

QUESTIONNAIRE

“Violence and its impact on the right to health”

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 42/16.

I would like to invite you to respond to the questionnaire below. Submissions received will inform my next thematic report on “Violence and its impact on the right to health”, which will be presented to the Human Rights Council in June 2022.

The questionnaire on the report is available at OHCHR website in English (original language) as well as in French, and Spanish:
(<https://www.ohchr.org/EN/Issues/health/pages/srrihealthindex.aspx>).

All submissions received will be published in the aforementioned website, unless it is indicated that the submission should be kept confidential.

There is a word limit of 750 words per question. Please submit the completed questionnaire to ohchr-srhealth@un.org. The deadline for submissions is: **18 January 2022**.

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Contact Details

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

Type of Stakeholder (please select one)	Member State Observer State <input checked="" type="checkbox"/> Other (please specify) Civil Society Organizations
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Name of State	United States
Name of Survey Respondent	Desiree Alliance - Cristine Sardina MSJ Best Practices Policy Project - Penelope Saunders PhD
Email	director@desireealliance.org bestpracticespolicyproject@gmail.com
Can we attribute responses to this questionnaire to your State publicly*? *On OHCHR website, under the section of SR health	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comments (if any): This is a joint collaboration of the Desiree Alliance and the Best Practices Policy Project

Background

Within the framework of Human Rights Council resolution 42/16, the Special Rapporteur on the highest attainable standard of physical and mental health has identified sexuality, gender based violence and femicide as one of her priorities during her tenure (See [A/HRC/47/28](#) paras 50-64). In compliance with her mandate and in line with this priority she has decided to devote her next thematic report to the 50th session of the Human Rights Council in June 2022 to the theme of “Violence and its impact on the right to health.”

Objectives of the report

The Special Rapporteur intends to shed light on who is seen as victims of violence, and who is affected by what type of violence, with emphasis on the violence experienced by women, children, LGBTI persons and conflict related gender based violence. She will also explore the role of men as perpetrators and their experience as victims of violence. Her analysis will look into the responses that survivors of violence receive with a focus on good practices, as well as the obligations, responsibilities, and protections that arise under the right to health framework

and other relevant human rights in this connection. She will also report on emerging trends related to the impact of COVID-19 on all forms of violence and related responses.

In her report, the Special Rapporteur will address, inter alia, issues related to gender based violence, (including inter-personal and intimate violence), as well as structural violence. She will also assess the impact of the criminalization of sex work, same sex relations, transgender persons, abortion, drug use etc. on the enjoyment of the right to health. The Special Rapporteur would like to identify good practices and examples of comprehensive health responses to survivors of violence, and to identify lessons learned at the community, national, regional and international levels.

Key questions

You can choose to answer all or some of the questions below. (750 words limit per question).

When responding to the questions below, please use the glossary with definitions at the end of the questionnaire, and refer to all or some of the forms of violence in focus for this study as applicable in your country, countries or region in focus:

1. Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:
 - 1.1. gender based violence against women
 - 1.2. gender based violence and other forms of violence against children:
 - 1.3. gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity:
 - 1.4. violence against persons with disabilities, including GBV.
 - 1.5. gender based violence against men
 - 1.6. conflict gender based violence, including sexual violence
 - 1.7. Please share analysis and available evidence on the impact of COVID on the above

The constituents of our organizations are sex workers including all genders and groups of people impacted by the criminalization of sex work and sex workers lives, including people with disabilities, trans people and immigrants. Arresting sex workers (and people profiled as sex workers) is in and of itself violence, and these arrests lead to acts of gender-based and/or sexual violence against people with disabilities, trans people, cisgendered women, LGBTI, cisgendered men and immigrants. Our communities suffer at a minimum more than 26,000 cases of violence annually (the number of sex work related arrests reported to

the FBI in 2019)¹ and truly accurate figures will be much higher as the overwhelming additional cases of violence linked to arrest are not reported, and because our community members are arrested under other statutes relating to “loitering”, trespassing, and “disorderly conduct.” These forms of violence are exacerbated by racism, especially anti-Black policing and rights violations. After arrest, sex workers and related communities face further violence in court systems, prisons and other places of detention. Arrest and becoming “known” as a sex worker triggers whorephobic acts in which our communities are thought to be disposable and are subjected to further reprisals from non-state actors.

Institutional and systemic violence directly influence policies and enact laws that affect sex workers. Although data is not widely available from a sex worker-led framework, our organizations are authoritative on such subjects and have written a myriad of peer-reviewed reports on sex work, health, violence, and criminalization of sex work. Here are some of the examples of cases we have documented pertaining to violence that we have collected as part of our human rights documenting in the United States.

- The legal establishment does not conceive that those who work in sexual-based economies can be sexually assaulted and routinely obstructs sex workers’ attempts to seek justice for crimes committed against them. A serial rapist in New Jersey violently assaulted and robbed many sex workers for at least 10 years, if not longer. In order to stop him and seek justice for his victims, we documented a case and connected the victim to the sex crimes unit, but they took no action. The abuser was at last arrested by Federal agents in 2020 after pressure from sex workers and his case is pending.²
- sex workers fear and experience further harm, humiliation, and/or arrest when turning to the authorities for assistance. A sex worker who had been raped reported to us that she “did not go to the police out of fear of being outed as a prostitute to the community and possible arrest.” A woman was performing at a strip club and was attacked violently and told us that “while he was hitting me he commented that he can do whatever he wants and if I call the police, they won’t listen to me. This went unreported because the police know I engage in full service work so the police were scarier than the client beating me.”
- State agents attack and kill sex workers and those profiled as such with impunity. A clear example of unchecked law enforcement violence is the case of Juan David Ortiz, a Texas Border Patrol agent and supervisor who tortured, raped, and murdered four sex workers (the fifth victim escaped) in a span of seven days. It is unclear if the border agent began his serial killing in a time frame of one week or if his ten-year tenure as a state agent will produce more bodies of sex workers thought disposable and insignificant to him. Border Patrol spokespeople dismissed the relevance of the heinous acts of Ortiz’s murder spree.

¹ <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-29>

² <https://www.justice.gov/usao-nj/pr/new-jersey-man-charged-coercing-and-enticing-commercial-sex-workers>

2. Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.

US sex workers and people directly impacted by the criminalization of sex work are not able to safely report violence perpetrated by state agents and non-state actors. Simply put, groups of people who are criminalized in the US are denied rights, including the right to health, and justice. US sex workers' greatest fear is abuse by law enforcement and other state agents. Our organizations have documented a pattern of practice by police towards sex workers which includes but is not limited to: kidnapping, assault, sexual harassment, public "gender searches" (police strip searches for the purpose of viewing genitalia), trafficking and rape, that constitutes torture and cruel, inhuman and degrading treatment. It is often extremely difficult or impossible for sex workers to access justice in these cases. In New Jersey, for example, a sex worker who was brutally beaten by police officers for sex in a bathroom, found herself charged with "aggravated assault on a police officer with a firearm." While the charge was ultimately dropped at a municipal level at prosecutor's discretion, she was held on \$10,000 bail, and when she sought to bring a complaint, video evidence of the incident had mysteriously disappeared and her case was not treated seriously.³ She has experienced ongoing police surveillance since this instance and lives in constant fear of retaliation, most recently having been threatened by law enforcement over social media.

Sex workers are often mistreated when seeking medical care when seeking care after being brutalized by state actors and non-state actors. State agents in the United States deny sex workers access to emergency health care. Sex workers who approach police with severe injuries from violence perpetrated against them are routinely belittled and blamed for the attacks against them and are not escorted, or even referred, to emergency rooms. Individuals in medical facilities seeking care for injuries sustained from attacks against them who are profiled as sex workers have been accusatorily questioned by police prior to receiving medical care. During arrests and while detained sex workers are denied access to health care. For example, during FBI stings in Alaska in 2017, a sex worker was detained for well over 2 hours and was denied medical attention (she was experiencing difficulty breathing).⁴ Local police ignore calls and do not respond when homeless sex workers call in for overdose assistance because the police do not want to "waste Narcan" on people they see as "unworthy."

The criminal justice systems affect sex worker health in regards to housing stabilities and job securities. In many states, a life-long sex offender status can be attached to prostitution-related convictions. This renders sex workers limited to unstable living conditions, forced into high-stressed neighborhoods, and unable to receive state benefits that would conditionally assist with housing, food, and healthcare provisions. The long-term ramifications on employment can also be detrimental to health in that sex

³ Interview, New Jersey Red Umbrella Alliance (Aug 26, 2019).

⁴ <http://sextraffickingalaska.com/operation-cross-country-alannas-story/>

workers are relegated to continue in the sex trade if they want to exit and, severely limit job opportunities that require background checks. They are essentially imposed to live with zero health benefits or securities that steady employment offers. The trickle down effect of these types of unnecessary punitive severities ultimately produce an environment of problems that exacerbate the intentions of effective public health policies. An ordinary misdemeanor crime of prostitution with a sex offender status and other criminal sanctions must be taken out of laws that condone these types of catastrophic life-long sentences.

3. Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.

One of the most prevalent challenge for U.S. sex workers and advocates is stigma-related narratives leading to policies and laws against prostitution at an alarming rate. A significant U.S. health policy against sex workers is the Anti-Prostitution Loyalty Oath, H.R. 1298, the U.S. Leadership Against Hiv/Aids, Tuberculosis and Malaria Act of 2003, under George W. Bush administration. This policy requires NGOs that receive federal HIV/AIDS and anti-trafficking funds to adopt an organization-wide policy opposing prostitution and sexual trafficking. Although the U.S. Supreme Court struck down portions of the oath (2013 *Agency for International Development v. Alliance for Open Society International, Inc*), no longer affecting U.S. based NGOs from receiving federal funding, the policy remains in effect preventing foreign NGOs from gaining access to prevention strategies, medications, and harm reduction methods through U.S. HIV and AIDS funding. The violent and counterproductiveness of this policy obstructs the fundamental credence of eradication to global health epidemics. To quote former president George W Bush at the signing of the 2003 act, “This is the daily reality of a continent (Africa) in crisis, and America will not look away”⁵, when in reality, America has looked away, justifying the control of who, what, and where gets U.S. dollars. Globally, sex workers are one of the most marginalized and criminalized populations - there is no redress with these types of policies. Adequate and deserved healthcare is essential to eradicate HIV and AIDS and other transmittable health disparities. The U.S. must discontinue the violent financial stronghold over underdeveloped countries and remove the Anti-Prostitution Loyalty Oath if we truly want to live in an HIV and AIDS-free world. The Rapporteur holds a unique position to pressure the U.S. government to eliminate this policy.

The Nordic Model is also gaining global ground as the eradication solution for prostitution. The Swedish Nordic model is the criminalization and eradication of buyers of sexual services. Many anti-sex work zealots believe if the demand side of prostitution is eliminated, the supply side will decline “*Arresting buyers just brings more cops to us. It*

⁵ <https://georgewbush-whitehouse.archives.gov/news/releases/2003/05/20030527-7.html>

doesn't do a damn thing for people except take money from our mouths and puts us in jail" ⁶. These are just a few examples of the harms being used against sex workers in the U.S.

The passage of the federal legislation SESTA/FOSTA in 2018 created far-reaching carceral penalties attached to citizenship, sex, work, and labor.⁷ These broadly-written federal enactments conflate sex work and human trafficking, and limit the sharing of vital safety information and advertising options for sex workers. Studies have shown that the more pressure placed on sex workers to prevent them from accessing income, the more health and rights are imperiled.⁸ Specifically, FOSTA/SESTA limits Section 230 — which was originally established to protect online platforms from liability over users' free speech (ie sex work) — forcing platforms to ban sex workers or use of their apps for sex work (or anything that could be perceived as sex work).⁹ The U.S. has put sex workers and other communities at risk, sequestering free speech and infringing upon the human right to work. The U.S. is not only violating it's own citizen's rights, but because US based companies own a large portion of the internet, the rights of people operating in countries where sex work is legal are compromised.¹⁰ Sex workers in the U.S. have reported drastic loss of incomes, affecting their ability to pay for their basic needs including food, shelter, health care and education.

Inherent in economic rights and the right to work is the ability to access favorable conditions, autonomy and self-determination. The legislation has imperilled sex workers ability to control their own funds as banks, financial institutions, and online payment services, have frozen accounts of sex workers and people they profile as such. As incomes are weakened, sex workers become increasingly vulnerable to pre-existing patterns of human rights violations that have long undermined work and support networks for low income people.¹¹ Arrest and subsequent conviction for prostitution-related offenses intensify the homelessness or housing precariousness experienced by people from low-income communities because people with criminal records are barred from accessing, or may lose current residence in public housing. Law enforcement officials also disrupt sex workers' (or those profiled as such) support networks by arresting people nearby, such as in the same hotel room during an arrest, regardless of the individual's involvement, and charging them as accessories, or worse.

4. Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.

⁶ Desiree Alliance - Anonymous street-based sex worker. June 2021. *Consequences of Misinformation about Sex Work and Sex Workers in the United States*. Face-to-face interview.

⁷ Sardina, Cristine - Desiree Alliance *Written submission for CEDAW discussion on the General Recommendation on Trafficking in Women and Girls in the context of Global Migration (General discussion on TWGCGM)* (February 2019)

⁸ City and County of San Francisco Department on the Status of Women *Mayor's Task Force on Anti-Human Trafficking Position Paper On FOSTA* (October 24th, 2018)

⁹ Campaign Action: *Protect workers and free speech. Repeal SESTA/FOSTA.*

<https://actionnetwork.org/petitions/sign-the-petition-protect-workers-and-free-speech-repeal-sestafosta>

¹⁰ Interview with Assembly Four, August 2019.

¹¹ Interview with Project Safe (Sept. 28, 2019).

When addressing health and sex, many assumptions are made that sex workers are vectors of transmittable viruses such as HIV, STIs, HEP C, etc. These suppositions create violence at the micro and macro levels of healthcare and legal systems. Healthcare providers are limited or nearly non-existent for immigrants/migrants and sex workers who identify as transgender. Many times, healthcare providers are ill-equipped to offer adequate medical care or treatment to sex workers because sex workers do not divulge their profession out of fear of punitive retributions. Due to ignorance and stigma, many providers display outright hostilities to trans patients seeking HIV/AIDS linkage to care. When these types of unprofessional behaviors hinder healthcare from the reception desk to the doctor visit, opportunities get bypassed for overall wellbeing and lifesaving medical treatments. The fact that reported domestic violence to healthcare providers in turn create additional violence in seeking treatment correlated to stigma, mandated reporting, and fear of sanctions (i.e., deportation, shared databases, criminalization, child protection interventions, etc.), prevent many sex worker communities from coming forward and receiving vital care detrimental to their health and wellbeing.

Many states enact felony sentencing enhancements to prostitution-related charges if the worker is found to be HIV+. Ordinary misdemeanor charges of a 1-day to 6-month jail sentence can add a ten-year prison term. Three Strikes laws also can be added if there have been prior convictions of prostitution. In the case of Marcia Powell, she was sentenced to a three-year term to the Arizona state prison system on prior prostitution charges. In her duration as an inmate, she was put in an outdoor holding cell awaiting a doctor's appointment. She was ridiculed by the staff as she begged for water, defecated on herself, and after four hours of extreme exposure to the elements, she boiled to death on May 20, 2009 in 107 degree desert heat. Her core body temperature was 108 degrees, she suffered from 1st and 2nd degree burns and burn blisters all over her body. The city's attorney office chose not to prosecute ADC staff in her death, claiming that there was insufficient evidence to go forward with a prosecution against any of the named individuals. Had she received adequate medical care at the first signs of distress, Marcia Powell would have lived.

We share the following case that illustrates the interaction of the impact of criminalization of sex work and trans rights, in regards to the right to health. In June 2019, Layleen Polanco, a 27-year-old Afro-Latina transgender woman died as a result of a seizure while she in solitary confinement, after being unable to afford \$500 pre-trial bail. NYC based activists note that she had a "warrant for re-arrest after missing a single court date" for prostitution-related charges and low-level drug charges and because she was "unable to complete mandated social services at the Human Trafficking Intervention Courts."¹² Video footage showed that Rikers staff failed to provide her with medical care that could have saved her life and laughed at her when they found her unresponsive in the cell.

¹² <https://medium.com/@Redcanarysong/in-support-of-dsa-res-53-decrim-platform-8eb4d164588>

5. Please share information on the health and other type of responses provided by the State and/or other actors in your country/ies or regions in focus to survivors of each/some of the aforementioned forms of violence. Please assess what works well and not so well, and whether COVID-19 impacted the response and how.

COVID-19 relief excluded sex workers.

6. Please specify the budget allocated in your country/ies in focus, to health related response to survivors of all/some forms of violence mentioned above. Please indicate the percentage of the national budget devoted to this; the percentage of the international aid provided or received for this. Please explain the impact of Covid 19 to the funding of responses to all/some forms of violence in your State/institution.

7. Please describe the needs of survivors of the above mentioned forms of violence as identified by your State/institution. Please share survivor-self identified needs and those of their families, with a focus on health emergency and long-term needs.

8. Please share examples of good practices and examples of comprehensive health responses to survivors of violence and indicate efficient multi-sectorial efforts at the community, national, regional and international levels by State or non-State actors.

In order to end the daily brutalization of sex workers through policing and arrest under anti-sex work statutes and all the other statutes such as anti-trafficking laws, immigration laws, restrictions on public and online spaces, we are seeking comprehensive law reform to end the criminalization of sex workers lives. Arresting sex workers is an act of violence and is often also gender-based violence and sexual violence. This must end for sex workers to be able to respond to violence and enjoy their right to health. The US must fund comprehensive rights based services to address violence and to ensure the health of sex workers and must hold all public services accountable to end discrimination and rights violations when sex workers seek assistance and care.

The US has already received and accepted a clear directive from the UN system to address these issues. During the first Universal Periodic Review of the United States in 2010, the Human Rights Council at the United Nations made Recommendation 86 to the United States to “...ensure access to public services paying attention to the special vulnerability of sexual workers to violence and human rights abuses.” The Obama Administration accepted the recommendation stating, “we agree 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...” To date the US Federal government has done nothing to honor this agreement.

At the state level some models are emerging to address some of the issues we have outlined. Sex workers—and people who would be profiled as sex workers—who have experienced violence, gender-based violence and sexual violence must be able to report these issues without fear. A legislative model to address some of these issues has recently passed in California.¹³ This legislation protects sex workers who report violent crimes from arrest.

9. Please describe State and other actors initiatives and measures to prevent these forms of violence, specific budget allocated to prevention, and good practices in this regard.

¹³ See <https://stjamesinfirmiry.org/wordpress/?p=4425> and <https://thehill.com/homenews/state-watch/452572-california-legislature-passes-bill-to-protect-sex-workers-rights>