

**OPEN LETTER TO THE GOVERNMENT OF THE DOMINICAN REPUBLIC REGARDING
THE BILL TO ESTABLISH “ZONES OF TOLERANCE” FOR SEX WORKERS**

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Demóstenes Willian Martínez Hernández
Comision de Justicia
CC: Esther Mirelys Minyety and Abel Martínez Duran

Dear Senor Martínez Hernández,

The undersigned, supporters and representatives of sex workers and organizations and individuals advocating for human rights, are deeply concerned with the “Proyecto de Ley mediante el cual se establecen Zonas de Tolerancia en la República Dominicana” (the Bill). While we understand the Government’s concern for the health and well-being of its citizens, the bill violates a range of human rights which will contribute to a climate of intolerance that will only heighten the risk of further violations, including stigma, discrimination and violence, against sex workers.

Human rights and public health concerns

In our view, the Bill violates human rights protected under international law. It is also inconsistent with sound, ethical public health practice and will likely serve to undermine efforts to protect and promote public health, a stated concern in the preamble to the Bill.¹

All people, including sex workers, are entitled to their basic human rights, including the **rights to freedom of expression and association** (*International Covenant on Civil and Political Rights*, Articles 19 and 22; *American Convention on Human Rights*, Articles 13 and 16) and the **rights to the highest attainable standard of health and to safe and healthy working conditions** (*International Covenant on Economic, Social and Cultural Rights*, Articles 6, 7 and 12). Moreover, sex workers are entitled to **equal treatment and protection under the law**. In particular, the *American Convention on Human Rights* stipulates that States Parties to the Convention, which includes the Dominican Republic, ensure to all persons subject to their jurisdiction the free and full exercise of rights and freedoms in the Convention, “without any discrimination for reasons of race, color, *sex*, language, religion, political or other opinion, national or social origin, economic status, birth, *or any other social condition*.” (Article 1, emphasis added)

Article 1 of the Bill stipulates that all sex workers must carry a card issued by the Ministry of Public Health which indicates their state of health. Ostensibly, this will require mandatory testing for sexually transmitted infections. Forced testing is a violation of the **right to bodily**

¹ “CONSIDERANDO NOVENO, Que como forma de prevenir las enfermedades de transmisión sexual es favorable que el Estado adopte un conjunto de medidas como forma de controlar este fenómeno;
CONSIDERANDO DECIMO TERCERO, Que en varios países de América latina y del caribe existen las llamadas zonas de trabajadoras sexuales, en las cuales los servicios de salud pública controlan las enfermedades de transmisión sexual;
CONSIDERANDO DECIMO QUINTO, Que es necesario crear un sistema de seguridad para la zona de tolerancia, con la finalidad de que a través de este sistema puedan articularse estrategias entre el gobierno y la sociedad para disminuir la delincuencia y las enfermedades de transmisiones sexuales, producto de la prostitución; ...”

integrity and autonomy. The UN’s expert health agencies have affirmed that HIV testing should be anchored in human rights and ethical principles and therefore do not support mandatory testing of individuals on public health grounds.² The *International Guidelines on HIV/AIDS and Human Rights* explicitly state, “Public health, criminal and anti-discrimination legislation should prohibit mandatory HIV-testing of targeted groups, including vulnerable groups.”³ Similarly, *Taking Action Against HIV and AIDS: A handbook for parliamentarians* states, “Individual identification or mandatory HIV testing of workers should be prohibited.”⁴ HIV testing should only be carried out with informed consent, meaning testing must be informed and voluntary, be accompanied by pre- and post-test counselling and the confidentiality of test results must be guaranteed.

Moreover, requiring sex workers to disclose their health status on a government-issued card (or risk a considerable fine) violates their **right to privacy**. The *International Covenant on Civil and Political Rights* (Article 17) prohibits arbitrary interference with a person’s privacy while the *International Covenant on Economic, Social and Cultural Rights* (Article 12) guarantees protection of the confidentiality of personal health information as part of the right to the highest attainable standard of health. The *American Convention on Human Rights* (Article 11) guarantees the right to privacy, and further prohibits arbitrary or abusive interference with one’s private life as well as unlawful attacks on one’s honour or reputation. Disclosing sex workers’ personal health information, which should be held confidential, is a violation of their right to privacy and exposes sex workers to potential stigma, discrimination and violence. Such an excessive invasion of privacy serves no legitimate objective.

Article 1 of the Bill further mandates the establishment of “zones of tolerance” in which sex workers must operate, while Article 2 stipulates that sex workers be housed in establishments away from residential centers, main avenues of the city and areas that have historical, artistic or cultural significance for the country. These are clear restrictions on sex workers’ **rights to equality and non-discrimination**, as well as their **right to freedom of association and right to freedom of movement and residence** (*International Covenant on Civil and Political Rights*, Article 12; *American Convention Human Rights*, Article 22). While international law permits a limitation on one’s right to freedom of movement and residence for the purpose of protecting public health, public morals or public order, there is no evidence such drastic measures accomplish any of those objectives. Rather, “zones of tolerance” may undermine public health by perpetuating stigma and discrimination against sex workers, which in turn creates barriers to HIV testing, sexual health education and HIV-related treatment, care and support.⁵ Significantly, the *International Guidelines on HIV/AIDS and Human Rights* recommend that laws and regulations “that provide for restrictions on the movement or association of members of vulnerable groups in the context of HIV should be removed in both law (decriminalized) and law enforcement.”⁶

² UNAIDS/WHO Policy Statement on HIV Testing, June 2004, online: www.who.int/rpc/research_ethics/hivtestingpolicy_en_pdf.pdf.

³ UNAIDS and Office of the High Commissioner for Human Rights, *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*, 2006, Guideline 5, 22(j).

⁴ Inter-Parliamentary Union, UNAIDS and UNDP, *Taking Action Against HIV and AIDS: A handbook for parliamentarians*, 2007.

⁵ See, for example, Asia Pacific Network of Sex Workers, United Nations Population Fund (UNFPA) and UNAIDS, *Building Partnerships on HIV and Sex Work: Report and recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2010, p. 14 and also Aids2031, *Sex, Rights and the Law in a World with AIDS*, 2009.

⁶ *International Guidelines*, supra, Guideline 5, 22(i).

Finally, while the Bill acknowledges both male and female sex work, the preamble and the Bill primarily refer to women who engage in sex work and the need to legislate as a way to regulate and ensure greater protection for female sex workers who may be subject to violence and abuse. Correspondingly, Article 2 of the Bill describes establishments to house women to ensure their personal safety and health, suggesting that female sex workers alone would be subject to forced segregation. This constitutes **sex-based discrimination**, a violation contrary to numerous international conventions, including the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which also calls on States Parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services...” (Article 12).

As the CEDAW Committee has recognized, “[p]rostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”⁷ Although the Government of the Dominican Republic purports to protect sex workers from violence and abuse, coercive measures, such as forced testing and segregation, isolate sex workers and drive sex work underground and away from health care services and the potential protection afforded by their communities and the police. Increased scrutiny of sex workers and severe limitations on where sex work may be practiced may also contribute to higher HIV risk in many ways, such as discouraging sex workers from carrying condoms if these will be used as evidence to support unregulated sex work, forcing sex workers outside of “zones of tolerance” to rush negotiations with clients which can lead to unsafe sex, or compelling sex workers to accept unsafe sex demanded by clients in order to pay off fines or respond to police extortion.

We commend the Government of the Dominican Republic for its concern for the health and safety of sex workers, who it acknowledges are among the most socially and economically marginalized of its citizens. Yet the proposed law undermines not only sex workers’ human rights but also public health objectives, by impeding sex workers’ access to HIV testing, care, treatment and support while increasing stigma, discrimination and violence against sex workers.

Action needed now

Therefore, we call upon the Government of the Dominican Republic to:

- reconsider and repeal the provision requiring sex workers to undergo mandatory testing for sexually transmitted infections and to disclose their health status on a government-issued card, as well as the associated fine for failing to abide by this provision;
- reconsider and repeal the provision establishing “zones of tolerance” in the Bill and the associated fine for operating outside of such zones;
- address the health and safety of all sex workers, including male, female and transgendered sex workers;

⁷ UN Committee on the Elimination of All Forms of Discrimination Against Women: General Recommendation 19, UN Doc No A/47/38, 1992. The UN Committee on CEDAW is mandated to monitor and encourage States Parties’ compliance with CEDAW.

- meaningfully consult sex workers, including male, female and transgendered sex workers, on the most effective means to promote their health and safety and protect them from violence;
- in the event the Bill passes, incorporate within two years of the law coming into force an independent legislative review to assess the impact of the law on the health and safety of sex workers; and
- respect, protect and fulfill their obligations under regional and international human rights law by ensuring all policy and legislation governing sex work is consistent with those obligations.

Sincerely,

1. Canadian HIV/AIDS Legal Network
2. Joyce Arthur, FIRST (Decriminalize Sex Work), Vancouver (Canada)
3. Maggie's: Toronto Sex Workers Action Project, Toronto (Canada)
4. Mary Shearman, Simon Fraser University (Canada)
5. Naomi Akers, Executive Director, St. James Infirmary, San Francisco (USA)
6. Ruth Morgan Thomas, Network of Sex Work Projects
7. Shabana Kazi, VAMP (India)
8. Meena Seshu, SANGRAM (India)
9. Mirza Aleem Baig, President, Gender & Reproductive Health Forum (GRHF) (India)
10. Victor Froylan Apolar Neave, Presidente, Organizacion de Trabajadores Sexuales Hombres no somos El Problema Somos Parte De la Solucion
11. Deborah Brock, Associate Professor, York University (Canada)
12. Kara Gillies
13. Nora Currie, author and activist, Toronto (Canada)
14. Elana Wright
15. AIDS and Rights Alliance for South Africa (ARASA)
16. Chris Bruckert, Associate Professor, University of Ottawa (Canada)
17. Bharati Dey, Secretary, Durbar Mahila Samanawya Committee (DMSC) (India)
18. Joanne Csete, Professor, Columbia University, New York (USA)
19. Wamala Twaibu Rodney, Executive Director, Uganda Harm Reduction Network
20. Kathy Mulville, Women's Global Network for Reproductive Rights
21. Nicci Stein, Executive Director, Interagency Coalition on AIDS and Development (ICAD) (Canada)
22. Isagara Nyakaana, Director, Kaana Foundation for Outreach Programs (Uganda)
23. Pivot Legal Society, Vancouver (Canada)
24. HOPS-Healthy Options Project Skopje (Macedonia)
25. Women Against Rape Inc. (Antigua/Barbuda)
26. Veronica Munk, TAMPEP (Germany)
27. Zi Teng, Sex Workers Concern Group (Hong Kong)
28. Walter Cavalieri, Director, The Canadian Harm Reduction Network
29. Jose Luis Aguilar, Director, Justice and Peace Commission (Mexico)
30. Jenn Clamen, Vice President of the Board of Directors, Stella, Montreal (Canada)
31. Alejandra Gil, Directora, APROASE A.C., Org de Mujeres Trabajadoras Sexuales y ex Trabajadoras Sexuales Mexicanas
32. Nataliia Isaieva, Executive Chairman of the Board, All-Ukrainian League "Legalife"

33. Aliya Rakhmetova, Coordinator, Sex Workers' Rights Advocacy Network (SWAN) Eurasia
34. Marlise Richter, PhD Candidate, International Centre for Reproductive Health, Department of Obstetrics & Gynecology, Ghent University, Belgium Visiting Researcher: African Centre for Migration & Society, University of the Witwatersrand, South Africa
35. Ana Karen, Tamaulipas Diversidad Vihda Trans A.C. (Mexico)
36. Cristine Sardina, Desiree Alliance Co-director (USA)
37. Thierry Schaffauser, Sex Worker, NSWP Board Director (Europe)
38. Health Options for Young Men on HIV/AIDS/STI's, Nairobi (Kenya)
39. Monica Mendoza, Mujer Libertad A.C. (Mexico)
40. Fabian Chapot, Prévention Outdoor | Aspasia (Switzerland)
41. Comitato per I Diritti Civili delle Prostitute Onlus Italia (Italy)
42. Mag. Maria Cristina Boidi, LEFO (Austria)