation of all adult prostitution with human trafficking. This conflation diverts attention and resources away from actual cases of trafficking, makes anti-trafficking work more difficult and drives sex workers underground putting them at greater risk for human rights abuses. In September of 2010, the National Association of Attorney’s Generals sent a letter to Village Voice Media, owner of Backpage, demanding the closure of the adult services section and this group has since tried to set up numerous roadblocks to website’s operations

(<http://www.naag.org/ags-give-backpage.com-deadline-to-substantiate-claims-it-limits-prostitution-ads-august-31-2011.php>). In the course of these campaigns NAAG has consistently equated trafficking in persons and adult prostitution. A letter from 19 Senators similarly confused human trafficking, adult prostitution and responded using hype saying, “There is only one option to keep our children safe from exploitation on your advertising network – shut down the adult services section of Backpage.com.” (http://www.kirk.senate.gov/?p=press_release&id=460).

SWOP-NYC and SWANK have documented the ways in which these misguided campaigns negatively affect people in the sex trade. Closing venues in which people in the sex trade operate independently and on their own terms necessarily leads many into more dependent, vulnerable situations. As one woman explained advertising online via low cost means, “is the only way I can make ends meet. I really don't know what I'll do if they get rid of it. It makes me worried about getting more work safely” (*Sex Trafficking: Backpage.com Isn't the Problem, Say Sex Workers*, <http://jezebel.com/5899825/backpagecom-isnt-the-problem-say-sex-workers>). A SWOP-NYC member testified online that being able to advertise on online at low-cost had allowed her to avoid homelessness and that without it she would not be able to survive safely in the NYC area (<http://swop-nyc.org/wpress/2012/06/18/why-backpage-is-important-to-me-pink/>).

Closing advertising venues and marginalizing sex workers prevent the investigation of human rights abuses and human trafficking. Madeleine, a SWOP-NYC member described how she had used evidence from an online advertising site to convict an abuser:

Closing down online advertisers will...remove the digital trail that can serve as a great source of information for law enforcement if the trafficking victim decides to report the crime. When I reported my pimp a number of years later, a digital trail still existed that allowed us to identify him...

Shutting down low-cost advertising venues such as these will put both consensual sex workers and trafficking victims out on the street. For consensual sex workers, shutting down advertizing services does not magically eliminate the conditions that caused them to seek out sex work in the first place. So in the absence of Backpage, they will still require the ability to advertise somewhere, which may in many cases mean advertising on the street, which is considerably more dangerous.

Why Backpage Is Important To Me: Madeleine's Story

<http://swop-nyc.org/wpress/2012/06/19/why-backpage-is-important-to-me-madeleines-story/>

HOW TO SUBMIT

The Department of State (“the Department”) requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons (“minimum standards”) that are prescribed by the Trafficking Victims Protection Act of 2000, (Div. A, [Pub. L. 106-386](#)) as amended (“TVPA”). This information will assist in the preparation of the Trafficking in Persons Report (“TIP Report”) that the Department submits annually to appropriate committees in the U.S. Congress on countries’ level of compliance with the minimum standards. Foreign governments that do not comply with the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA.

Information can be submitted via email to tipreport@state.gov for submissions related to foreign governments and tipreportUS@state.gov for submissions related to the United States.