

# Universal Periodic Review of United States

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### INDIVIDUAL SUBMISSION

**This report is submitted by the Sexual Rights initiative and an anonymous human rights defender from the United States.**



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Formed in 2006, the Sexual Rights Initiative (SRI) is a coalition of organisations including Action Canada for Sexual Health and Rights (Canada), Akahata (Argentina), CREA (India), Coalition of African Lesbians (South Africa), Egyptian Initiative for Personal Rights (Egypt) and the Federation for Women and Family Planning (Poland), with an office in Geneva. The SRI partners advocate together for the advancement of human rights related to sexuality, gender and reproduction at UN Human Rights Council.

**Key Words:** Acceptance of international norms, sexual and reproductive health and rights, sexual rights, abortion; sex work; sexual orientation, gender identity, gender expression; equality, non-discrimination; cruel, inhuman and degrading treatment, torture; right to remedy.

## **Executive Summary**

1. This report is submitted by the Sexual Rights Initiative and an anonymous human rights defender from and living in the United States. It focuses on a series of human rights violations related to sexual and reproductive health and rights policy and practice (and related concerns) and concerns about acceptance of international norms / non-compliance with human rights obligations.
2. United States laws, policies and practices related to different aspects of sexual and reproductive rights and health have put people in various marginalized groups at risk both inside and outside US borders. Women, sex workers, lesbians and gay men, transgender people (and in particular, Black trans women) and others who are gender non-conforming are at particular risk of violence (including murder) and discrimination, other human rights violations and stigma. Persons seeking or providing information about abortion, or persons providing or accessing abortion services, are also at heightened risk of various violations, and they suffer the effects of coercive policies that limit or eliminate funding and provision of services and information.
3. The United States government has deprioritized multilateralism, and cut needed funding from UN agencies providing health care and other critical services, including those for refugees and asylum seekers (UNFPA, UNWRA); it has also rescinded its membership in various UN bodies (i.e. The Human Rights Council, UNESCO), and pulled out of various international treaties and mechanisms, thereby limiting its exposure to accountability mechanisms.
4. Underpinning and fueling these human rights crises are a series of existing and emerging challenges including: corruption within highest ranks of federal government, including at executive level; lack of political will, the influence of religious actors in national and foreign policy, including those willing to sacrifice human rights for political goals, policy directed by racism / white supremacy and xenophobic and anti-immigrant sentiment, conservative anti-feminist and anti-human rights approaches to policy, practice and discourse, including for electoral gain, instrumentalization and deployment of anti-women's rights, anti-gender, anti-sexual and reproductive rights and anti-LGBT sentiment to further political goals and impunity for violent and discriminatory acts

## **Sex work**

5. The United States government accepted this recommendation from Uruguay in the 9<sup>th</sup> UPR session in 2010:  
"Undertake awareness-raising campaigns for combating stereotypes and violence against gays, lesbians, bisexuals and transsexuals, and ensure access to public services paying attention to the special vulnerability of sexual workers to violence and human rights abuses."
6. The US failed to include information on how it implemented this recommendation in relation to sex workers during its second UPR and has overlooked reporting on rights violations affecting sex workers generally throughout the UPR. Since the last UPR of the

US, the situation has deteriorated considerably for sex workers as a result of a number of retrogressive actions undertaken by the US.

7. The Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) are the U.S. Senate and House bills signed in 2018 (this is now known as FOSTA-SESTA) that sought to fight online sex trafficking. FOSTA-SESTA presents two main sets of human rights concerns: 1) it erroneously conflates trafficking with sex work and therefore both fails to properly address trafficking and also casts a draconian net over the distinctly different practice of consensual and non-coerced sex work; and 2) it creates legal threat for legitimate sexuality-related businesses that operate online.
8. FOSTA SESTA has a chilling effect on free speech and freedom of expression. It has been used against expressions of sexuality having nothing to do with trafficking. The spurious and disproven conflation of trafficking and sex work have affected rights related to labor, expression, and physical safety: Online sex workers have argued that their safety is at risk as a result of these policies, as the media platforms they use for offering and discussing sexual services (as opposed to working in the street, where risks are greater) had begun to shrink or shut down due to the threat of liability under FOSTA SESTA.<sup>i</sup> They argue that their livelihoods are being impacted (and rights related to employment), as is the potential for earning a living wage as a result of the surveillance and scrutiny of the platforms on which they operate.
9. FOSTA SESTA also limits discussion among sex workers on line and some note that its scrutiny inhibits their ability to warn one another about violent clients.
10. There are lawsuits against the US Department of Justice intended to overturn FOSTA SESTA on legal grounds.<sup>ii</sup>
11. Sex workers have been targets of violence for decades within the United States, with generally poor police response and impunity for perpetrators. As stigma and discriminatory attitudes are allowed to proliferate, the risks of physical violence tend to increase. This becomes a circular problem of violence, discrimination and impunity, with economic and physical implications.

### ***Sexual orientation and gender identity***

12. Title VII of the 1964 Civil Rights Act has been interpreted to protect lesbians, gay men and transgender people from discrimination in public employment. In 2019, the US Department of Justice stated its intention to direct the Equal Employment Opportunity Commission to reinterpret Title VII so as to exclude LGBT protections offered in previous years.<sup>iii</sup> The Department of Justice also announced its intention to bring a case to the US Supreme Court to defend its assertion that employment protections of public employers should not extend to LGBT people.
13. If the Department of Justice succeeds in these efforts, LGBT employees of public institutions would no longer be protected from employer discrimination. The general LGBT population would potentially be deterred from seeking employment in these institutions. Current LGBT employees would have less recourse than other current

employees to non discrimination protections. The Human Rights Council's reports (A/HRC/19/41 paras 51-53 and A/HRC/29/23 paras. 5, 42, 58) address employment discrimination against LGBT people).

14. LGBT communities are concerned about rollback of protections, some of which are quite recent (at federal and state levels).

### ***Violence against transgender people, and Black transgender women in particular***

15. The United States government accepted the following UPR recommendations in 2010:

*A - 176.162 Heighten efforts to promote non-discrimination of any kind, including discrimination on the basis of sexual orientation and gender identity (South Africa)*

*A - 176.163 Keep promoting progress in lesbian, gay, bisexual, transgender and intersex issues, especially in preventing discrimination based on gender or sexual orientation (Israel)*

Since these recommendations were accepted, the US has not only failed to properly implement them but has created conditions that have increased risk or weakened the possibility of legal protection.

16. There has been an increase in (or an increase in reporting of) murders of Black transgender women in the United States.<sup>iv</sup> Often, these murders are poorly investigated and result in lack of accountability for perpetrators.

17. Black transgender women express fear for their safety in a range of environments. The Inter American Commission on Human Rights asserts that the average life expectancy of trans women in the Americas is between 30 and 35 years. Stigma and fear of further verbal, psychological or physical abuse intervene to keep transgender and gender non-conforming people from enjoying a range of their human rights (including rights to security of person, dignity, bodily autonomy) including economic and social rights (including rights to health and health services, education, information and employment).

### **Abortion and the US "Gag Rule" / Mexico City Policy**

18. The following UPR recommendations were rejected by the United States in the 22<sup>nd</sup> session in 2015, and actually since that time has even put in place worse measures which have increased protection gaps:

*N - 176.97 Interpret the Helms Amendment on the Allocation of Foreign Assistance in such a way that United States foreign assistance enables safe abortion for women and girls who have been raped and impregnated in conflict situations (Netherlands);*

*N - 176.98 Clarify its interpretation of the Helms Amendment in order to be able to provide safe abortion for rape survivors (United Kingdom of Great Britain and Northern Ireland);*

*N - 176.99 Allow foreign assistance to support safe abortion services, where legal in the host country. This should apply as a minimum in the cases of rape, incest and life endangerment, as is also permitted by existing United States federal law (Belgium);*

*N - 176.100 Ensure that the United States international aid allows access to sexual and reproductive health services for women victims of sexual violence in conflict situations (France)*

19. The “Mexico City” policy, also known as the “Gag Rule”, was put back into effect in first days of the current administration.<sup>v</sup> This policy regulates federal funds and their use in relation to abortion. This highly restrictive policy prohibits the granting of federal funds to NGOs that address abortion in any way. It bans funding to groups that provide not only abortion services, but also referrals, information about abortion or counseling. The ban casts a wide net: it restricts family planning activities and services, denies information and actually precludes organizations receiving US funds from using their own separate funds for anything remotely related to abortion in relation to family planning.
20. Women who may become or are pregnant are at particular risk under this onerous policy. To deny users of health services even information or counseling about abortion should be in the context of cruel, inhuman and degrading treatment.
21. Organizations’ capacity to operate effectively, and even to support women’s right to the highest attainable standard of health, are compromised under the Gag Rule. Individuals’ rights to freedom of expression, to the right to health, to information, and to benefit from scientific progress are also impacted. Women who might choose to have abortion procedures are denied their autonomous decision making under this policy, and in worst case scenarios, will remain pregnant against their wishes because of US government and right wing conservative anti-abortion influence. This effect, alongside the policy itself should be considered as a form of cruel, inhuman and degrading treatment.

## **Religious freedom**

22. During the second UPR, Sweden made the following recommendation to the US:

N - 176.164 “Take affirmative steps to ensure that individuals’ religious refusals are regulated to conform with international human rights standards that protect sexual and reproductive rights and the rights to equality and non- discrimination on the basis of sex, gender, sexual orientation or gender identity (Sweden).”

23. The US accepted the recommendation under the condition that it recommends compliance with domestic law and international human rights obligations, including regarding freedom of religion.
24. “Religious freedom” has become an “opt out” strategy used by extremists in order to discriminate and deny services. Increasingly, this legal strategy has been used to protect those individuals who deny provision of health care, abortion and contraception information, and, as has been reported in the media– deny provision of cakes and bakery goods ordered in celebration of same-sex partnerships.
25. Pharmacists, doctors, nurses, teachers, civil servants and others are among those who have chosen to discriminate and withhold services or goods based on their claims to

“religious freedom”. State legislatures have, under conservative right-wing influence, protected those withholding services and goods and enacting discrimination.

26. The US government submits an annual International Report on Religious Freedom<sup>vi</sup> to Congress and has created an Office of International Religious Freedom.<sup>vii</sup> These efforts seek to create legitimacy for various faith based (and anti-sexual and reproductive rights) organizations and projects.
27. Taken together, these efforts strengthen the tactics and legitimacy of those who are anti-abortion, anti-gay and who seek to create a blurred line between “church and state”. These are meant to legitimize the most conservative faith-based efforts to be integrated into the US government – in person and in policy. While shrouded under language of freedom of religion, many of these efforts are not about the freedom to practice one’s religion free from discrimination, but the freedom to promote discrimination against often already-marginalized groups. They justify individuals’ capacity to discriminate freely, with impunity. And in cases of abortion or contraception, the “withholding” can have serious and lifelong consequences, especially for women, and women who are poor or living in places where easy access to a range of services or goods is not available.

## **Recommendations**

28. Rescind the “Helms Amendment” / Mexico City policy / Global Gag Rule, thereby allowing unrestricted funding for family planning related to abortion.
29. Overturn the FOSTA SESTA Acts to ensure the safety of sex workers. In federal policy, differentiate sex work from trafficking. Decriminalize sex work to protect and reduce violations against sex workers.
30. Ensure that any “religious freedom” legal arguments for groups or individuals are not used to justify the discriminatory denying of services, care, goods, or commodities. Federal protections against discrimination should be strengthened and should explicitly preclude exemptions that allow discrimination. Ensure contraception is available and that people celebrating same sex weddings can order and receive cakes of their choosing.
31. Ensure violence and killings of gender non-conforming people (and sex workers) are thoroughly investigated with perpetrators held fully accountable. Federal databases should disaggregate data based on various gender-related categories.
32. Restore full funding to the UN mechanisms and bodies from which funds have been withheld, including UNFPA, the UN Population Fund.
33. Take steps to ratify - and actually ratify - all treaties and related optional protocols, including CEDAW and CRC.
34. Ensure rights to information, to benefit from scientific progress and to expression are enjoyed by all, including by women outside the US who may seek sexual and reproductive health services through organizations that receive federal funds.

## END NOTES

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<sup>i</sup> <https://www.businessinsider.com/fosta-sesta-anti-sex-trafficking-law-has-been-failure-opinion-2019-7>

<sup>ii</sup> <https://stopsesta.org/>

<sup>iii</sup> <https://news.bloomberglaw.com/daily-labor-report/justice-department-urges-civil-rights-agency-to-flip-lgbt-stance>

<sup>iv</sup> 18 Transgender Killings This Year Raise Fears of an 'Epidemic'; New York Times; retrieved 2 October 2019.

<https://www.nytimes.com/2019/09/27/us/transgender-women-deaths.html>

<sup>v</sup> The policy has its roots in 1973 legislation and came into full effect under the presidency of Ronald Reagan in 1984. It has been suspended under Democratic administrations and has been put into effect under Republican ones.

<sup>vi</sup> <https://catalog.data.gov/dataset/international-religious-freedom-report>

<sup>vii</sup> <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-of-international-religious-freedom/>