

8/4/2015

Dear AI members, AI Section Directors, and AI Board members:

We write to express our support for the resolution requesting “the International Board to adopt a policy that seeks attainment of the highest possible protection of the human rights of sex workers, through measures that include the decriminalisation of sex work.” We are a diverse group of academics and scholars who have extensively researched the regulation and criminalization of sexuality through criminal law, including the exchange of sex for money, in both developed and developing countries. Our research addresses women, men and transpersons in sex work. We support efforts to counteract trafficking of under-age persons and adults into the sex sector. We base our support of AI’s proposal on scholarship and research: our own research as well as our knowledge of empirically sound and analytically rigorous global research on sex work, prostitution law, trafficking, and human rights law. AI’s human rights goals would be best served by state policies decriminalizing the un-coerced selling and buying of sex and the range of activities (such as forming groups, living or working together, advertising services, etc.) that, when un-coerced and legal, support the rights of people in sex work.

AI’s general policy is to be wary of criminal law regulating gender and sexuality.¹ We recognize that the criminal law does play an important role with respect to sex work: to ensure the rights of persons affected by violence or other harms such as wage theft. In all cases the application of the criminal law must be assessed in light of whether it provides equal and accessible justice for the victim and the accused.

We focus on two specific issues: 1) why existing credible research supports the rejection of the so-called Nordic model (decriminalizing the seller of sex while penalizing the buyer) and 2) why rigorous studies on the relationship between human trafficking and the sex sector supports total decriminalization. In particular we note empirically and analytically sound research that debunks the Nordic model and refutes claims that legalization or decriminalization of sex work will ‘increase’ the risk of trafficking into the sex sector.²

¹ We find that the ICM proposal on prostitution law is consistent with AI’s existing positions against the application of criminal law vis a vis sex among competent and consenting partners. This includes strong stances against the criminalization of women who choose to seek abortion services, as well as the providers who provide them, and persons who engage in same sex behavior. See *Sexual and Reproductive Rights: Some Frequently Asked Questions*. London: Amnesty International, 2007. Accessed August 2, 2015. https://www.amnestyusa.org/sites/default/files/pdfs/srr_faq.pdf and *Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa*. London: Amnesty International, 2013. Accessed August 2, 2015. https://www.amnestyusa.org/sites/default/files/making_love_a_crime_-_africa_lgbti_report_emb_6.24.13_0.pdf In situations where partners are not competent or consenting – such as in cases of rape or sexual violence – AI supports the application of human rights law to protect victims and uphold justice in criminal court. See *Rape and Sexual Violence: Human Rights Law and Standards in the International Criminal Court*. London: Amnesty international, 2011. Accessed August 2, 2015. <https://www.amnesty.org/en/documents/IOR53/001/2011/en/>

² For discussion purposes, we are using the word ‘trafficking’ as it is defined in the UN Palermo Protocol, See *United Nations Convention against Transnational Organized Crime*. New York: United Nations Treaty

We fully appreciate that for a human rights organization, any victim deserves rights protection and public attention: we applaud this approach. What concerns us is methodology. Victims' stories, however affecting and deserving of attention, may call us to respond, but should not alone dictate the form of policy. As feminists and theorists, we listen carefully to the many stories of differently situated people, and use methodologies to generate knowledge of what can work best to promote the rights of the diverse populations affected by law. As scholars of the criminal law's operation on sexuality, we each know well the complexity of its impact on rights,³ including many negative consequences.

Decriminalization of sex work protects sex workers from HIV and violence

Evidence shows that people in sex work face heightened risks for human rights violations including HIV exposure and serious violence, particularly from state agents, as well as discrimination in housing, access to healthcare, education, etc. Many of us work in health, law and human rights and are deeply familiar with or have carried out the research cited in these debates: we flag only a few of the more recent well-documented inquiries cited by UNDP,⁴ WHO,⁵ the UN Special Rapporteur on The Right to Health,⁶ and Human Rights Watch.⁷

Public health research supports the conclusion that criminalization of sex work prevents sex workers from having equal access to health services, including HIV-related services.⁸ A 2015 Lancet study estimated that decriminalization of sex work

Resolutions 55, no. 25 (2000): 1, available from <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>. We note that 'trafficking' includes trafficking into all types of work and all types of people (men, women, and children). We remain concerned about policy debates that focus exclusively or disproportionately on trafficking into the sex sector or trafficking involving women and girls

³ See for example, Vance, Carole S. "More Pleasure, More Danger: A Decade After the Barnard Sexuality Conference." *Pleasure and Danger: Exploring Female Sexuality*, 1992; Miller, Alice M. "Sexuality, violence against women, and human rights: women make demands and ladies get protection." *Health and Human Rights*, 2004: 16-47; Otto, Dianne. "Making sense of zero tolerance policies in peacekeeping sexual economies." *Sexuality and the Law*, 2007: 259-282.

⁴ Godwin, John. "Sex Work and the Law in Asia and the Pacific." Thailand: UNDP, 2012. Accessed August 2, 2015. <http://www.undp.org/content/dam/undp/library/hiv aids/English/HIV-2012-SexWorkAndLaw.pdf>

⁵ Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions. Geneva: World Health Organization, 2013. Accessed August 2, 2015. http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf?ua=1

⁶ Anand Grover. "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." New York: UN General Assembly Human Rights Council 14, no. 3 (2010): A/HRC/14/20. Accessed August 2, 2015, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

⁷ Human Rights Watch. "World Report 2014." New York: Human Rights Watch, 2014. Accessed August 2, 2015. https://www.hrw.org/sites/default/files/wr2014_web_0.pdf

⁸ Gruskin S, Williams G, Ferguson L. "Realigning Government Action with Public Health Evidence: The Legal and Policy Environment Affecting Sex Work and HIV in Asia." *Journal of Culture, Health and Sexuality* 16, no. 1 (2014):14-29.

could avert 33-46% of new HIV infections in the next decade.⁹ Other research findings point to the relationships between criminalization of sex work and negative health issues such as violence,¹⁰ poor condom negotiation,¹¹ mental health stresses,¹² and general disempowerment.¹³ Similarly, with regards to violence, available evidence shows that criminalization impedes sex workers' access to health services, impairs their ability to negotiate better living and working conditions, and makes them vulnerable to a range of human rights abuses, especially violence.¹⁴ Studies have shown that criminalization reduces the ability of people in sex work to organize, be visible, participate in public life as full citizens and be treated with dignity.¹⁵

Criminalizing buyers and not sellers does not protect sex workers' rights

Supporters of the different policies and practices encompassed by the Nordic model promote the decriminalization of sex work and criminalization of buyers as a way to 'end-demand.' This model might seem appealing at first glance, but it relies on two assumptions that undermine it: 1) an ideological position that selling sex is always victimizing and buying sex is always exploitative; 2) assumptions that the Nordic model protects the seller from harm.

Supporters of the ideology that sex work is inherently degrading argue that prostitution should be eliminated through criminal law. Some feminists find this persuasive because it comports with their view that *all women* are *always* sexually subject to men. Yet many female-identified sex workers have spoken out against this

⁹ Shannon, Kate, Steffanie A. Strathdee, Shira M. Goldenberg, Putu Duff, Peninah Mwangi, Maia Rusakova, Sushena Reza-Paul et al. "Global epidemiology of HIV among female sex workers: influence of structural determinants." *The Lancet* 385, no. 9962 (2015): 55-71.;

¹⁰ Cusick, L. and Berney, L. "Prioritizing punitive responses over public health: commentary on the Home Office consultation document *Paying the Price*." *Critical Social Policy* 25, No. 4 (2005): 599-600; Rhodes, T. "Police violence and sexual risk among female and transvestite sex workers in Serbia: qualitative study." *British Medical Journal* 337 (2008): 813-814.

¹¹ Blankenship, K. and Koester, S. "Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users", *Journal of Law, Medicine & Ethics* 30, no. 4 (2002): 550; Ahmed, Aziza, Margo Kaplan, Alison Symington, and Eszter Kismodi. "Criminalising consensual sexual behaviour in the context of HIV: consequences, evidence, and leadership." *Global Public Health* 6, no.3 (2011): S357-S369.

¹² Seib, C. et al. "The health of female sex workers from three industry sectors in Queensland, Australia", *Social Science & Medicine* 68, no. 3 (2009): 476-477.

¹³ Kerrigan, Deanna, Caitlin E. Kennedy, Ruth Morgan-Thomas, Sushena Reza-Paul, Peninah Mwangi, Kay Thi Win, Allison McFall, Virginia A. Fonner, and Jennifer Butler. "A community empowerment approach to the HIV response among sex workers: effectiveness, challenges, and considerations for implementation and scale-up." *The Lancet* 385, no. 9963 (2015): 172-185.

¹⁴ Removing laws criminalizing sex work and related activities can help create empowering environments that allow sex workers to access HIV and other health services, to report violence and abuse (including by police and third parties), and to take steps to mitigate the impact of HIV. In addition, removing criminal prohibitions enables persons in sex work to become more visible and public (if they choose), organize politically, demand better treatment, and counter stigma. See Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act of 2003. Wellington: Government of New Zealand, 2008. Accessed August 2, 2015. <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

¹⁵ Rekart, Michael L. "Sex-work harm reduction." *The Lancet* 366, no. 9503 (2006): 2123-2134.

assumption, arguing that while many face negative social responses and bad conditions in the work they do, their work is not inherently degrading.¹⁶ Underlying these assumptions are the pre-conceived notions of the 'seller' and 'buyer' as female and male in an extreme power dynamic without recognizing that sellers also include men and transgendered persons, amid very diverse conditions of work shaped by the landscape of criminalization.

Second, the assumption that 'decriminalization' of the seller frees the seller of all of the harms of the criminal justice system and surveillance defies reality. The practices of policing and prosecution, as demonstrated by research in countries adopting the so-called Nordic model, drive transactional sex underground with less time to screen clients. The policing of clients also exposes sex workers to increased violence from state agents and clientele.¹⁷ Persons who sell sex are still subjected to abusive police and criminal justice policies.¹⁸ AI members will recognize this problem: police as coercive state agents around the world are generally the perpetrators of human rights violations, not trusted agents of protection, particularly for stigmatized persons.¹⁹

The Nordic model makes assumptions about the 'inherent degradation' of sex work and does little to address the continued violence associated with criminalization or support alternatives suggested by sex workers to improve their working conditions.

The relationship between prostitution and trafficking

Proponents of the Nordic model assert that decriminalization of sex work will increase trafficking. This is too simplistic, as well as improbable. Trafficking is the result of multiple factors that promote vulnerability, not the result of the labor sector *per se*. For example, both domestic work and fisheries are within the legal sector, yet trafficking into them is rampant in many countries—the variables that lead to trafficking work through vulnerability and coercion, the inability to migrate legally, inadequate border controls, a lack of state accountability, and police

¹⁶ See Bromberg, Sarah. "Feminist issues in prostitution." *International Conference on Prostitution* 10 (1997): 2008; also Ahmed, Aziza. "Feminism, Power and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health." *Harvard Journal of Law and Gender* 34, no. 226 (2011); Nagle, Jill. *Whores and other feminists*. London: Routledge, 2013.

¹⁷ Deering, Kathleen N., Avni Amin, Jean Shoveller, Ariel Nesbitt, Claudia Garcia-Moreno, Putu Duff, Elena Argento, and Kate Shannon. "A systematic review of the correlates of violence against sex workers." *American Journal of Public Health* 104, no. 5 (2014): e42-e54.

¹⁸ Dodillet, Susanne, and Petra Östergren. "The Swedish sex purchase act: Claimed success and documented effects." *International Workshop on Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, 2011; Levy, Jay. *Criminalising the Purchase of Sex: Lessons from Sweden*. Milton Park: Routledge, 2015; Skilbrei, May-Len and Charlotta Holmstrom. *Prostitution Policy in the Nordic Region*. Surrey: Ashgate, 2013.

¹⁹ See Peters, Alicia W. "Trafficking in meaning: Law, victims, and the state." PhD diss., Columbia University, 2010; Cheng, Sealing. *On the move for love: Migrant entertainers and the US military in South Korea*. Philadelphia: University of Pennsylvania Press, 2011; Saunders, Penelope, and Jennifer Kirby. "Move Along: Community-based Research into the Policing of Sex Work in Washington, DC." *Sexuality, Criminalization and Social Control Action Research* (2011): 107-127.

corruption. The criminal or legal status of the work in question remains but one feature in a complex landscape.

Advocates (including media, and at times governments) often argue that “[w]here prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”²⁰ In keeping with persistent efforts to distinguish prostitution from trafficking, our review of the research literature still does not find convincing evidence to support the assertion that legalized prostitution *causes or increases* trafficking.²¹ Statistics about trafficking are notoriously slippery. According to research by UNESCO-Bangkok on trafficking,²² available statistics are unreliable, in part because of the variability of the definitions used to identify who is a ‘trafficked person’. Another significant problem is the lack of social science research that meaningfully compares trafficking (as defined in international law) and prostitution under different legal regimes (i.e., legalization, criminalization and tolerance). The impossibility of ‘proving’ what many opponents of prostitution passionately believe bedevils many of the arguments they make.²³ It is equally if not more plausible, that there be an association between the increased identification of trafficked persons in decriminalized regimes of sex work when states have not only progressively reformed their prostitution law, but also paired this with more effective, accountable interventions against trafficking.

Evidence on decriminalization of sex work shows that it is an important part of a set of interventions to combat trafficking into the sex sector. Legal prostitution, combined with effective rights-based anti-trafficking laws, makes it easier to identify and combat trafficking as workers and clients in the legal sector can report

²⁰ The Link Between Prostitution and Sex Trafficking. Washington D.C.: Bureau of Public Affairs, 2004. Accessed August 2, 2015. <http://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

²¹ "UN Women's note on sex work sexual exploitation and trafficking." Geneva: UN Women, 2013. Accessed August 2, 2015. <http://bit.ly/1IU6KIT> ["The conflation of consensual sex work and sex trafficking leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights. Furthermore, failing to distinguish between these groups infringes on sex workers' right to health and self-determination and can impede efforts to prevent and prosecute trafficking."]

²² See <http://www.unescobkk.org/culture/trafficking>. UNESCO's Trafficking Statistics Project is an ongoing project attempting to assess the scale of the problem, as well as the empirical validity of various estimates and guesstimates in wide circulation.

²³ One recent study (Cho et al. 2013), using non-comparable data criticized for its poor quality, claimed to find an association between “human trafficking inflows” and legalized prostitution, which the authors interpret as causality. They argue that legalized prostitution contributes to increases in trafficking. Cho et al. acknowledge that their correlational finding cannot demonstrate causality, so they turn to what they term ‘anecdotal evidence’ for 3 countries whose policies have changed, though data on ‘trafficking inflows’ are lacking for 2 of the 3 countries. Any association between more reported or prosecuted trafficking cases and decriminalized sex work regimes can equally, if not more plausibly, be explained by the practices of states, which have not only progressively reformed their prostitution law but also paired this with more effective, accountable interventions against trafficking. A parallel interpretive problem is posed by increased reports of violence against women. We question whether these are instances of increased occurrence or increased detection. For the full methodology see, Seo-Young Cho and Axel Dreher and Eric Neumayer. “Does Legalized Prostitution Increase Human Trafficking?” *World Development* 41, no. 1 (2013): 67-82. For a thorough dismantling of this study see, Weitzer, Ronald. “New directions in research on human trafficking.” *The Annals of the American Academy of Political Science and Social Science*, vol. 653 (May): no. 1 (2014): 6-24.

8/4/2015

trafficked or suspicious cases without fear of arrest.²⁴ Moreover, conditions for cooperation with authorities are improved which, along with the ability of workers to claim rights, make the violence and exploitation of trafficked persons more visible. In short, decriminalization makes it clear what the crime of trafficking really stands for -- severe labor exploitation and coercion/deception, not simply the selling or buying of sex. This distinction between sex work and trafficking also comports with the overall philosophy and innovation of the UN Palermo Protocol (2000), which suggests that people who have been trafficked are not criminals, but crime victims. This distinguishes between prostitution and trafficking into prostitution.²⁵

We encourage AI to recognize victims of sex-trafficking in the larger context of human trafficking. A single-issue focus on prostitution as the 'cause' of trafficking, rather than on the exploitation that operates in all of the different sectors in which trafficking occurs (e.g., in agricultural work, domestic work, factory work and prostitution), would move AI away from responding to the needs of *all* trafficked persons with a coherent, overall strategy.²⁶ AI has long taken a leading role in the struggle for the human rights of trafficked persons. It is all the more important for AI's work to support policies and programs that are grounded in valid research.

Keeping the Flame

We understand that ultimately AI's position will not be resolved by recourse to research alone: the positions taken by partisans on all sides are also ideological and passionate, as claims involving human dignity ought to be. However, we highlight in our conclusion that a number of us are long-time AI members as well as past staff, consultants, or national section Board members (here we flag Gruskin, Roseman and Miller). We were involved in the 1991 and onward struggle over the adoption of persons as prisoners of conscience if they were arrested for same-sex behavior; others of us were active in the decisions that allowed AI to work on violence against women more generally as well as on abortion and reproductive health rights. In each of these cases, partisans on all sides were passionate, and often very high profile: celebrities and AI members alike have strong convictions on sexuality.

²⁴ "Human Trafficking and Sex Worker Rights." New York: The Freedom Network, 2015. Accessed August 2, 2015. <http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf>

²⁵ This is presented in the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," supplementing the United Nations Convention against Transnational Organized Crime. For full text see, United Nations Convention against Transnational Organized Crime. New York: United Nations Treaty Resolutions 55, no. 25 (2000): 1. Accessed August 2, 2015.

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

²⁶ Ann Jordan, Ali Miller, Carole Vance, Baerbel Heide Uhl, Bridget Anderson, Julia O'Connell Davidson, Audrey Macklin, Jodi Jacobson, and Sealing Cheng. Expert Letter to Ambassador John Miller, April 21, 2005. Letter. U.S. Department of the State. Accessed August 2, 2015. <http://www.nswp.org/sites/nswp.org/files/USSTATE-LETTER.pdf>

8/4/2015

The final decisions on these past votes on same sex behavior as well as the decriminalization of abortion were taken through a mixture of evidence-based support, passion and consistency with human rights principles. We acknowledge how painful many individuals may find the idea of AI working against some of their most renowned supporters, but we don't need to remind AI that it has consistently carried the banner for human rights when popular opinion has thought otherwise. We urge AI to continue keeping this powerful flame.

We appreciate your careful and thorough concern as Amnesty International debates this crucial issue. Any one of us would be happy to be contacted in regard to our research and/or for more sources and analysis as you proceed with your debates.

Sincerely,

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8/4/2015

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