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Abstract

Through a close examination of Amnesty International's (Amnesty) own arguments and sources, this paper demonstrates that Amnesty's proposal to decriminalize prostitution or "sex work" will harm those it claims to help. It concludes that the best available evidence indicates that decriminalization of prostitution would: increase sex trafficking, leave prostituted women or "sex workers" more vulnerable to violence, and reduce access to healthcare, protection, and services. Prostituted women primarily enter the industry at a young age, often suffering from a history of sexual and physical abuse, coming from marginalized and vulnerable communities, and driven by emotional and economic desperation. It is in this context that prostituted women "consent" to sell themselves in the extremely risky and dangerous sex industry. But instead of helping victims of sexual exploitation, Amnesty's proposal will mostly benefit their abusers—the mostly male consumers and organizers of the sex industry. Amnesty reaches its flawed conclusion by consistently misreading the evidence, engaging in selective skepticism, and ignoring the troubling legal and practical implications of its own policy. Amnesty rejects decades of scholarly research on the basis of few sources—in one case from close to half a century ago—and sometimes misreads the reports they rely on. Amnesty consulted primarily with those most likely to support its position—the "sex workers"—rather than the sex trafficking victims, adult survivors of prostitution and the child victims of commercial sexual exploitation who are the most harmed by the sex industry.

Keywords

Prostitution, sex work, sex workers, sex trafficking, human trafficking, trafficking, exploitation, violence against women

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AMNESTY INTERNATIONAL'S EMPTY PROMISES: DECRIMINALIZATION, PROSTITUTED WOMEN, AND SEX TRAFFICKING

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ABSTRACT

Through a close examination of Amnesty International's (Amnesty) own arguments and sources, this paper demonstrates that Amnesty's proposal to decriminalize prostitution or "sex work" will harm those it claims to help. It concludes that the best available evidence indicates that decriminalization of prostitution would: increase sex trafficking, leave prostituted women or "sex workers" more vulnerable to violence, and reduce access to healthcare, protection, and services. Prostituted women primarily enter the industry at a young age, often suffering from a history of sexual and physical abuse, coming from marginalized and vulnerable communities, and driven by emotional and economic desperation. It is in this context that prostituted women "consent" to sell themselves in the extremely risky and dangerous sex industry. But instead of helping victims of sexual exploitation, Amnesty's proposal will mostly benefit their abusers—the mostly male consumers and organizers of the sex industry. Amnesty reaches its flawed conclusion by consistently misreading the evidence, engaging in selective skepticism, and ignoring the troubling legal and practical implications of its own policy. Amnesty rejects decades of scholarly research on the basis of few sources—in one case from close to half a century ago—and sometimes misreads the reports they rely on. Amnesty consulted primarily with those most likely to support its position—the "sex workers"—rather than the sex trafficking victims, adult survivors of prostitution and the child victims of commercial sexual exploitation who are the most harmed by the sex industry.

KEYWORDS

Prostitution, sex work, sex workers, sex trafficking human trafficking, trafficking, exploitation, violence against women

Prostitution is not a victimless crime; it is a brutal form of sexual violence. —Letter signed by 177 sex trafficking survivors (Equality Now, 2013)

ON MARCH 26, 2016, Amnesty International (Amnesty) released its final policy recommendation to decriminalize all prostitution and claimed it was defending the human rights of "sex workers" (Amnesty International, 2016a). This paper will evaluate Amnesty's proposal, arguments, and supporting evidence. It contends that Amnesty's recommendations would make prostituted women and victims of sex trafficking more vulnerable to abuse and violence,

while handing a huge victory to their abusers. This paper also argues that Amnesty consistently misreads the evidence, engages in selective skepticism, and ignores the troubling implications of its own policy. Decriminalizing prostitution will increase human trafficking, leave prostitutes even more susceptible to exploitation, and encourage a degrading and violent industry. Amnesty's policy will not help "sex workers" or victims of sex trafficking, but it will help the mostly male pimps and johns exploiting them.

This paper will demonstrate the weakness of Amnesty's main arguments for decriminalization, and methodological problems that led Amnesty to this conclusion. The first section focuses on comparing Amnesty's semantics and rhetoric to the actual legal and policy implications of its proposal. The second section explores the connection between sex trafficking and prostitution, examines Amnesty's evidence for denying a link between them, and concludes by arguing that decriminalization will likely increase sex trafficking. The third section examines what it means to "consent" to prostitution by looking at the factors for entry and at the nature of the sex industry. It critically considers Amnesty's research on a variety of topics such as average age of entry and the risks associated with prostitution. The final section contends that—contrary to Amnesty's view—decriminalization will undermine the safety and health of prostitutes or "sex workers." The conclusion addresses some of the collateral results of decriminalization on rape culture and violence against women.

RHETORIC AND REALITY: THE POLICY AND LEGAL IMPLICATIONS OF DECRIMINALIZATION

Amnesty International's proposal recommends "the decriminalization of all aspects of consensual adult sex" (Murphy, 2015). This includes the sale of sex by "sex workers" and the "repeal (of) those (laws) which make the buying of sex from consenting adults or the organization of sex work . . . a criminal offense" (Amnesty International, 2016a, p. 2). In other words, being a "john" or a "pimp" would no longer be a criminal offense, but there could be charges for other related offenses. Amnesty considers the term "sex worker" to apply only to "consenting adults" of at least 18 years of age (Amnesty International, 2016a, p. 3-4; Amnesty International, 2016b, p. 3-4). On his or her eighteenth birthday, a boy or girl counts as a consenting adult for the purpose of selling sex. Amnesty's proposal of decriminalization is distinct from legalization, which would involve formal regulation the sex industry and "*introduction* of laws and policies specific to sex work" (Amnesty International, 2015) (emphasis in original).

Amnesty claims that its recommendations are about protecting and advocating for "the human rights of sex workers," but it is the men—the consumers and organizers of sex—who will benefit most. "Sex work" is not gender-neutral. The vast majority of "sex workers" are women. Practically all of the consumers (the johns) and the organizers of the sale of sex (the pimps) are men. Amnesty's proposal would establish the legal right of men to buy or rent women's bodies for sexual acts, and the legal right of men to sell or rent women's bodies to other men for sexual acts.

In fact, this will be the primary effect of Amnesty's proposal, for the vast majority of people in the sex industry are the consumers, the johns (Moran, 2013). The level of consumer participation varies from country to country—from as high

as 60 to 75 percent in some Southeast Asian countries (Moran, 2013) to 10 percent in Britain, 18 percent in Germany (Raymond, 2004), and 17 to 55 percent in Italy (Raymond, 2004; Smith, 2003). In the United States, an estimated 15–20 percent of men have paid for sex (ABT Associates Inc., 2008). In contrast, the number of “female sex workers” ranged between 0.2 percent and 2.6 percent in Asia, 0.1 percent and 1.4 percent in West Europe (Vandepitte et al, 2006), and under 1 percent in the United States (Lubin, 2012). As Rachel Moran explained, “Prostitution is a thoroughly male-dominated trade” (Moran, 2013, p. 193).

Amnesty denies that its policy helps pimps or establishes a right to buy sex (Amnesty International, 2015), but that is the essence of the proposal. Many supporters of prostitution law reform already oppose criminalizing the sale of sex because it further victimizes the victims of commercial sexual abuse and sexual exploitation. The Nordic model, for instance, decriminalizes the sale of sex: but it also criminalizes the purchase and organizing of prostitution as a way to reduce demand, and protect the victims of prostitution and trafficking. Other advocates have considered more small-scale reforms within the existing law-enforcement model, such as safe harbors laws for prostituted children, expansion of john schools,¹ special trafficking courts, and additional police training. But Amnesty criticizes the Nordic model and others precisely because it believes that the purchase and organizing of sex must be decriminalized as well. In fact, Amnesty’s decriminalization policy is unique precisely because it creates a legal right for men to buy and sell women’s bodies for sexual services. And throughout its consultations and draft policies, Amnesty expressed sympathy for men purchasing and arranging the sale of women’s bodies (Neuwirth, 2014). Amnesty’s proposal is not entirely or even mostly about the “sex workers” it claims to defend.

On its face, Amnesty’s policy recommendation that “sex work” be treated as any other form of employment also has many troubling implications. Here are four quick examples. First, in most service industries, people cannot discriminate against their customers based on race, gender, religion, and sexual orientation (ACLU, 2012). Under Amnesty’s policy, “sex workers” would legally be obligated to have sex with certain customers, stripping them of their ability to choose their “clients.” Second, in many welfare systems, people have to prove that they have attempted to find employment prior to qualifying for aid. Amnesty’s proposal would open the door for requirements that women attempt to sell themselves for “sex” before receiving welfare benefits. This issue has already been raised in Germany (UPI, 2005; Moran, 2013, p. 213-214).² Fortunately, the *Budessozialgericht* (Federal Social Court of Germany) decided in 2009 that women were not obligated to have sex with men. But Germany’s decision was under a “legalization” framework, not Amnesty’s decriminalization model, which allows no special exceptions or treatment of “sex work.” Third, in most jobs, when someone obtains services through unlawful means (such as deception or threats), it is treated as “theft of services.” Because Amnesty claims that “sex work” should be treated like other forms of employment, this raises the prospect that if a john rapes a “sex worker,” he would be guilty of theft of services rather than rape. Amnesty was

¹ John schools are education programs for someone—almost exclusively men—arrested for soliciting illegal commercial sex. The Johns are diverted into these programs to learn about the realities of prostitution, risks of STDs, and other factors with the goal of dissuading them from soliciting commercial sex in the future.

² Hamburg lawyer Mechthild Garweg explained, “There is now nothing in the law to stop women being sent into the sex industry... The new regulations say that working in the sex industry is not immoral any more, and so jobs cannot be turned down without a risk to benefits” (UPI, 2005).

clearly aware of this concern. In the Final Policy, it explicitly states that consent can be withdrawn at any time, and that if consent is withdrawn, then it is still rape (Amnesty International, 2016a, p. 15). Unfortunately, Amnesty does not explain how this can be squared with the essence of its policy that “sex work” is the same as other forms of “work” and that there should be no special “legalization” of “sex work.” Further, the fact that Amnesty has to clarify that rape will still be treated as a rape is an indication of how morally problematic and dangerous its policy is. Fourth, normally, when there is a contract for services, breaching that contract makes someone liable for monetary damages.³ Amnesty’s proposal would require a woman who changes her mind about having sex with a john to pay damages to him.

Further, because Amnesty’s policy does not recommend special regulations of “consensual” sexual arrangements, it would permit violent or rough sexual activity that could include beatings, torture, cutting, and burning. The testimony of “sex workers,” the BDSM industry,⁴ and the prevalence of domestic violence and violence against women indicate that there may be a high demand for such arrangements. Amnesty may not want to condone violence against women, but Amnesty’s policy opens to the door for it. Nor does Amnesty’s recommendation give any basis for laws requiring birth control, including condoms, or methods for limiting STDs.

This is the promise of Amnesty’s human rights approach: Women will be compelled and pressured, with a green light from the state, to have sex with men. Amnesty’s policy employs empty rhetoric of consent and bodily autonomy, while paving the way for “sex workers” to be stripped of the choice to enter the industry and the ability to pick their “clients.” This proposal would leave them vulnerable to even more sexual exploitation. Amnesty would claim that the preceding is not the intent of its policy; but despite that, it is undeniably the result of it.

The following sections will detail other results of a “human rights” policy that protects the rights of men to buy and sell women’s bodies for sex. In the following sections, instead of referring to “sex work” or “sex workers,” I will use the terms prostitution and prostituted women. This is not to deny that other people can also be prostituted, but women are by far still the most commonly sold in the sex industry. “Sex work” and “sex workers” will not be used because sex is not and should not be treated as a form of work like any other, as will be argued in the section “The Myth of Consent.”

³ Courts have ruled that specific performance for breach of contract is not allowed under the 13th Amendment (Oman, 2009). Specific performance is when the court orders the breaching party to fulfill the terms of the contract, such as ordering a “sex worker” to have sex with her client.

⁴ BDSM is often a gateway into human trafficking. In a case prosecuted by Pamela Chen, “Jodi” entered into a consensual BDSM relationship with Marcus that quickly devolved into human trafficking. Among other abuses, the victim has “slave” carved into her chest with a knife, the letter “G” branded onto her buttocks with a coat hanger, and a whiffle ball put into her mouth and lips closed with surgical needles. She was subject to regular beatings, torture, and rape, and Marcus attempted to sew her vagina shut with a sewing needle and thread (U.S. v. Marcus, 487 F. Supp.2d 289 (E.D.N.Y. 2007)).

SEX TRAFFICKING AND PROSTITUTION: TWO SIDES OF THE SAME COIN

Amnesty's proposal attempts to delink sex trafficking and prostitution (Amnesty International 2016a; Amnesty International 2016b). Amnesty does this in order to argue that decriminalization will not result in increased sex trafficking, which could justify laws against prostitution. Even if prostitution were treated as "work," the collateral effects of decriminalization might be seen as too high. Yet this section will show that Amnesty relies on unreliable and misleading arguments, and ignores the weight of the evidence that shows sex trafficking and prostitution to be closely linked.

The market for sex trafficking and prostitution is fundamentally the same. It is a market for the sale of sex, and as a consequence, they both react to the same dynamics of supply and demand. The decriminalization or legalization of prostitution drastically increases demand for sex due to the reduced stigma of purchasing sex and the elimination of legal deterrents. This increase in demand can be met three ways. First, it can be met with legal prostitution; this is sometimes called the "substitution effect," where legal, consensual prostitutes substitute for illegal prostitution. Second, sex traffickers can step in and meet the excess demand; this is sometimes referred to as the "scale effect." Third, if the demand drives the price of purchase up sufficiently, supply and demand can reach equilibrium; but this scenario requires an enforcement model efficient enough to prevent sex trafficking and ensure a properly functioning market.

In practice, the most common response to increased demand is an increase in sex trafficking. This is because when prostitution is decriminalized or legalized, the increase in demand for sex far outstrips the increase in consensual supply. Pimps turn to sex trafficking to meet that gap between supply and demand. Decriminalization also reduces the risk to pimps and sex traffickers,⁵ while increasing the possible rewards. In the Netherlands, one of the first countries to experiment with legalization and decriminalization, there has been a marked increase in sex trafficking (Working Group, 2004; Rudder, 2011; Cho et al, 2013). Seeking a solution, the De Wallen council recommended reducing the number of brothels, noting that monitoring and investigating sex trafficking may even be harder in the legalized prostitution sector (Dutch News, 2011; Mees, 2009). Some police experts estimate that 50 to 90 percent of prostitutes in the red light district were forced into prostitution (Mees, 2009). According to an International Labor Organization (ILO) study comparing the decriminalization model in Denmark and

⁵ The risk for sex traffickers will be reduced because it will be easier to operate by hiding victims in plain sight. Already many criminal organizations and gangs are moving to sex trafficking because it is a notoriously hard crime to investigate and prosecute. In contrast to drugs and guns, when a man is seen with a woman or child, there is no evidence of a crime; police usually need testimony from traumatized individuals, who are terrified of the traffickers and often distrustful of police. Decriminalizing prostitution would make these investigations harder. Now, even when a man is selling a young woman for sex, there is no evidence of a crime, and no basis for the police to investigate further. Further, under Amnesty's open market framework, even physical injuries are not enough to raise police suspicions, and even if they do, they might be considered first as a contract dispute rather than an issue of sex trafficking or abuse. Some advocates of the law enforcement model recognize that prostituted women are victims of commercial sex abuse, but believe that criminal laws are necessary to provide avenues for government and chance to separate prostituted women from their exploiters. The Nordic model, instead, only criminalizes the purchase of sex rather than its sale, but it still uses the criminal aspect as an opportunity for intervention.

the Nordic model in neighboring Sweden, the number of trafficking victims in Denmark is four times that of Sweden, even though Sweden's population is about 40 percent larger than Denmark's and even though the number of legal prostitutes in Denmark is also three to four times larger than in Sweden (Dailova-Trainor & Belser, 2006). Germany's population is about 10 times as large as Sweden's, but it has 69 times as many prostitutes and an estimated 62 times as many trafficking victims (Dailova-Trainor & Belser, 2006). A study in 2005 showed that trafficking in Germany declined gradually through 2001 and then started to increase after the decriminalization of prostitution of 2002 (Di Nocala et al, 2005). And this makes sense. Demand for buying sex is much more elastic than supply for the sale of sex, which creates a huge opening for sex traffickers to make money—and they take advantage of it. While Sweden has seen a marked decline in demand (from around 14 percent to 7.5 percent of the male population), Denmark has seen an over 40 percent increase (Dailova-Trainor & Belser, 2006). In Norway, demand for sex dropped 20-25 percent after the introduction of the Nordic model (Rasmussen et al, 2014).

The conclusions from these case studies are further backed by three studies involving global data sets and theoretical analysis. One study of 150 countries by Cho, Dreher, and Neumayer found that “[t]he scale effect of legalized prostitution leads to an expansion of the prostitution market, and increased human trafficking, while the substitution effect reduces demand for trafficked women as legal prostitutes are favored over trafficked ones. . . . On average, countries where prostitution is legal experience larger reported human trafficking inflows” (Cho et al, 2013, p. 1).⁶ In another study, Jakobsson and Kotsadam concluded, “Using two recent sources of European cross country data sets we show that trafficking of persons for commercial sexual exploitation . . . is least prevalent in countries where prostitution is illegal, most prevalent in countries where prostitution is legalized, and in between in those countries where prostitution is legal but procuring illegal. . . . [T]he results suggest that criminalizing procuring, or going further and criminalizing buying and/or selling sex, may reduce the amount of trafficking to a country” (Jakobsson & Kotsadam, 2013, p. 1). A third theoretical study, by Lee and Persson, concluded that the Nordic model was more effective at reducing trafficking than the Dutch model of decriminalization (Lee & Persson, 2013). It concluded that the Dutch model had the same effect on trafficking as the traditional model of complete criminalization, which has a weak effect of increasing trafficking. They advocated for a hybrid of the Swedish and Dutch model (Lee & Persson, 2013).

Amnesty's proposal claims that criminalization (of either demand or supply side) does not reduce trafficking, and it has two supporting citations (Amnesty International, 2016b, p. 46). The first citation is to a three-paragraph editorial in *The Lancet* that devotes one sentence to the issue at hand (Lancet, 2015). The other citation was to a submission by Anti-Slavery International (ASI) to the Committee for Justice of the Northern Ireland Assembly, in which ASI claimed it

⁶ According to Amnesty, Weitzer “convincingly rebutted” the methodology of Cho et al. (Amnesty, 2016b, p. 47). One of Weitzer's critiques was that the Cho et al study looked at UNODC numbers on human trafficking rather than just sex trafficking. He argued that there is no reason that prostitution should be linked to labor trafficking (Weitzer, 2014, p. 6-24). In doing so, Weitzer effectively concedes that there is a reason that prostitution and sex trafficking could be related because it is logically the same market. Further, there often is a link between labor and sex trafficking since they rely on similar criminal networks, and an atmosphere conducive to criminal behavior. The close connection between prostitution and sex trafficking then also links it to labor trafficking.

did not have enough evidence that criminalization reduced human trafficking (Anti-Slavery International, 2014). But of course this is different from saying that their evidence proves that criminalization *does not* reduce trafficking. Amnesty also uses the same ASI citation to support its claim that decriminalization does not increase human trafficking (Amnesty International, 2016b, p. 46). But Amnesty failed to mention the final report produced after ASI's submission: The Committee For Justice reviewed all the evidence, conducted in-country visits, and then concluded that it "*strongly* believed that there is a *clear* link between human trafficking and the demand for sexual services. Criminalising the purchase of such services would curtail demand and therefore lessen the incentives for human trafficking thus reducing it" (Committee for Justice, 2015, p. 28) (emphasis added). The Committee concluded that Nordic model in Sweden has reduced demand for sexual services and tackled human trafficking (Committee for Justice, 2015, p. 28). In short, Amnesty cites ASI's submission, but it ignores the Committee's conclusions that human trafficking and prostitution are linked and that the Nordic model was the most successful in reducing trafficking.

Amnesty's only remaining piece of evidence is a German Federal Police Report that found the number of "identified" human trafficking cases had decreased (Amnesty International, 2016b, p. 47). But, as Amnesty points out, Germany has a *legalization* model, which Amnesty has specifically rejected (Amnesty International, 2016b, p. 47). Further, those statistics are widely understood to understate the amount of trafficking in Germany (Spiegel, 2013; Follmar-Otto & Rabe, 2009). This may be because the police put less emphasis on trafficking investigations as result of legalizing prostitution (Follmar-Otto & Rabe, 2009). Helmut Sporer, Detective Chief Superintendent of the Crimes Squad in Augsburg, Germany, noted that around 80 percent of the "sex workers" in Germany are immigrants, primarily from new EU member states known to be major trafficking routes. And Sporer continued, "90 percent of these women have not . . . freely chosen prostitution, they are subjected to various forms of pressure" (Speak, 2013). Belatedly, Germany has begun to understand the extent of its trafficking problem and to attempt reforms of its prostitution laws (Speak, 2013).

Amnesty has adopted a double standard in its proposal: Time and again, it demands absolute certainty for contrary positions (something impossible in social science), but it trusts anything that supports its own case. At times, Amnesty misreads and twists contrary evidence to support its argument. Amnesty concludes that evidence showing the Nordic model to be successful in reducing trafficking is "not completely reliable" (Amnesty International, 2016b, p. 47). Indeed, it says, Sweden's Chancellor of Justice himself has "confirmed" this (Amnesty International, 2016b, p. 47). In the footnote, however, the chancellor's actual quotation fails to provide that confirmation; in fact, it contradicts Amnesty's position regarding the Nordic model:

Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime [trafficking] is considered to be substantially smaller in scale than in other comparable countries. According to the Swedish police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers who are considering establishment in Sweden (Skarhead, 2010, p. 34; Amnesty International, 2016b, p. 47).

Focusing solely on the "hard to assess the exact scale" phrase—to the exclusion of the point being made—Amnesty uses this quotation as its only evidence to

back up its claim that numbers pointing to the Nordic model's success in reducing trafficking are "not completely reliable" (Amnesty International, 2016b, p. 47). Amnesty continues to claim that the Swedish National Council for Crime Prevention "found no evidence" that the Nordic model "significantly" "decreas[ed] trafficking into the sex industry in Sweden" (Amnesty, 2016b, p. 47 fn. 250). Yet Amnesty's page citation does not address that issue at all, and the referenced report was focused on the organization of trafficking rather than the impact of the Nordic model (Swedish National Council for Crime Prevention, 2008, p. 79).⁷ Further, other articles have referred to the data in the report, and compared it to the trafficking numbers from comparable countries, to demonstrate that the Nordic model has reduced trafficking (Jakobsson & Kotsdam, 2010).

It is telling that nothing in Amnesty's Final Policy or Explanatory Note addresses the argument around why decriminalization of prostitution would increase sex trafficking, namely, that demand will exceed supply. In order for sex trafficking not to increase, either (1) the supply must increase, or (2) the price must increase to balance demand with supply. First, *supply increase*: Some of this will be addressed in Section 3, but most women are not willing to sell or rent their bodies for sex, regardless of the price. Second, *price increase*. In an ideal market, the cost of "consensual" sex would simply increase until it causes supply and demand to reach equilibrium. But this requires an effective enforcement regime to eliminate trafficking and forced prostitution (which can drive down prices). Despite the fact that Amnesty consistently criticizes law enforcement and laments the corruption and abuses by government and police, it still expects law enforcement to root out sex trafficking in a decriminalized market and ensure that the market works efficiently and fairly without any regulation. This is an enormous task. Further, prostitution primarily draws from unskilled (Moran, 2013)⁸ and disadvantaged "workers" (see section 3), which increases the chance for an unregulated market to trigger a race-to-the-bottom (as we will see in Section 4).

There is also reason to think that Amnesty failed to meaningfully consider the concerns of sex trafficking victims. Amnesty touts the fact that it consulted with 200 "sex workers" or "consenting" adults who actually have the capacity to "consent" (Amnesty, 2016a; Amnesty, 2016b). What it fails to mention is telling: Amnesty did not seriously consult with sex-trafficking victims.⁹ Amnesty did not seriously consult with prostituted women who were coerced or pressured into sexual exploitation. And Amnesty did not seriously consult with survivors of child sex trafficking or other victims of sexual exploitation. Amnesty consulted with "sex workers"—the part of the sex industry most likely to agree with its pre-conceived position. And Amnesty's dismissal of the concerns and needs of victims of the sex industry goes even further. Amnesty recommends that "sex workers" be involved in developing any future legislation concerning the sex industry—only "sex workers," not sex-trafficking victims, not victims of sexual exploitation, and not victims of child sex trafficking, but only those adults who "consent" to the sale of

⁷ Page 79 of report focuses on the use of the internal organization of human trafficking rather than the impact of the law after implementation.

⁸ Moran rebuts the notion of prostituted women as "skilled" workers. The main skill a prostituted woman possesses is the correct reproductive organs. Further, at times, johns and pimps specifically seek out "unskilled" and inexperienced women because they can get a better price (Moran, 2013).

⁹ In its research, Amnesty only claimed to consult with five sex trafficking victims in two of the case studies discussed below (Amnesty, 2016d; Amnesty, 2016e).

sex. Amnesty—instead of defending and giving a voice to voiceless—effectively recommends the silencing of those most harmed by the sex industry. And it does this all in the name of human rights.

To conclude, the best available evidence indicates Amnesty's policy will increase sex trafficking. Amnesty dismisses the scholarly research that demonstrates the risks of decriminalization, instead embracing an ill-founded ideology that holds that prostitution and sex trafficking are unrelated. In fact, prostitution and sex trafficking are part of same market—a market for sex—one that is likely to get only more brutal and exploitative if governments heed Amnesty's recommendations. We can now turn to what Amnesty means by "consensual" prostitution and whether even "consensual" prostitution is exploitative and abusive.

THE MYTH OF CONSENT: "WORK" AND COMMERCIAL SEX ABUSE

Amnesty reminds us often that "consent" is a "key component" of this "sex work" proposal, that "sex work" is limited to "consenting adults" (Amnesty, 2016b, p. 26). Amnesty asserts that states must "recognize and respect the agency and capacity of adults engaged in consensual sex work" (Amnesty, 2016b, p. 27) and it objects to limitations on "agency" and "bodily autonomy" (Amnesty, 2016b, p. 27). The problem, it claims, is that government bodies and clients assume either that "sex workers always consent to sex" or that "sex workers can never consent to sex" (Amnesty, 2016a, p. 15; Amnesty, 2016b, p. 27). But Amnesty ignores a third option: Even when a "sex worker" consents to "sex," she might still be a victim of exploitation. Unfortunately, people consent to exploitation and abuse all the time.

Prostitution is not the same as sex trafficking, but it is an unjust form of exploitation. There are many situations in which people "consent" to abuse, and governments can have a legitimate role in preventing certain "consensual" but harmful activities, such as drunk driving and certain drug use. Further, based on "consent," does Amnesty support the decriminalization of the sale of human organs from live donors? After all, many people, driven by poverty, might consent to sell their organs, and there is already a black market for organs in certain countries. Does Amnesty favor allowing women to sell their bodies to be tortured? Amnesty claims not to support violence against prostituted women—but under its "consent" analysis, there is no reason why it shouldn't allow it. As discussed above, there is demand in the prostitution market for violence against women, and many desperate women already "consent" to undergo such abuse through BDSM and rape fantasies in the sex industry. In short, just because a prostituted woman "consents" to sell sex does not mean that it should be allowed or condoned, or that men should be allowed to buy or arrange it.

The following will demonstrate that prostituted women are essentially consenting to their own exploitation and abuse, and that prostitution is exploitative—even (and perhaps especially) when it is consented to. Further, our understanding of "consent" in most of these situations should be weighed against by the sex industry's history of abuse and marginalization of women.

Prostitution – Commercial Sex Abuse

Almost all studies agree that prostitution is a remarkably violent and dangerous industry. One study of 854 prostituted women in nine countries found that 63 percent of the women had been raped by a john or a pimp, and 71 percent had been physically assaulted (Farley et al, 2003). In Oregon, a study found that 84 percent of prostituted women were victims of aggravated assault, 68 percent were victims of rape, 53 percent were victims of sexual torture, 49 percent had been kidnapped, and 27 percent had been mutilated by torture (Hunter, 1998). In San Francisco, a study of adults in prostitution discovered that 82 percent had been physically assaulted, 83 percent had been threatened with a weapon, and 68 percent had been raped by a john or pimp (Ashley, 2008). In a study of prostitutes in seven cities in the U.S., 58 percent reported experiencing violence, while 36 reported having abusive clients (Dank, 2014). Even Amnesty cites studies showing an industry fraught with sexual and physical violence, economic deprivation, and marginalization (Amnesty 2016a; Amnesty, 2016b). For example, Amnesty refers to a 2010 study in Papua New Guinea of 593 “sex workers.” In a period of six months, 46 percent had experienced physical violence and 50 percent had been raped (Amnesty, 2016c, p. 10).

As a result of the regular sexual and physical violence, post-traumatic stress disorder (PTSD) and disassociation are common (Moran, 2013, p. 138-150). In one study, 68 percent of prostituted women suffered from PTSD, a number matched only by victims of state-sponsored torture and treatment-seeking combat veterans (Farley et al, 2011). In a 30-year study of almost 2,000 prostitutes in the U.S., the most common causes of death were homicide, suicide, drug- and alcohol-related problems, HIV infection, and accidents (Patterat, 2004). The mortality rate of prostitutes was found to be 200 times that of the general population (Patterat, 2004). Sixty-five percent had seriously attempted suicide, and 38 percent had attempted it more than once (Hughes, 2004). Prostitution Research and Education concluded that prostituted women had a workplace homicide rate 51 times the next most dangerous profession (Farley et al, 2011).

Amnesty argues that certain types of prostitution are safer than others, and it relies heavily on various articles by Ronald Weitzer, a Professor of Sociology at George Washington University. Amnesty’s attempt to distinguish “good” versus “bad” prostitution fails for several reasons. First, the claim is not borne out by the evidence. Even studies of “good” prostitution show it to be a violent and dangerous business (MacKinnon, 2011; Scott, 2008). For instance, massage parlor prostitution is portrayed by Amnesty as less risky than street prostitution but even Weitzer cites a “survey of 100 Asian workers at 12 San Francisco massage parlors [that] found that 62% reported ever being beaten by a customer” (Weitzer, 2009, p. 219). In New Zealand, some legal brothels warn against having pillows in the rooms because of concerns that johns might suffocate the prostituted women (Moran, 2016). These are not indications of a healthy, risk-free work environment.

Second, there is some evidence that indoor prostitution is actually more dangerous than street prostitution. Some prostituted women have reported feeling less safe working in brothels and massage parlors because of a higher degree of isolation (Moran, 2016). The level of abuse can also be worse since indoor prostitution mostly serves to protect the johns by providing anonymity (Farley, 2005).

Third, Amnesty’s position relies on a Weitzer article that distorts the evidence. In his heavily cited “Sociology of Sex Work,” Weitzer contends that indoor

prostitution is less risky than street prostitution. To demonstrate his point, he creates a chart claiming that “brothel worker(s)” and “massage parlor worker(s)” face “Moderate” risk of “Exploitation by third parties” and “Very Low” “Risk of violent victimization” (Weitzer, 2009, p. 217). In contrast, street prostitution involves “High” and “Very High” risks. Yet the chart is misleading. In the fine print, Weitzer explains that “the brothel and massage parlor workers depicted here *do not* include those who have been trafficked against their will or otherwise forced into prostitution” (Weitzer, 2009, p. 217) (emphasis added). In other words, he excludes those most at risk of “violent victimization” and “exploitation by third parties”—and *only* excludes them for indoor prostitution. He does not exclude those trafficked and coerced in street prostitution (Weitzer, 2009, p. 217). Thereby, Weitzer rigs the data to get the result he wants—and Amnesty willingly follows.

What is clear is that all prostitution—indoors or on the street—carries large risks of violence and rape, and differing degrees of vulnerability. Prostitution is a necessarily risky and dangerous business. The violence and brutality inherent in the prostitution industry, if not in every single instance of prostitution, are why such a large percentage of prostituted women want to exit. In one study, 89 percent of prostituted women said they wanted to escape (Farley et al, 2003).

The violence in the prostitution industry should not be surprising. Contrary to Amnesty’s position, prostitution is distinct from other types of work because sex is different from other types of activities. This is also why rape is different from other forms of assault. Rape is commonly understood to be a particularly brutal and degrading crime. Though people can be forced to do many things without consent—they can be physically assaulted or forced to lift heavy objects, make sweaters, etc.—rape is worse because people recognize sex as especially intimate, personal, and private. This is why many prostituted women describe selling sex as, paradoxically, consenting to rape for money (Farley, 2005). It is a form of commercial sexual abuse because it involves dehumanizing and degrading oneself.

In study after study, prostituted women have discussed and reflected on this particular psychological harm of the sex industry. It is a common theme in many personal memoirs about the sex industry. As Moran notes, “What you are actually doing when you prostitute yourself is sanctioning and accepting payment for the sexual abuse of your own body. You go through all the negative feelings associated with sexual abuse, but in the sanction of it you have effectively gagged yourself. You have literally sold your rights of expression; it is a twin prostitution really, and its second component is at least as damaging as the first” (Moran, 2013, p. 107).

So why would anyone choose to enter and stay in this industry, especially if aware of some of the risks? Why would someone “consent” to such dangers?

Consenting to Abuse

Amnesty’s proposal relies on a controversial understanding of consent. What counts as voluntary prostitution is highly contested. Most prostituted women enter because of extreme desperation and a history of abuse that makes selling their body seem acceptable, even normal. Women’s “consent” to rent their bodies for further abuse must be understood in this context.

Factors for entry

We know that prostituted women are predominantly from disadvantaged, marginalized, and vulnerable communities. A large percentage of prostituted women have a history of abandonment, running away from home, and moving in and out of foster care and homeless shelters (Reid, 2011; Agnew, 1992; Wilson & Widom, 2010). We know that “prolonged and repeated trauma usually precedes entry into prostitution” (Farley et al, 2003, p. 35). Many prostituted women’s first sexual experience was rape, often by a family member or relative. In a pilot study of 130 prostitutes, 57 percent reported they had been sexually abused as a child, 32 percent reported that rape was first their sexual experience, and 26 percent reported that their first sexual experience was with a relative (Farley & Barkan, 1998). Another study found that 98 percent of prostitution survivors reported being emotionally abused as children, 90 percent had been physically abused, 85 percent were victims of incest, and 60 percent had been sexually abused as children (Farley & Kelly, 2000). And a different study found that 90 percent of the women had been physically battered in childhood; 74 percent had been sexually abused in their families, and another 50 percent also sexually abused by someone outside the family (Farley & Kelly, 2000).

Women might also “choose” prostitution because of extreme poverty or destitution, or to support a drug habit. While Amnesty tries to claim that prostitution is about making money, just like other forms of employment, this particular kind of “work” is usually only palatable because of poverty, a history of abuse and trauma, and desperation. In this sense, it is not different from many trafficking cases. We know that many sex-trafficking victims fail to understand that they are victims because of low-esteem, insecurity and brainwashing. Many trafficking victims are recruited through a sexual relationship, where the trafficker pretends to be a boyfriend and then leverages the victim’s feeling of love and attachment into commercial exploitation. As one pimp commented, it is a game of “choice, never by force” (GEMS, 2007; Geist, 2012). There is often a fine line between “consensual” prostitution and sex trafficking through coercion and fraud.

Amnesty is, of course, correct that not every prostituted woman has this experience, but the studies reveal that abuse, trauma, destitution, and desperation are the most common motivating factors in the industry. And this makes intuitive sense. If “sex workers” are subject to as much violence, stigma, and discrimination as even Amnesty concedes they are, only the most desperate are likely to choose prostitution as a profession. Still, Amnesty gives weight to the experiences of a few “sex workers”—casting “sex work” as normal, healthy, and even glamorous—while forgetting the interests, and real situations, of the majority of prostituted women. It is possible that Amnesty is simply not concerned with causes of entry. Amnesty provides no real analysis of why women choose prostitution, except to say that the reasons are varied. And yes, there are varied reasons, but it is rare to find a healthy reason. Amnesty even cites a United Nations Development Program (UNDP) report so radical that it states, “Sex work is not always a desperate or irrational act; it is a realistic choice to sell sex—in order to support a family, an education or maybe a *drug habit*” (Global Commission on HIV and the Law, 2012, p. 39) (emphasis added). Selling oneself to feed a drug habit is an irrational act. And selling oneself to feed one’s children is a desperate act, albeit a noble one. But when we see a woman enter prostitution to provide for her children (Moran, 2013), rather than citing that as a reason to encourage prostitution, we should see it as an illustration of our society’s failure to provide for its most vulnerable members—and we should seek other solutions. Such a situation is but

another indication of the perversion of the industry, and of the importance of offering struggling mothers an alternative to subjecting themselves to trauma and exploitation. Amnesty's embrace of the sex trade encourages an industry built on the physical and sexual abuse of mostly women.

Average age of entry

We also know that the age of entry into prostitution is very young. Most studies seem to indicate that the average age of entry is in the teenage years. The oft-cited and oft-criticized (Hall, 2014) University of Pennsylvania report by Estes and Weiner puts the average of entry at 12-14 for girls and 11-13 for boys, but it was based on a small sample group and not intended as a generalization for all of prostitution (Estes & Weiner, 2001). But even some of the critiques of Estes et al put the age of entry around 15 to 16 (Har, 2013; Conner, 2016). And similar results to Estes and Weiner's have been found in other states. Studies in Illinois and Washington also put the age of entry at 12-14 (Boyer et al, 1993), and a Chicago study found 35 percent entering prostitution before 15 and 62 percent before 18 (Raphael & Shapiro, 2002). A New York study said the average age of entry was 15 (Curtis et al, 2008; Silbert & Pines, 1982), and an international study of nine countries found 47 percent entered prostitution before 18 (Farley et al, 2003). In short, the best evidence available indicates that the average age of entry into prostitution is under 18.

These studies cast the sex industry in a troubling light, as depending on the commercialized rape of children. Under the Trafficking Victims Protection Act (TVPA) and international law—and under Amnesty's own standard—these are victims of sex trafficking. The commercial sexual exploitation of minors is by definition sex trafficking. Human trafficking numbers also show the frequency of sex trafficking of minors. For example, according to a 2011 Department of Justice (DOJ) report, nearly half of the year's 2,500 federal sex-trafficking cases involved victims under 18 (Banks & Kyckelhahn, 2011). Amnesty's policy asks us to believe that, if an underage girl has been trafficked for sex, on her eighteenth birthday she becomes a consenting adult in the "sex work"—this despite the disadvantages placed on her by her years of victimization in the industry. Overnight, that child's rapists and sex traffickers become legitimate "sex work" customers and organizers. In reality, prostitution is an industry that offers and relies on a steady supply of traumatized, exploited, marginalized, and disadvantaged women and children to be sold, on the cheap, to men.

Given the troubling implications of why people "consent" to become "sex workers," Amnesty would have good reason to rebut the research on average age of entry. So how does Amnesty address this evidence in its final policy? In all, Amnesty devotes one footnote to it. Footnote 34 reads: "[C]laims that the majority of sex workers enter the sex industry as children . . . have been shown to be misrepresentative of a large proportion of sex workers" (Amnesty, 2016a, p. 9 fn. 34). To support this position, Amnesty cites three articles—two of which do not discuss average age of entry (Vanweseneck, 2001; Clatt et al, 2014), and Ronald Weitzer's "Sociology of Sex Work" addresses it in only three paragraphs (Weitzer, 2009, p. 219). Weitzer states, "Regarding age of entry, it is sometimes claimed that 13-14 years old is the norm, but this appears to be a myth" (Weitzer, 2009, p. 219). And Weitzer offers one citation to support this claim—Winick and Kinsie, from 1971 (Weitzer, 2009, p. 219; Winick & Kinsie, 1971). In other words, Weitzer's (and Amnesty's) rejection of an entire body of research about average age of entry is based on one citation to an article in 1971—an article that predates most of the relevant research by three decades.

After casually dismissing the prior research, Weitzer proceeds to discuss two studies. He explains, “[O]ne recent study of street prostitutes found that 20% began to sell before age 16 and that “almost half (48%) had entered after age 19” (Weitzer, 2009, p. 219). What Weitzer does not spell out is that the study’s findings mean that 52 percent entered *before* 19 years of age (Hester & Westmarland, 2004), and the study said that prostituted women entered at a “young” age (Hester & Westmarland, 2004, p. 77). The other study found that only three percent of call girls and four percent of brothel workers entered prostitution between the ages of 12 and 15, and that the majority entered after age 19 (Weitzer, 2009, p. 219). But Weitzer does not mention that the study, conducted in Australia, focused on call girls from Sydney and Canberra who are described as middle-class “sex workers” (meaning they are more likely to have a later age of entry) (Perkins & Lovejoy, 2007), and while the Estes et al. study has been criticized for using a sample of only 210, the sample of call girls (95) was even smaller (with a sample of 124 brothel workers used as a comparison) (Perkins & Lovejoy, 2007). Yet Weitzer accepts this study as truth while dismissing others out of hand.

Amnesty’s entire argument against all the evidence that prostituted women enter the industry at a young age is based on the following: an article from 1971—a study that focuses mostly on a small sample of call girls from Sydney and Canberra; and a study that disagrees with Amnesty and concludes that “street prostitutes” enter at a “young” age, many as children.

Amnesty International’s Free Market Utopia

Amnesty could claim that even if prostitution is exploitative and abusive, people have a right to consent to it. And even if that consent is given due to trauma and abuse, it is still someone’s right to give that consent; therefore, the government has no regulatory role to play. Yet this economic libertarian outlook would certainly be an outlier for a leftist human rights group. Governments typically have wide berth in regulating economic activity in order to prohibit such things as child labor, highly dangerous activities, and overly long working hours. Amnesty has traditionally cheered regulations to protect workers, but it does not support regulations to protect “workers” in the sex industry. Amnesty’s conversion to free-market idealism applies only to the most dangerous and violent industry.

Amnesty also ignores the other actors in all this: the men who are abusing and exploiting vulnerable and marginalized women. It is one thing to excuse someone for hurting herself (as troubling as that is), but it quite another story to excuse those who are hurting her. Someone always benefits from a prostituted woman’s history of abuse by purchasing or renting her for his own pleasure and amusement; someone did the abusing, raping, beating, and torturing of that prostituted woman. Yet Amnesty wants to protect pimps and johns from criminal sanctions, and even from regulations. Amnesty wants prostitution in an unregulated market, even though it is an especially risky industry fraught with physical and sexual violence, frequently entailing the commercialized rape of children, and benefiting from a workforce that has a history of trauma. This policy only compounds the exploitation of prostituted women. As Moran put it, “To be prostituted is humiliating enough; to legalise prostitution is to condone that humiliation, and to absolve those who inflict it. It is an agonising insult” (Moran, 2013, 221).

“GIRLS ARE FOR SALE”: AMNESTY’S UNREGULATED, OPEN MARKET FOR WOMEN’S BODIES

Girls Education and Mentoring Service (GEMS)—an organization in New York that helps empower victims of commercial sexual exploitation—has a campaign called “Girls Are Not For Sale.” Amnesty International flips that on its head: Girls Are For Sale. Amnesty’s recommendations would only make worse a prostitution industry already defined by physical and sexual violence. Amnesty does not deny that prostitution can be brutal; rather, it believes that prostituted women are made more vulnerable to abuse and exploitation by criminal penalties. It contends that if prostitution were decriminalized, then prostituted women could report violence and rapes to the police and get access to health care. But Amnesty offers scant evidence for any of this in its Final Policy and Explanatory Note. Instead, Amnesty focuses on how criminalization can be counter-productive and cause problems, critiquing the Nordic model as well. But showing that these approaches are imperfect does not prove that decriminalization is better.

Amnesty conducted four in-depth country case studies, none of which involved a country that has legalized or decriminalized prostitution. An honest appraisal of how to approach prostitution would have assessed an example of criminalization, decriminalization, legalization, and a hybrid such as the Nordic model. Instead, Amnesty only studied and critiqued—in many cases, rightly so—the problems with criminalization and the Nordic model. These critiques are important and necessary, but Amnesty failed to take a serious look at the results of decriminalization and legalization. This left Amnesty free to criticize other models without putting its own (or the closest comparison to its own) under the microscope. Further, Amnesty used Norway as a case study for the Nordic model but did not examine Sweden, which developed the Nordic model and has seen good results. During its in-country consultations, Amnesty again did not seriously include sex-trafficking victims or prostituted children in the conversation, and instead consulting primarily with those who qualify as “sex workers” in Amnesty’s narrow definition. In Papua New Guinea, Amnesty consulted with 29 “sex workers” and no victims of sex trafficking (Amnesty, 2016c, p. 9). In Hong Kong, Amnesty consulted with 40 “key stakeholders” including “sex workers” but not including victims of sex trafficking (Amnesty, 2016d, p. 10). In Argentina, Amnesty consulted with 13 “sex workers” and two victims of sex trafficking (Amnesty, 2016e, p. 13). In Norway, Amnesty consulted with 27 “sex workers” and three victims of sex trafficking (Amnesty, 2016f, p. 8). Amnesty did not claim to have consulted with any child victims of prostitution.

When we do what Amnesty failed to do and actually look at attempts of legalization and decriminalization, we find that the theoretical benefits did not materialize. Decriminalization further opens the door to abuse and exploitation, causes a race to the bottom, and reduces access to protection and health care.

Opening the Door to More Abuse and Exploitation

Decriminalization causes a race to the bottom in the sex industry. The growing demand for sex is met through more trafficking, increased immigration from predominantly poor countries (such as Eastern Europe) (Koprs Landelijke Poli-

tiediensten, 2008; TAMPEP, 2009),¹⁰ and prostitutes being “worked” even harder. Already marginalized and vulnerable prostituted women gain even less bargaining power in an open market, and men are effectively encouraged to demand more as the legal regime lifts any stigma or restraints on the types of sexual services being provided. In New Zealand, women in brothels have reported that “men now demand more than ever for less than ever. And because the trade is socially sanctioned, there is no incentive for the government to provide exit strategies for those who want to get out of it. These women are trapped” (Moran, 2015). In Germany, women reported working 18-hour days and living in the rooms in which they worked—hardly a healthy environment (Winter, 2010; Diu, 2015).¹¹ Germany now features massive 12-story brothels to service men around the clock.¹² Advertisements in Germany include: “Sex with all women as long as you want, as often as you want and the way you want. Sex. Anal sex. Oral sex without a condom. Three-ways. Group sex. Gang bangs” (Meyer et al, 2013).

As mentioned before, most prostituted women want to escape the industry. Decriminalizing prostitution, however, will reduce the pressure to provide exit and escape options; once “sex work” is officially considered to be the same as other professions, why would there be a need to help women escape it? It will also reduce pressure to provide victims of prostitution with the requisite health care, counseling and aid to help them rebuild their lives.

Reducing Stigma and Reducing Protection

Amnesty frees johns and pimps from criminal scrutiny and regulation, and it frees law enforcement and government agencies from their obligation to help the victims of prostitution. This leaves prostituted women with less access to social services and protection than before, and emboldens their exploiters. Decriminalization of prostitution will make it harder for police to intervene to stop human trafficking and violence in the industry.

First, Amnesty’s proposal sends the wrong message to law enforcement and social services agencies. One of the great successes of the anti-trafficking movement has been pushing back against the presumption of “consent” in prostitution, demonstrating that many women are prostituted as a result of force, fraud, or coercion. This opened the door for victims of prostitution to receive aid and protection. Amnesty, instead, will feed the myth of the “happy prostitute” (Mo-

¹⁰ For instance, in the Netherlands, the percentage of Dutch prostitutes has declined from 95 percent to around 10 percent, and of the foreign born prostitutes, around 70 percent are undocumented. Ninety percent of women in Amsterdam’s brothels are East European, African, and Asian women (Koprs Landelijke Politiediensten, 2008). Other studies have put the numbers lower; for instance, TAMPEP put the number at around 60 percent. Foreign-born women are more vulnerable to exploitation and abuse (TAMPEP, 2009).

¹¹ Doris Winter, a former prostitute using a pseudonym wrote in a contribution to the Academic series, “Today a higher percentage of prostitutes don’t go home after work, but rather remain at their place of work around the clock... The women usually live in the rooms where they work.” Working conditions for prostitutes have “worsened in recent years... Significantly more services are provided under riskier conditions for less money than 10 years ago” (Winter, 2010).

¹² Now it is worth noting that some of the previous examples are from legalization models, such as Germany. But while legalization and decriminalization are different, they are likely to play out in similar ways. Decriminalization of anything will be worse, because of even fewer restrictions on men and fewer safety regulations (such as panic buttons, background checks for clients, requiring a client registry with safety reviews, requiring condoms or regular health checks for prostituted women and/or clients, licensing for pimps or organizers). Decriminalization removes even the minimal protections offered in legalization, and leaves prostituted women even more vulnerable to abuse.

ran, 2016, p. 90, 150), which will reduce governmental and non-governmental focus on prostitution. It takes a considerable degree of naiveté to think that prostituted women will receive more help and protection if they are seen as “workers” in a tough but fulfilling job instead of as victims of abuse.

Second, stigma around “sex work” will be primarily reduced for pimps and johns, not for “sex workers.” Amnesty displays remarkable hypocrisy by criticizing police for corruption and abuse of “sex workers” yet, on the other hand, thinking that police will prevent violence after being told that “sex workers” are not victims but normal employees. It does nothing to disabuse police or society at large of the conception that—even if legal—“sex work” is “dirty” or degrading, which will make it harder for “sex workers” to report abuses and seek recourse.

Third, as previously explained, prostituted women will be more vulnerable to sex traffickers, pimps, and other sexual predators. Police will be more likely to view physical and sexual violence as part of these women’s “work” (which it often is) to be dealt with as contract disputes rather than serious crimes.

Unfortunately, we already see some of this playing out. In 2007, the German government found that there “are no viable indications that the [legalization of prostitution] has reduced crime” and that legalization “has as yet contributed only very little in terms of improving transparency in the world of prostitution” (German Federal Ministry for Family Affairs, 2007). Over one-third of prosecutors noted that legalizing prostitution “made their work in prosecuting trafficking in human beings and pimping more difficult” (German Federal Ministry for Family Affairs, 2007). The report also stated that the law has “not been able to make actual, measureable improvements to prostitutes’ social protection,” “hardly any measureable, positive impact has been observed” regarding their working conditions, and that there are “no viable indications that the [law] has reduced crime” (German Federal Ministry for Family Affairs, 2007, p. 79). The Dutch government noted that “a large part of police capacity was used for inspections in the regulated sector [of prostitution], leaving them with no capacity to play a major monitoring and investigative role with regard to punishable forms of prostitution outside the licensed businesses” (i.e., the illegal sector) (Daalder, 2002). In New Zealand, the police noted that “as a result of legislative changes, Police . . . [have] less contact with the sex industry, and there is no systematic intelligence gathering and collation,” making it more difficult to discover abuses and exploitation (New Zealand Ministry of Justice, 2008, p. 101). According to the New Zealand government report, “the majority of sex workers interviewed felt that the [act of decriminalizing prostitution] could do little about violence that occurred” in the sex industry (New Zealand Ministry of Justice, 2008, p. 14). Prostituted women also reported that they were not more likely than they were before decriminalization to report acts of violence they suffered to the police (New Zealand Ministry of Justice, 2008, p. 58). One-third of those working in legal brothels stated that they had to have sex with a client they didn’t want to in the last year (New Zealand Ministry of Justice, 2008, p. 46).

The Right to Health

A large part of Amnesty’s argument is framed as concerning prostituted women’s right to health, but Amnesty actually devotes very little analysis to this question in the Final Policy and Explanatory Note. In fact, the bulk of its research comes from various UN agencies focused on HIV/AIDs (Global Commission on HIV and the Law, 2012; WHO, 2012; UNAIDS, 2009, Human Rights Council, 2010), instead of experts in prostitution and sex trafficking. Those experts largely

objected to Amnesty’s proposal, including the concerns laid out in the Coalition Against Trafficking in Women’s (CATW) open letter (CATW, 2015)—signed by 600 organizations and individuals—or those in the open letter of Jessica Neuwirth, who founded Equality Now and Amnesty’s Women Rights Division (Neuwirth, 2014). These parties understand that health care policy needs to be crafted in a particular way to deal with the specific risks and hazards innate to prostitution and sex trafficking, and to the wide range of health concerns that cannot be reduced to only HIV/AIDs—but Amnesty has not shown interest in their expertise in these matters (Bien-Aime, 2015; Geist, 2016).

Because the sex industry is likely to get more exploitative after decriminalization due to the race to the bottom and increased trafficking, prostituted women will have less access to health care and services. The increased demands of clients will also have a health cost. This could be from increasingly violent clients, requests for unprotected sex, more frequent anal sex, or simply the physical (and psychological toll) of being penetrated multiple times every day by, in most cases, strangers. Some of these health concerns could be dealt with through a legalization regime, but basic health regulations, like requiring condoms, caps on the number of clients per day, and STD checks of clients, are not part of Amnesty’s proposal; quite the opposite, in fact. Further, all the benefits of decriminalization—such as greater willingness to go to hospitals—could be met through the Nordic model.

Country studies have demonstrated this. Even Germany and New Zealand, the two cases studies usually held up as most favorable to Amnesty’s position, saw no improvement in health care for prostitutes after decriminalization (German Federal Ministry for Family Affairs, 2007, p. 16-20; New Zealand Ministry of Justice, 2008, p. 49-50). In fact, because of the increase in trafficking and worsening conditions, the health care situation is likely to worsen. In Germany, hardly any women in prostitution registered with a social insurance agency as employees, and thus the vast majority of them were not afforded greater social protection and benefits like health insurance and pension insurance (German Federal Ministry for Family Affairs, 2007, p. 16-20). In New Zealand, according to the government, most people in prostitution “felt there had been no great change” in their access to health services and information since decriminalization, and key informants “were not aware of any substantial change in the use of safer sex practices by sex workers as a result of the enactment of [the law that decriminalized prostitution]” (New Zealand Ministry of Justice, 2008, p. 49-50). In contrast, Sweden, using the Nordic model, has used money from fines against pimps and johns to expand health care and services provided to prostituted women. The result of Amnesty’s promise of the right to health will be prostituted women who are less healthy and more vulnerable to abuse.

CONCLUSION

“Being with a prostitute is like having a cup of coffee, when you’re done, you throw it out.” (Farley et al., 2011)

There is a myth that prostitution is a victimless crime. But it is not. The prostituted women are victims of commercial sex abuse, and are usually in the industry because of a history of exploitation, abuse, and poverty. There are also the victims of sex trafficking and prostituted children who are caught in the same sex

industry. And Amnesty's decriminalization proposal is harmful not just to prostituted women. It also contributes to a pervasive rape culture by feeding the idea that it is acceptable to treat people, to treat women, as objects to be bought, sold, used and abused. It teaches men and women that sex is not unique and special and, hence, that rape is not especially wrong.

Decriminalization will reduce the stigma and risks associated with purchasing and arranging sex, and thereby reduce the stigma of using someone else without concern for their overall well-being. Men will be free to demand more from women, and will feel entitled to purchase women's bodies. Here, the connection between pornography and prostitution is illustrative. Over time, pornography has become progressively more extreme, and pornography is a training ground for prostitution (Farley et al, 2011). Pornography helps develop male fantasies, and then johns seek to act out those fantasies—often involving BDSM, barely legal teens, public humiliation, and rape—with prostituted women (Farley et al, 2011; Janson, 2013). Several studies indicates that de-stigmatizing the commodification of sex contributes to johns becoming even more aggressive and violent toward prostitutes (Farley et al, 2011; Janson, 2013). A recent study found that men who buy sex have less empathy for women and are at greater risk for committing sexual violence (Wolper, 2015).

Amnesty, again, comes to the defense of johns, attempting to promote a distinction between “good” and “bad” clients. But if “good” men are using prostituted women, then the policy should be not to de-stigmatize “sex work,” but to educate them about the violence in the industry and the desperation that drives most prostituted women to this work. They should be taught to respect women as persons rather than as objects to be bought, used, and discarded. Instead, Amnesty continues to seduce men with the idea that prostitution is a victimless crime, allowing them to be complicit in a system of violence and exploitation. In the name of women's rights, Amnesty panders to the worst in men instead of demanding the best in them.

Amnesty is right about at least one thing. The laws on prostitution are in desperate need of reform. But those reforms should be aimed at offering an alternative to prostitution for all the people trapped in the industry. They should offer protection from pimps, johns, and, at times, law enforcement, and they should serve to educate people about the violence and degradation that take place within the sex industry. Instead, Amnesty's policy will increase human trafficking by normalizing and effectively condoning the sex trade. It will facilitate the commercial sexual abuse of women by contributing to a race to the bottom in the sex industry. And its proposed reforms will protect and encourage pimps and johns at the expense of the victims of the sex industry. Amnesty claims that its policy will protect the human rights of sex workers, but it will do the opposite. And the sex trafficking victims and child prostitutes—largely ignored in the policy and excluded in the recommendations—will be left even more vulnerable to abuse and exploitation. Amnesty's policy on decriminalization promises to protect the human rights of prostituted women, but in reality, it only offers support and defense to a sex industry built on violence and sexual exploitation.

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