

**BRIEFING: U.S. Travel Bans on
Sex Workers, People who Use Drugs and People with Criminal Convictions**

Monday, September 20, 2010
11:00 a.m. – 2:00 p.m.

Open Society Institute (OSI)
1730 Pennsylvania Avenue NW, 7th Floor
Washington, D.C.

Purpose of the meeting: To discuss legal analysis of U.S. travel bans against marginalized populations—sex workers, people who use drugs and people with criminal convictions—and implications on human rights and an effective response to HIV and AIDS, in the context of the upcoming IAC 2012 in the U.S.

Participants: About 40 people attended the meeting in person or by phone, with representatives from UNAIDS, UNDP, IAS, ICW, GNP+, ICASO and NGOs working on HIV/AIDS, harm reduction, sex worker rights, anti-trafficking, and women’s rights. Groups represented include Council for Global Equality, Harm Reduction Coalition, Drug Policy Alliance, Best Practices Policy Project, Sex Workers Outreach Project (SWOP)-USA, North American NSWP, Desiree Alliance, .HIPS, RELEASE, Global NSWP, Sex Workers Project-Urban Justice Center, Housing Works, ABA, WORLD/U.S. PWN, AIDS Action, HRW, National Minority AIDS Council, amfAR, CHAMP, Global Forum on MSM and HIV, Different Avenues, CHANGE and Women of Color United

Summary of meeting:

The meeting was organized by Different Avenues, Women of Color United and Center for Health and Gender Equity (CHANGE), and was held at OSI in Washington, D.C. OSI commissioned the analysis of U.S. immigration law and review of the grounds for inadmissibility to inform conversations about a waiver process for sex workers, people who use drugs and those with criminal convictions to attend the 2012 AIDS conference that is planned to be held in the U.S.

Legal analysis:

Cora Tekach, immigration attorney, gave a presentation on her legal analysis of existing US law and relevant grounds for inadmissibility including health-related grounds (including communicable diseases as well as physical and mental disorders and associated behaviors that could be deemed as “harmful”) , criminal grounds (including crimes of moral turpitude, persons who use drugs, and sex workers), public charge, people previously removed and passport requirements. “Substance abuse” falls within the category of mental disorders and persons with a history of substance abuse must have certification of “remission.” Grounds of inadmissibility associated with “prostitution”, which is defined as “promiscuous sexual intercourse” includes engaging in prostitution in the past 10 years, coming to the US with the intent to engage in prostitution, and engaging in an unlawful commercialized vice. Persons having engaged in prostitution must have a certificate of “rehabilitation”.

She explained the ESTA and visa application process, grounds of inadmissibility and waivers in the context of the International AIDS Conference in 2012. Cora explained processes that people who use drugs and who are sex workers could follow to try to secure a waiver to enter the U.S. She explained that there is not a generalized approach to seeking waivers and that each case is considered separately. (For details about grounds for inadmissibility and visa application and waiver processes, see memorandum prepared by Cora Tekach)

Discussion

In response to the legal analysis and explanation of visa application and waiver processes, participants raised multiple concerns:

- With a waiver process, sex workers, people who use drugs and those with criminal convictions would be going on the record with the U.S. consulate. Being on record as a sex worker or person who uses drugs could be shared with the home country government as well as other countries.
- With a waiver process, there would be a waiver code recorded on individual passports that would impact future travel to the U.S. and internationally. Even though the HIV travel ban was lifted, people living with HIV who received waivers gave firsthand accounts of receiving a “stamp” in their passports, indicating that they had a waiver, which continues to impact their international travel. When an official took note of the stamp one participant was told, “We don’t let people like you into the country.”
- There was brief mention of the “No fly list” and the question of whether persons with waivers will end up on the list after the conference.
- The process of having to prove “remission” and “rehabilitation,” especially for those who are currently sex workers and using drugs as well as having to show the consulate a copy of a police record.
- Possible implications for other marginalized populations, and those who are poor and unable to pay application and waiver fees, particularly with the prospect of paying from extremely limited coffers and subsequently not being approved.
- Timing of visa application and waiver. Scholarships to attend a conference often happen only a month or two prior to the conference, and there would not be enough time for the visa application process and waiver issuance. In addition, many countries require evidence of a plane ticket and hotel reservation, which costs money, and so it would be difficult for those affected by the travel bans to start the visa application process early.
- Timeline given 2012 is an election year. The only realistic time this waiver system could be considered is in 2011, after the 2010 elections and before the 2012 elections. We need to consider the fact that this will be public information (even if we want to do this under the radar), and the Republican party and tea party activists will use the fact that the

Administration has opened its borders to sex workers and people who use drugs against Obama and other Democrats in an election year. Thus, a waiver process could have impact U.S. elections.

- There was doubt that an anonymous waiver system for every participant of the AIDS conference would be feasible as long as a visa application that requires one to identify as a sex worker or person who uses drugs had to be completed.
- The anti-trafficking movement in the U.S. is very well-funded, and includes a coalition of radical right evangelicals and left feminists. This is a strong anti-sex work force that conflates sex work with trafficking and has the access to both right and left wing members of Congress.
- People who use drugs may not have access to substitute therapies. Within the conference charter is the requirement that the host city has methadone for those indeed.
- IAS is one of the 4 orgs who put together the Vienna Declaration. That declaration talks about decriminalizing drug users, meaningful involvement, and it explicitly singles out the US as a country that incarcerates based on racial disparities. It makes no sense to have this human rights declaration and then bring this conference to the US.

Other ideas and suggestions discussed:

- There was a strong suggestion to move or postpone holding the conference in the U.S. Some participants agreed that the conference should be moved and others strongly objected to moving the conference. There was no consensus on this suggestion.
- Those who strongly support the conference being held in the U.S. stated it was an opportunity to bring attention to the epidemic in D.C., and to bring attention to the U.S. travel bans, and the anti-prostitution loyalty oath in PEPFAR.
- It was suggested that for a waiver process, to focus on just the 2012 AIDS conference makes it easier to negotiate a waiver with the USG. It will be harder to change the law or get a broader waiver that goes beyond just one conference, so best to focus on just IAC 2012.
- It was suggested that with immigration reform being an important issue on the horizon, that may provide an opportunity for changes to the travel bans. Others thought this was not feasible.
- It was suggested that we organize a meeting with the Department of State, Department of Homeland Security, and with the White House and make them state on the record, ‘no you can’t bring these categories of people here.’ We need to have a meeting with officials and put actions on the table including Congressional options and otherwise.

- It was suggested that we need to define an acceptable solution, we need to establish a timeline by which the workable solution must be in place. If by an agreed upon date, we do not have a solution that does not result in singling out people who use drugs, have criminal records or have engaged in sex work, we must push to move the conference to an alternate site, whether it is Geneva, which has been set up for this purpose, or elsewhere.

Proposed actions (no consensus or agreement was reached on any of these proposals):

- Negotiate with the USG for a blanket waiver that would be anonymous, that all conference participants would complete (and not be required to complete the visa or ESTA application where individuals would have to admit to being a sex worker or person who uses drugs).
- Move the 2012 AIDS conference to an alternate location.
- Postpone holding the conference in the U.S. until a thorough and fair waiver process is developed, or U.S. immigration law changed.
- IAS to review and change internal deadlines for scholarships and abstracts, etc. to allow sufficient time for people to apply for visas and if rejected, apply for a waiver and go through a waiver process.
- Gather data to assess how many people would be affected by the travel bans and in which countries.
- Plan and coordinate visa applications for participants who may be inadmissible.
- Request a policy memorandum on the travel bans from the Executive.
- Seek legislative action to remove the travel bans.
- Request an Executive Order to remove the travel bans.
- Work with Department of Homeland Security to establish a waiver application process.

Next steps:

- Develop an “ask” for the USG that would be the “ideal” situation.
- Ensure that individuals representing communities of sex workers and people who use drugs are involved in the negotiations with the USG.
- Develop a timeline for negotiating a waiver process with the USG.
- Review IAS internal deadlines.
- Share summary notes of meeting with meeting attendees.
- Time is limited and we need to continue conversation and stay on top of this issue.