



*The City University of New York*

**CUNY SCHOOL OF LAW**

*Law in the Service of Human Needs*



Human Rights Committee Secretariat  
Office of the United Nations High Commissioner for Human Rights  
8-14 Avenue de la Paix  
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Switzerland  
Attention: Kate Fox/Sindu Thodiyil

August 23, 2013

Re: Addressing Question 21(a) and 21(b) in the List of Issues on Criminalization of Trafficking Victims in the U.S. and Effective Remedies

Dear Committee Members:

The International Women's Human Rights Clinic at the City University of New York School of Law, the Legal Aid Society's Trafficking Victims Advocacy Project, and The Sex Workers Project at the Urban Justice Center submit this letter to assist the Human Rights Committee to prepare for the upcoming review of the compliance of the United States (U.S.) with the International Covenant on Civil and Political Rights (ICCPR) at the Committee's 109<sup>th</sup> regular session, which will be held from October 14 to November 1, 2013. This letter supplements our earlier submission dated December 19, 2012 and focuses specifically on issues related to human trafficking into the sex trade in the U.S., in response to questions 21(a) and 21(b) in the List of Issues.

As discussed in our prior submission, in the United States, all too often law enforcement fails to identify and assist trafficking victims. Instead, victims are often treated and prosecuted as criminals. We commend the steps that certain U.S. states have taken to remedy the harms faced by trafficking victims by allowing them to vacate certain criminal convictions that were a result of the trafficking. However, the U.S. must do more to provide an effective remedy for the harms of criminalization. Further, the U.S. has violated the ICCPR by failing to take appropriate measures to prevent such criminalization in the first instance. While human trafficking affects many industries and labor sectors, for the purposes of this letter, references to "trafficking" are understood to denote "human trafficking into the sex trade."

#### **I. Introduction: Criminalization of Trafficking Victims Violates U.S. Obligations Under the ICCPR**

It is well established that people who have been victims of human trafficking have experienced a violation of their fundamental rights, and states must ensure that there is no impunity for the crime of human trafficking. At the same time, however, the U.S.'s emphasis on a criminal justice approach to trafficking often results in many trafficking victims coming into contact with the state as criminals, rather than crime victims. They are arrested, detained, and prosecuted, and then burdened with the stigma and collateral harms of having a criminal record, all for having engaged

in criminal acts that they are forced into by their traffickers. The abusive and degrading nature of these arrests, coupled with the lasting harms of criminal records, violates the rights of trafficking survivors to be free from cruel, inhuman or degrading treatment and exposes them to additional risks of exploitation by traffickers in contravention of the U.S.'s obligations under Articles 7 and 8 of the ICCPR.

The U.S. furthermore has clear obligations under article 2.3 to provide an effective remedy to individuals who are improperly prosecuted and convicted. At least ten individual states have taken measures to remedy these harms by enacting legislation that allows victims of trafficking to clear from their records criminal convictions that were a direct result of the trafficking. These laws are an essential first step to establishing an effective remedy. However, the U.S. government must do more to encourage other states to follow suit, in addition to ensuring access to a range of other remedies—including medical and psychological care, compensation, and recognition of rights violations—to redress the harms of improper criminalization.

## **II. Relevant Questions in List of Issues**

This submission addresses issues raised in parts (a) and (b) of Question 21 on the List of Issues. Specifically, question 21 calls on the U.S. to “provide information on steps taken:

(a) To combat human trafficking;

(b) To protect children under 18 years of age living in the State party from being sexually exploited through prostitution, as well as the steps taken to ensure that these children are not dealt with through the criminal justice system.”

Other international human rights experts have recognized that criminalization of trafficking victims in the U.S. violates fundamental human rights. Question 21(b) follows recent concluding observations by the Committee on the Rights of the Child (CRC) recognizing the need to end the criminal prosecution of children for prostitution offences. In its review of the U.S.'s compliance with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, the CRC expresses concern that “[c]hildren are still being legally arrested, detained and prosecuted for prostitution in the majority of states.”<sup>1</sup> To remedy these harms, the CRC calls on the U.S. to “[l]egally and effectively decriminalize the involvement of children in prostitution ensuring that no state law on prostitution allows for the arrest and detention of ... minors” engaged in the commercial sex trade.<sup>2</sup> The CRC also recommends legislative measures to ensure that children are “protected and not arrested or detained” for their involvement in prostitution, as well as sufficient training and funding for the passage and implementation of such legislation.<sup>3</sup>

While the CRC's concluding observations only address the question of minors trafficked into prostitution, it is crucial that this Committee address the criminalization not only of child victims of trafficking, but of all victims of human trafficking. As the Special Rapporteur on trafficking in persons has observed, it is essential that trafficking victims “not be prosecuted for offenses relating to their status as trafficking victims[, as such criminalization] inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are

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<sup>1</sup> Committee on the Rights of the Child, *Concluding Observations: United States*, ¶ 33(b), U.N. Doc. CRC/C/OPSC/USA/CO/2 (Jan. 25, 2013).

<sup>2</sup> *Id.*, ¶ 34(b).

<sup>3</sup> *Id.*, ¶ 34(c).

entitled.”<sup>4</sup> In addition to the direct harms that criminalization carries for survivors of trafficking, the Special Rapporteur emphasizes that criminalization can undermine efforts to combat human trafficking “because it destroys trust, retraumatizes victims and reinforces what traffickers may have told victims about law enforcement authorities.”<sup>5</sup>

Thus, we urge this Committee, in considering the U.S.’s efforts to combat human trafficking, to examine the steps that the U.S. is taking to ensure that all individuals who are trafficked into the sex trade—both minors and adults—are not dealt with through the criminal justice system.

### **III. U.S. Government Response**

The U.S. government fails to respond to the question of what measures it is taking to ensure that individuals trafficked into the sex trade—whether minors or adults—are not processed through the criminal justice system.<sup>6</sup> Instead, the government’s responses to both questions 21(a) and 21(b) focus largely on one of the U.S.’s primary strategies to combat trafficking: prosecution. The government’s response highlights that, in 2012, federal agencies secured 381 convictions for human trafficking.<sup>7</sup>

### **IV. Additional Information**

#### **a. Efforts to combat human trafficking must not jeopardize the rights of trafficking victims.**

While the apprehension and arrest of traffickers are a critical part of protecting trafficking victims, the U.S.’s almost-exclusive focus on maximizing arrests and prosecutions of traffickers frequently carries unintended collateral harms for people who are trafficked into the sex trade. Because these individuals are compelled to engage in criminal activity, they are frequently arrested under prostitution laws without being identified as trafficking victims. In stark contrast to the less than 400 trafficking convictions obtained by federal officials in 2012, New York City alone has averaged over 2700 arrests for prostitution annually for the past five years,<sup>8</sup> and many of those arrested are victims of trafficking.<sup>9</sup>

Arrests for prostitution are often traumatic. Traffickers frequently instill deep fear and mistrust of law enforcement in their victims.<sup>10</sup> Arrests reinforce these fears when law enforcement personnel expose persons arrested for prostitution to lewd comments, forced nudity, sexual harassment or propositions.<sup>11</sup> Criminal convictions also create enormous barriers for individuals to move beyond the abuses of trafficking and rebuild their lives once they finally escape from trafficking,

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<sup>4</sup> Joy Ngozi Ezielo, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezielo, ¶ 25, U.N. Doc. A/HRC/20/18 (June 6, 2012).

<sup>5</sup> *Id.*, ¶ 26.

<sup>6</sup> U.S. Dept. of State, *United States Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights (ICCPR)*, ¶ 114, U.N. Doc. CCPR/C/USA/Q/4/Add.1 (June 2013).

<sup>7</sup> *Id.*, ¶ 113.

<sup>8</sup> New York State Division of Criminal Justice Services, Computerized Criminal History System, *Prostitution Arrests in New York City 2008-2012* (tracking arrests for prostitution or loitering for prostitution charges)(current as of Mar. 20, 2013).

<sup>9</sup> *Oversight: Combating Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution*, City of New York Committee on Women’s Issues and Committee on Public Safety 2 (Oct. 19, 2011) (testimony of Kate Mogulescu & Katherine Mullen) (hereinafter *Combating Sex Trafficking in NYC*).

<sup>10</sup> MELISSA DITMORE, URBAN JUSTICE CTR., *KICKING DOWN THE DOOR: THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS* 40 (2009).

<sup>11</sup> *Combating Sex Trafficking in NYC*, *supra* note 10, at 2, 5-6.

often reinforcing many of the factors that contribute to a vulnerability to trafficking in the first place, such as limited employment or safe housing options.

Even where trafficking victims are recognized as such, they are often seen primarily as “instruments of criminal investigation, rather than as holders of rights.”<sup>12</sup> Trafficking victims may be confined to detention-like facilities, such as closed shelters or rehabilitation centers, to ensure their participation in on-going investigations;<sup>13</sup> they may be threatened with arrest themselves if they fail to cooperate with law enforcement;<sup>14</sup> and under federal law, trafficking victims are required to cooperate with the investigation and prosecution of their traffickers (with limited exceptions) in order to qualify for immigration benefits as a trafficking survivor.<sup>15</sup> Such practices and requirements often reinforce mistrust of law enforcement and place testimony and cooperation ahead of survivors’ safety and psychological needs.<sup>16</sup>

**b. Some U.S. states are taking crucial steps toward establishing effective remedies to respond to the improper criminalization of trafficking victims.**

Recognizing the harmful consequences of criminalization of trafficking victims, at least ten U.S. states have enacted statutes to treat survivors of trafficking as victims of crimes—not as criminals.<sup>17</sup> While the majority of these laws have yet to go into effect, more than thirty trafficking survivors have had their convictions vacated under New York’s statute,<sup>18</sup> and the laws have the potential to help thousands of trafficking survivors who were not properly identified as victims of crimes when they entered the criminal justice system. Because a criminal record can severely reduce employment opportunities, carry immigration consequences, and affect one’s ability to obtain public benefits, the ability to vacate one’s criminal convictions can have an immediate impact on a survivor’s well-being.<sup>19</sup> Vacating convictions that were a result of being trafficked can also have remedial psychological effects, as the judge’s order to vacate the convictions may be the first time the survivor is recognized and treated as a crime victim, rather than a criminal.

This state-level trend signifies a growing consensus that those forced to perform acts against their will should not also be forced to suffer the harmful consequences for those offenses in the form of a criminal record. These states should be commended for this development, and the U.S. government must do more to promote the passage of effective legislation allowing for such vacatur.

**V. Recommended Questions for the United States Government**

1. What steps is the United States taking to ensure that survivors of trafficking are not arrested, detained, or prosecuted, but rather recognized as crime victims?
2. Recognizing the remedies that some U.S. states have taken to address criminalization of trafficking victims, what steps has the government taken to ensure that all survivors of

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<sup>12</sup> Joy Ngozi Ezielo, *Report of the Special Rapporteur on trafficking in persons, especially women and children, delivered to the Human Rights Council*, U.N. Doc. A/HRC/17/35, ¶ 61 (Apr. 13, 2011).

<sup>13</sup> MELISSA DITMORE, *supra* note 11, at 45-46.

<sup>14</sup> *See, e.g.*, Affidavit of “Layla,” on file with the Legal Aid Society, ¶ 31, 34.

<sup>15</sup> 22 U.S.C.A. § 7105(b)(1)(E)(i)(I).

<sup>16</sup> *See, e.g.*, MELISSA DITMORE, *supra* note 11, at 51.

<sup>17</sup> *See*, INTERNATIONAL WOMEN’S HUMAN RIGHTS CLINIC, CUNY SCHOOL OF LAW, CLEARING THE SLATE: SEEKING EFFECTIVE REMEDIES FOR CRIMINALIZED TRAFFICKING VICTIMS, Sec. III (forthcoming).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

trafficking who have been criminalized have access to effective remedies, including vacatur of trafficking-related convictions?

## **VI. Suggested Recommendations**

Given the lasting harmful effects that criminalization of trafficking survivors carries both for individuals who have been trafficked into the sex trade and for efforts to combat trafficking in general, we urge the Committee to expressly recognize in its concluding observations to the U.S. government that the failure to take adequate measures to prevent such criminalization violates the state's obligations under the ICCPR.

At the same time, we commend the measures that some U.S. states are taking to enable trafficking survivors to vacate criminal convictions that were a direct result of the trafficking situation. We would like to see the U.S. government do more to promote effective remedies aimed at redressing the harms of criminalization.

To that end, we encourage the Committee to issue the following recommendations to the U.S. government:

1. Legally and effectively decriminalize the involvement of both adult and child trafficking victims in the sex trade to ensure that no state law on prostitution allows for the arrest and detention of individuals who have been trafficked into the sex trade, and provide training and funding for the promotion and implementation of such laws and policies.
2. Pass legislation allowing for vacatur of criminal convictions that occur as a result of human trafficking in all states that have not yet done so to ensure that trafficking survivors who have been treated as criminals have access to an effective remedy to allow them to rebuild their lives, free from the collateral consequences of a criminal record.

We hope that this information will be useful for the upcoming review of the United States' compliance with the ICCPR, and that the concerns raised here will be reflected in the recommendations made to the U.S. government. Please do not hesitate to contact us via phone (718-340-4602) or email ([suzannah.phillips@law.cuny.edu](mailto:suzannah.phillips@law.cuny.edu)) should you have any questions or require any additional information.

Sincerely,

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