

July 2017

Why We Must Oppose The Full Decriminalization of Prostitution

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Recommended Citation

Bien-Aime, Taina (2017) "Why We Must Oppose The Full Decriminalization of Prostitution," *Dignity: A Journal on Sexual Exploitation and Violence*: Vol. 2: Iss. 3, Article 10.

DOI: 10.23860/dignity.2017.02.03.10

Available at: <http://digitalcommons.uri.edu/dignity/vol2/iss3/10><http://digitalcommons.uri.edu/dignity/vol2/iss3/10>

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WHY WE MUST OPPOSE THE FULL DECRIMINALIZATION OF PROSTITUTION

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GOOD AFTERNOON. My name is Taina Bien-Aimé and I am the executive director of the Coalition Against Trafficking in Women, one of the oldest international organizations working to end human trafficking and the sexual exploitation of women and girls.

It is an honor to address the honorable members of Congress and my colleagues here who are dedicated to ending human trafficking. I would also like to thank the National Center on Sexual Exploitation for inviting me to this important briefing. The title of this presentation, “Why We Must Oppose the Full Decriminalization of Prostitution,” first requires a basic overview of definitions and legal frameworks that govern prostitution and its links between human trafficking, the sex trade, gender-based violence, and discrimination. The question often arises as to the relationship between sex trafficking and the sex trade, particularly prostitution. Human trafficking operates under market equations of supply and demand. Labor trafficking thrives on the demand for cheap goods and forced labor, and as it relates to sex trafficking, it is the demand for prostitution that fuels the multi-billion-dollar sex trade. Under these market rules, the sex trade operates as a vast economy of unflinching exploitation.

From an international legal perspective, the international agreements and laws in place are sterling tools. In particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children¹ (Palermo Protocol), which the United States ratified in 2005, provides the internationally agreed-upon definition of human trafficking. The Palermo Protocol lists the means through

¹ United Nations, “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,” (2000), <http://www2.ohchr.org/english/law/protocoltraffic.htm> (accessed March 11, 2017). See article 3(a).

which traffickers operate, including abuse of power over persons with vulnerabilities which means that the argument that a victim consented to her trafficking is not a defense in a court of law. The Palermo Protocol also calls on governments to punish the “demand” side of trafficking. This definition of trafficking also applies to pimping.

Nationally, the U.S. State Department also recognizes that without “. . . demand for commercial sex, sex trafficking would not exist in the form it does today.”² Also, the National Security Presidential Directive-22 (NSPD-22) instructs federal agencies to strengthen efforts to combat human trafficking by recognizing that activities such as prostitution, pimping, pandering, and brothel-owning contribute to the phenomenon of trafficking in persons, and formalizes the U.S. government’s opposition to prostitution and related activities as inherently harmful and dehumanizing.³ Furthermore, Article 134 of The Manual for Courts-Martial prohibits pandering by compelling, inducing, enticing, or procuring an act of prostitution.⁴

To discern the best way to combat sex trafficking, it is necessary to examine the national and jurisdictional legal frameworks that govern prostitution, of which there are three major models:

- 1) **Full criminalization**, in which all parties to acts of prostitution are criminalized (sellers, buyers, and facilitators). This model prevails throughout U.S. States, except for a few counties in Nevada.
- 2) **Legalization and its worst form, decriminalization**, where the buying and selling of human beings for sex is legal, with examples of such frameworks in Germany, the Netherlands, certain states in Australia for legalization, and New Zealand, for decriminalization.
- 3) **Demand-focused legislation**, whereby prostituted individuals are decriminalized and offered comprehensive services, while the purchasers of sex are held accountable under the law. This model is also known as the Swedish, Nordic, or Equality Model.

What are the implications of each of these legal frameworks? In a nutshell:

Prohibitionist Model

Full criminalization of prostitution fails to recognize the vulnerabilities of prostituted individuals and punishes them for their exploitation at the hands of traffickers and pimps. Furthermore, other than a few groundbreaking demand-focused initiatives in Seattle, Washington, Cook County, Illinois, and other cities, the discriminatory impact of prostitution laws leads to disproportionate arrests of women and the transgender population, who are often brutalized in the process, while the sex buyers are rarely apprehended. The Justice for Victims of Trafficking Act of 2015 calls on the Department of Justice to prosecute those who “solicit or patronize” victims of human trafficking and trafficked children for the purpose of

² U.S. Department of State, “Trafficking in Persons Report,” (June 2016), <https://www.state.gov/documents/organization/258877.pdf> (accessed March 12, 2017).

³ The White House, “National Security Presidential Directive-22” (November 16, 2002) <http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf> (accessed March 12, 2017).

⁴ “Manual for Courts-Martial United States” 2012 Edition, <http://www.au.af.mil/au/awc/awcgate/law/mcm.pdf> (accessed March 15, 2017).

commercial sex acts. These measures are an excellent start in addressing the demand, but we must accelerate implementation efforts and also ensure that comprehensive services, including housing, legal and medical services, are offered to those trafficked and prostituted.

Decriminalization and Legalization Models

Decriminalization and legalization of the sex trade are unmitigated disasters in every country where these laws have passed. Local authorities in the Netherlands,⁵ Germany,⁶ and Australia,⁷ where pimping, sex buying, and brothel owning were legalized, struggle to contain the illegal sex trade and organized crime that thrives under this framework. Up to 90% of women and girls in brothels across Europe are undocumented foreign women from the poorest countries of Eastern Europe and the global south deemed to have been trafficked.⁸ Germany hosts country-wide, multi-storied chain brothels in which sex buyers are offered menus from which to choose sexual acts, some of which amount to torture.⁹ Since New Zealand passed its decriminalization law, street prostitution doubled in Auckland between 2006 and 2007,¹⁰ with an overwhelming representation of Maori and Polynesian women and girls in the sex trade. New Zealand is a destination country for trafficked women from China, Hong Kong, Taiwan, South Korea, Thailand, and Vietnam and a source country for child sex trafficking, mostly from Indigenous populations.¹¹

Swedish or Nordic Model

On February 14, 2017, the Republic of Ireland followed Sweden, Iceland, Norway, South Korea and Canada,¹² Northern Ireland and most recently France, in enacting the “Swedish” or “Nordic Model.” These governments have recognized: 1) that prostitution is a form of gender-based violence and discrimination; 2) that sex buyers are the bedrock of the highly profitable sex trade; and 3) that without them the sordid multi-billion-dollar business would collapse and sex traffickers would

⁵ Naftali Bendavid, “Amsterdam Debates the Sex Trade,” *The Wall Street Journal*, June 30, 2013, <https://www.wsj.com/articles/SB10001424127887324049504578543370643627376> (accessed March 12, 2017).

⁶ Nisha Lilia Diu, “Welcome to Paradise,” *The Telegraph*, 2013, <http://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/> (accessed March 12, 2017).

⁷ Eamonn Duff, “I Give Up: Lawless Sex Industry Prompts Brothel Buster to Call It Quits,” *The Sydney Morning Herald*, April 4, 2015, <http://www.smh.com.au/nsw/i-give-up-lawless-sex-industry-prompts-brothel-buster-to-call-it-quits-20150401-1mcswx.html> (accessed March 12, 2017).

⁸ European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens’ Rights and Constitutional Affairs, *Sexual Exploitation and Prostitution and Its Impact on Gender Equality*, p. 6, 2014 [http://www.europarl.europa.eu/Reg-Data/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/Reg-Data/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf).

⁹ Taina Bien-Aimé, “Germany Wins the Title of ‘Bordello of Europe’: Why Doesn’t Angela Merkel Care?” *The Huffington Post*, n.d., http://www.huffingtonpost.com/taina-bienaime/germany-wins-the-title-of_b_7446636.html (accessed March 15, 2017).

¹⁰ Samantha Berg, “From Norway to New Zealand, Pro-Prostitution Research is Its Own Worst Enemy,” *Feminist Current*, November 24, 2014, <http://www.feministcurrent.com/2014/11/24/from-norway-to-new-zealand-pro-prostitution-research-is-its-own-worst-enemy/> (accessed March 14, 2017).

¹¹ U.S. Department of State, *ibid*.

¹² Note that the South Korean and Canadian models contain provisions that allow arrest of prostituted women in some cases, and therefore have exceptions to the Swedish model.

have no place to park their prey. As a result of its 1999 law, Sweden¹³ has documented a decrease in street prostitution and sex trafficking (although sex trafficking and prostitution facilitated online remain a challenge) and more importantly a normative cultural paradigm shift whereby the vast majority of the Swedish population now believes that purchasing sex is a barrier to gender equality. The government of Norway¹⁴ has also published an independent report finding that its demand-focused 2009 law has reduced the prostitution market.

Given the strong human rights and gender equality frameworks to combat sex trafficking and commercial sexual exploitation that have developed to date, what are the barriers toward legal and social change? For one, the lucrative sex trade and its supporters have crafted a powerful public narrative by co-opting deeply held, democratic principles of freedom, agency, and choice to mainstream the sex trade, including prostitution and pornography. To promote their agenda to normalize exploitation, they also misuse the equally evocative concepts of “sex” and “work,” which resonate with our common sense of worth, dignity, and rights. By coining the phrase “sex work,” the sex trade has enlisted the media, the entertainment industry and even the United Nations and some human rights organizations to create a dangerous storyline supporting men’s right to buy unfettered sexual access to women. It is a narrative that defines the exchange of money for sexual harassment, violence, power, and control, as “consent.”

Survivors¹⁵ of the sex trade tell us that prostitution is neither sex, nor work, but the deepest manifestation of dehumanization and an extension of childhood sexual and economic violence: incest, rape, homelessness, or persecution from sexual identities.

The human rights of prostituted women are indistinguishable from the human rights of non-prostituted women. Prostitution, in all of its forms, from pornography to strip clubs, from escort services to the most recent phenomenon of “sugar daddies,” is not an exception to gender-based violence; it is its cause and its consequence.

Every day we combat myriad efforts promoting the decriminalization and legalization of the sex trade globally, which are heavily funded by powerful donors, including the Open Society Foundation and, through its HIV/AIDS programs, the Gates Foundation. For instance:

- UNAIDS¹⁶ and other UN agencies have endorsed the decriminalization of prostitution as a way to combat HIV/AIDS. While combating HIV/AIDS is critically

¹³ European Commission, “The Ban against the Purchase of Sexual Services. An Evaluation 1999-2008,” *Together against Trafficking in Human Beings* (2013), https://ec.europa.eu/anti-trafficking/publications/ban-against-purchase-sexual-services-evaluation-1999-2008_en (accessed March 12, 2017).

¹⁴ “Evaluation of Norwegian Legislation Criminalising the Buying of Sexual Services (Summary),” n.d., <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806321b6> (accessed March 15, 2017.)

¹⁵ Rachel Moran, *Paid For. My Journey through Prostitution*, (New York, NY: W.W. Norton & Company Inc., 2015).

¹⁶ Global Commission on HIV and the Law, “HIV and the Law: Risks, Rights and Health” (July 2012), <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf> (accessed March 12, 2017); UNDP, UNFPA and UNAIDS, “Sex Work and the Law in Asia and the Pacific” (2012), <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf> (accessed March 12, 2017).

urgent, these policies have limited to no analyses of gender-based violence and can be interpreted as investing more in the health of sex buyers and their families, rather than that of prostituted women.

- In 2013, UN Women¹⁷ distributed a Note entitled *Sex Work, Sexual Exploitation and Trafficking* supporting UNAIDS' call for decriminalization.
- Amnesty International passed a resolution in 2016 calling on governments to decriminalize prostitution, or as they describe it: "adult consensual sex work," in effect creating a so-called human right for men to purchase women for sex in violation of the Universal Declaration of Human Rights and international law. I stand by my characterization of the Amnesty International policy on decriminalization of prostitution as one promoting gender apartheid. This policy sets aside and apart two categories of women: one that deserves access to economic and educational opportunities, to a work environment free of sexual harassment and to a life free of violence; and, the other, a class of women, girls, and transwomen, whom they condemn to the sex trade and to a future without vision. Amnesty International did not pass a resolution supporting poor men to enter into debt bondage, nor is it promoting the sale of organs as socio-economic empowerment, so why the exception for disenfranchised women and girls from the global south and Indigenous, Aboriginal, First Nations, Roma, African or of African descent, or belonging to so-called caste systems, for exploitation?
- Equally disturbing was the recent publication of The Movement for Black Lives Platform, which calls on states to "pass legislation decriminalizing prostitution."¹⁸ As an African-American woman who has dedicated her life to ensuring equality and redressing centuries-long effects of sexual slavery, sexual violence, and discrimination, that The Movement for Black Lives would endorse pimping and sex-buying as socio-economic solutions for Black women is unfathomable.

Combating sex trafficking and prostitution requires an intensive collaborative network of law enforcement, governments, direct service providers, and advocacy organizations, but also the medical and mental health community, labor unions, the LGBTQ community, men and boys, and youth groups. And, first and foremost, the formidable growing network of survivors, who are helping us understand the true horrors of a life in prostitution and at the hands of sex buyers, pimps, brothel owners, and other exploiters, for the profit of others.

We urge the Department of Justice, Department of State, and USAID to continue making clear that the sex trade, including prostitution, is the bedrock of sex trafficking and that it is not more of a choice for women and girls than is female genital mutilation, child marriage, polygamy, intimate partner violence, or any human rights violation based on sex inequality.

We urge the U.S. Department of Health and Human Services and the Centers for Disease Control to undertake comprehensive data collection and research on the inherent pervasive physical and psychological harms of prostitution, including the risks of illness, trauma and traumatic injuries, and even death. Prostitution is a harmful cultural practice that can only end if we analyze it as the exercise of power, control, and sexual access to human bodies by sex buyers. If we pledge to

¹⁷ UN Women, "Note on Sex Work, Sexual Exploitation and Trafficking (draft)," distributed to an undisclosed list of email recipients in October 2013.

¹⁸ The Movement for Black Lives, "Platform" (Invest/Divest, Section 2)," <https://policy.m4bl.org/platform/> (accessed March 12, 2017).

fight for the abolition of all forms of human rights violations, then we must also invest in the abolition of prostitution.

The Universal Declaration of Human Rights (UDHR),¹⁹ penned under the leadership of the visionary Eleanor Roosevelt, lays out the basic principles of our inalienable and indivisible rights, among which that all human beings are born free and equal in dignity and rights, including the right to personal security. We urge Congress to continue framing its laws and policies on behalf of all women and girls under these principles.

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Taina Bien-Aimé is the Executive Director of the Coalition Against Trafficking in Women (CATW), one of the oldest international organizations dedicated to ending trafficking in women and girls and commercial sexual exploitation as practices of gender-based violence and discrimination. Prior to this position, Taina was the Executive Director of Women's City Club of New York, an advocacy organization that helps shape policy in New York. She is also a founding board member of and later served as the Executive Director of Equality Now (2000–2011), an international human rights organization focused on the rights of women and girls. She was Director of Business Affairs/Film Acquisitions at Home Box Office (1996–2000) and practiced international corporate law at the Wall St. law firm, Cleary Gottlieb Steen & Hamilton (1992–1996). Taina holds a Juris Doctor from NYU School of Law and a degree in political science from the University of Geneva/Graduate School of International Studies in Switzerland. Her awards include the New York County Lawyers' Association Edith I. Spivack Award, the Susan B. Anthony Award and the NYU Law Alumni Association Award for Distinguished Service in the Public Interest. Taina is a contributor to the *Huffington Post*, and sits on the Board of the New York Women's Foundation and New York City's Mayoral Commission on Gender Equity.

RECOMMENDED CITATION

Bien-Aimé, Taina. (2017). Why we must oppose the full decriminalization of prostitution. *Dignity: A Journal of Sexual Exploitation and Violence*. Vol. 2, Issue 3, Article 10. DOI:10.23860/dignity.2017.02.03.10. Available at <http://digitalcommons.uri.edu/dignity/vol2/iss3/10>.

¹⁹ United Nations, "Universal Declaration of Human Rights," (December 10, 1948), <http://www.un.org/en/universal-declaration-human-rights/> (accessed March 12, 2017).

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