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THE DANGER OF CONFLATING TRAFFICKING AND SEX WORK: A Position Paper of the Sex Workers Project at the Urban Justice Center

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I. Introduction

The purpose of this paper is to illustrate the complexity of human trafficking and the danger of conflating trafficking and sex work. The harms caused by current policies that seek to address trafficking by further criminalizing sex work will be addressed. Specific policy approaches are recommended to prevent human trafficking within a context that affirms the sexual health and human rights of sex workers.

II. Definitions of Trafficking and Sex Work

Trafficking in persons has been defined as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation,”¹ In addition to the effects of globalization, poverty and political unrest are associated with increased human trafficking because they force persons to move from one place to another to seek work or safety.² Movement can be from rural to urban areas inside one country or through international borders.

While some organizations require that people be transported to a foreign destination to be trafficked, the United States does not make international movement a requirement to

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo Protocol, UN Doc. A/55/383 (2000). *See also*, Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA]. The TVPA provides definitions of all relevant terms, including, *severe forms of trafficking* and *sex trafficking*.

² David A. Feingold, *Think Again: Human Trafficking*, FOREIGN POL’Y, 22-28 (Sept./Oct. 2005), *available at*: <http://www.ForeignPolicy.com>.

be considered trafficked under law.³ Historically, the majority of trafficking worldwide is for forced labor, such as domestic work or manual labor.⁴ A 2005 study by the International Labour Organization (ILO) estimated that less than half of all trafficking victims worldwide are part of the sex trade.⁵ In fact, in a July 2006 study, the U.S. Government Accountability Office (GAO) found that all current estimates of the number of people trafficked into any kind of work, including sex work, are questionable: “The accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies. For example, the U.S. government’s estimate was developed by one person who did not document all his work...”⁶ The questionable numbers are also hard to compare. While the U.S. government estimated that 68 percent of cross-border trafficking in 2003 involved commercial sex, the International Labour Organization estimated that 43 percent of cross-border and internal trafficking from 1995 to 2004 involved commercial sex.⁷ Girls, children and trafficking itself were defined differently in each case.⁸

Because of these myriad problems, the GAO report states that “More than 5 years after the passage of the landmark anti-trafficking law, the U.S. government has not developed a coordinated

³ See Office to Monitor and Combat Trafficking in Persons, United States Department of State, Trafficking in Persons Report: Introduction (June 5, 2006), available at: <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>.

⁴ Id. at 22 (Feingold, who heads the anti-trafficking project for United Nations Educational, Scientific, and Cultural Organization [UNESCO], writes that this is because the worldwide market for labor is far greater than that for sex); See also, Debbie Nathan, *Oversexed anti-trafficking efforts too often neglect other forms of forced labor*, THE NATION, (Aug. 29, 2005), available at: <http://www.thenation.com/doc/20050829/nathan> (Nathan writes that the majority of T-visa applicants to date have listed jobs such as construction, welding, and domestic work, not prostitution, on their applications. Further, Nathan found that the Department of Justice will often mis-classify individuals as having been trafficked for sex if they were raped or sexually assaulted in the course of their employment, even if that employment was not related to commercial sex).

⁵ Feingold, *supra* note 2, at 22. (The ILO study also found that of the estimated 9.5 million victims of forced labor in Asia, less than 10 percent were trafficked for commercial sexual exploitation). See also, Nathan, *supra* note 4.

⁶ United States Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad* 1-65, 2 (July 2006), available at: <http://www.gao.gov/new.items/d06825.pdf> [hereinafter referred to as GAO Study].

⁷ Id. at 12.

⁸ Id.

strategy to combat trafficking in persons abroad...or evaluated its programs to determine whether projects are achieving the desired outcomes.”⁹.

Nonetheless, media sensationalism and religious bias compel many NGOs and government agencies to latch onto sexual exploitation as the major purpose of trafficking.¹⁰ The “sex panic” over “sex slavery” has galvanized feminists, evangelicals, and conservative politicians alike and has been a popular sell to media outlets, whereas forced labor has not stirred the same moral public outcry, despite victims’ horrific experience in subhuman conditions.¹¹

Sex Work

The vast majority of sex workers strive for fair working conditions including safe and healthy environments with access to living wages, medical and dental benefits.¹² Many sex workers make a decision to enter and work in the sex industry.¹³ In many cases, sex work serves as a better paying alternative to domestic work, waitressing or retail positions.¹⁴ Contrary to the popular media representation of sex workers as destitute and

⁹ Id. at 3.

¹⁰ See Nathan, *supra* note 4.

¹¹ Id.

¹² Sex workers have been organizing together formally since the 1970s to demand increased respect, human rights, and occupational standards. Recently, a conference was held in July of 2006 in Las Vegas that was attended by sex workers and advocates to further progress these goals and establish stronger alliances. See, *Las Vegas Sex Workers Demand Rights, Respect: reportedly largest gathering of academics, advocates, prostitutes in 10 years*, ASSOCIATED PRESS, (July 14, 2006), available at: <http://www.msnbc.msn.com/id/13863047/>; See also, Joe Doezema, *Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, Paper Submitted for Presentation to the International Studies Association, 40th Annual Convention (Feb. 16-20, 1999); available at: <http://www.ciaonet.org/isa/doj01/doj01.html> (Stating that sex workers demand that their work be recognized as a valid form of labor).

¹³ See, Ronald Weitzer, *New directions in research on prostitution*, CRIME, LAW & SOCIAL CHANGE 43: 211-235, 213 (2005).

¹⁴ See Urban Justice Center, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, 1-100, 55-56 (Sex Workers Project/Urban Justice Center) (June 23, 2003), available at: <http://www.sexworkersproject.org/reports/RevolvingDoor.html>.

desperate, sex workers often use earnings to pay for school, family necessities or for future businesses.¹⁵

Sex work is alternately described as being the same as trafficking in persons or the cause of trafficking into sex work.¹⁶ These conclusions are based on flawed studies, providing biased and inadequate information.¹⁷ Conflating sex work with trafficking into sex work erases the voices of sex workers, worsening the conditions of sex workers and warping discussions of trafficking.

III. Trafficking Collapsed into Sex Work

Internationally, political pressure and historical bias have caused the collapse of trafficking in persons into sex work. In many cases, political pressure by the U.S., not concern for trafficking, has compelled countries to pass anti-prostitution bills.¹⁸ Such political pressure by the U.S. has included placing countries on watch-lists in the “Trafficking in Persons Report” and placing anti-prostitution stipulations on foreign aid.¹⁹

¹⁵ Id. at 56-57.

¹⁶ See Feingold, *supra* note 2, at 24 (The State Department website argues “Where prostitution is legalized or tolerated, there is greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery,” despite a lack of data to support this bold assertion).

¹⁷ Ronald Weitzer, *The Growing Moral Panic Over Prostitution and Sex Trafficking*, THE CRIMINOLOGIST, 30(5), 1-5, 3-4 (Sept./Oct. 2005).

¹⁸ Id. at 4.

¹⁹ See United States Leadership Against HIV/AIDS, Tuberculosis, AND Malaria (Global AIDS Act) Pub. L. No. 108-199; 22.U.S.C.S. § 7631(e)-(f) (2004) (These subsections respectively mandate that no funds “may be used to promote or advocate the legalization or practice of prostitution or sex trafficking” or “to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking”). See also, Trafficking Victims Protection Reauthorization Act, 22 U.S.C. 7110(g) (2) (2003) (This section prohibits U.S. funding for organizations that tacitly “promote, support, or advocate the legalization or practice of prostitution”) [*hereinafter* TVPRA 2003]. See also, Cable from Colin Powell, Secretary of State, U.S. Government, to USAID field offices worldwide (Jan, 2003) (Excerpt of cable on file with the Sex Workers Project at the Urban Justice Center) (Powell directly states that “organizations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID Anti-trafficking grants and contracts, or sub grants and sub-contracts”).

In the United States, the religious right and radical feminists have joined forces in the campaign against the sex industry.²⁰ For the religious right, extramarital sexual intercourse with multiple partners contravenes socio-communal norms. Indeed, the “evangelical concern for sexual integrity,” coupled with the notion of saving ‘fallen women,’ has galvanized this contingency.²¹ Religious advocates perceive women involved in prostitution as victims that need to be saved from their unholy, shameful, and ultimately un-Christian lifestyle.²²

The conflation of sex work and trafficking, as well as attacks on sex workers, results from condemnation of sex outside marriage, homosexuality, and other forms of “deviant” behavior. In fact, these new anti-trafficking measures are part of a systematic attack by the religious right and conservative women’s rights groups to preach abstinence against comprehensive sexual education and to restrict access and disparage the effectiveness of condoms.

The radical feminist movement, spearheaded by anti-sex feminists such as Kathleen Barry, Andrea Dworkin, Catherine MacKinnon, and Donna Hughes, maintains that male power, patriarchal domination, misogyny, and “utter contempt” of women are the driving forces behind pornography and prostitution.²³ Within this rubric, there is no distinction between trafficking and other forms of sex work, as this movement rejects the notion that sex work can exist without force, coercion, and violence. As stated by Melissa Farley, a prominent anti-prostitution radical feminist, “To the extent that any woman is assured to

²⁰ See generally, Ronald Weitzer, *Moral crusade against prostitution*, SOCIETY, 27-32 (Mar./Apr. 2006).

²¹ Nina Shapiro, *The New Abolitionist*, SEATTLE WEEKLY, (Aug. 25, 2004), available at: http://www.seattleweekly.com/news/0434/040825_news_slavery.php.

²² Id.

²³ See Kathleen Barry, *FEMALE SEXUAL SLAVERY* (1984). Barry writes: “Pornography is a practice of cultural sadism as well as a means of diffusing it into the mainstream of accepted behavior... The most prevalent theme in pornography is one of utter contempt of women... Women are the objects of pornography, men its largest consumers, and sexual degradation its theme.” Id. at 206.

have freely chosen prostitution, then it follows that enjoyment of rape and domination are in her nature.”²⁴ MacKinnon, in *Sexual Abuse as Sex Inequality*, insists on referring to women involved in prostitution as “prostituted women.”²⁵ This terminology strips women of a voice, identity, and agency, as now, their “prostituted” stance centrally defines them. This denial of agency allows others (such as politicians and academics) to speak for them and to create policies, including continued criminalization, that they perceive to be in the best interest of “prostituted women.”

The single-mindedness of these two groups’ messages - that prostitution is a social evil that must be stopped - has allowed evangelicals and radical feminists to unite in fighting (and conflating) trafficking and sex work. Further, the language of sex workers as victims appears seductively easy to ingest by mainstream audiences. Emotional accounts in combination with pictures of young women as victims has created a ‘moral panic’ that panders to political interests.²⁶ Such political pandering adversely affects victims of trafficking and legitimate sex workers, whose real-life demands are ignored if they do not fit neatly within this moralistic agenda. The politicization of trafficking through deliberate publication of biased statistics and misinformation has created a “moral panic” that obfuscates the reality of sex workers.²⁷ This panic has allowed all forms of sex work to be swallowed within the rubric of trafficking. This conflation is exemplified by an Op-Ed written by Ambassador John Miller, Director of the Office to Monitor and Combat Trafficking in Persons, to the New York Post, which states: “If you believed something

²⁴ Weitzer, Moral Crusade, *supra* note 20, at 28.

²⁵ Catherine MacKinnon, *Prostitution and Civil Rights*, WOMEN’S LIVES – MEN’S LAWS 151-161, 151 (2005).

²⁶ John Miller, *A Modern Slave Trade*, NEW YORK POST, (May 22, 2005), available at: <http://www.state.gov/g/tip/rls/48633.htm> (Ambassador Miller, Director of the Office to Monitor and Combat Trafficking in Persons, utilizes emotion-grabbing accounts of individual cases and attention-getting terminology to skew the issue).

²⁷ See generally, Weitzer, Growing Moral Panic, *supra* note 17.

contributed to hundreds of thousands of people being trapped in slavery, you would do everything in your power to stop it. Government should act no differently. That's why the U.S. Government has taken a stand against legalized prostitution."²⁸ He goes on to cite a "growing body of research" that allegedly establishes that prostitution "fuels" the growth of "modern day slavery."²⁹

Recently, scholars and activists have begun to discredit these bold assertions, questioning the empirical validity of such research. Feminist author Gayle Rubin found that radical feminist literature on prostitution contains "'sloppy definitions, unsupported assertions, and outlandish claims.'" ³⁰ Other scholars have noted that studies in radical feminist literature consistently violate the canons of objectivity for conducting social science research.³¹ In evaluating anti-prostitution literature, experts found that "Anecdotes are generalized and presented as conclusive evidence, sampling is selective, and counterevidence is routinely ignored."³² Further, even when organizations do make a good faith attempt to find reliable statistical data, they find that such data does not exist in the realm of trafficking.³³ This dearth furthers the cycle of misinformation and politicization because it allows groups to either embellish or discredit existing facts according to their ideology. The U.S. government, with a distinct political and ideological agenda, has been

²⁸ Miller, *supra* note 26.

²⁹ *Id.*

³⁰ Weitzer, *New Directions*, *supra* note 13, at 214.

³¹ *Id.*

³² *Id.*

³³ See Doezenia, *supra* note 12. Doezenia writes: "The Global Alliance Against Trafficking in Women (GAATW), who undertook a year-and-a-half-long investigation into 'trafficking in women' internationally at the request of the UN Special Rapporteur On Violence Against Women, stated that finding reliable statistics on the extent of trafficking in women was virtually impossible, due to a lack of systematic research, the lack of a 'precise, consistent and unambiguous definition of the phenomena [of trafficking in women]' and the illegality or criminal nature of prostitution and 'trafficking.'"

the first to utilize and mis-interpret “data” in their favor.³⁴ Publishing unreliable and flawed methodology and statistics is irresponsible and disingenuous, especially in government documents, which the public relies upon for accurate information.

There is no indication that increased criminalization of sex work decreases instances of trafficking into sex work³⁵ Treating human trafficking as the same as prostitution ignores the large population of victims trafficked into labor such as manual labor and domestic service. Defining sex work as identical to trafficking into sex work negates sex work as a voluntary choice for a profession, heightens the criminalization and stigmatization of sex work, and universalizes negative conditions that may only impact some sex workers.

V. THE DANGERS OF CONFLATION

The propensity to conflate trafficking of individuals for coerced sexual exploitation with the issues of sex work, forced labor trafficking, and voluntary smuggling across international borders poses a great danger not only to those who are trafficked but also to sex workers. The result of merging these groups has caused confusion in the media and in public perception, created obstacles to implementing effective public policy, and in practice disregards the human, social, and economic rights of sex workers.

Confusion in the Media & Public Perception

Despite the fact that the majority of trafficking is for forced labor, the United States Government and the media have focused almost entirely on the abduction and forced transportation of women and girls over international borders for the purposes of prostitution. A search of the United States Department of State website will quickly yield

³⁴ See Weitzer, Growing Moral Panic, *supra* note 17, at 4.

³⁵ Weitzer, Moral Crusade, *supra* note 20, at 29.

four policy pamphlets which address the “Facts about Human Trafficking and Forced Labor,” “Child Sex Tourism,” “Rescuing Victims of Modern Day Slavery,” and “The Link between Prostitution and Sex Trafficking.”³⁶ The *facts* presented are disturbing and elicit genuine concern.³⁷ The proposed solutions to the problem of trafficking are presented as simple: eradicate sex work, prosecute all involved in trafficking, free all victims, and require the former three policies from all U.S. allies.

However, difficulty arises from the reality that the issues at hand are much more complex and thus require more nuanced solutions. First, we cannot come to a consensus on the scope of the problem of trafficking for the purposes of sexual exploitation until there are uniform, reliable, and unbiased data gathering mechanisms in place.³⁸ Additionally, the inherent assumption that all sex work is coerced and that most human trafficking occurs for the purpose of sexual exploitation is false. Numerous studies and No’s that consult directly with sex workers who work both outdoors (on the street) and indoors (at brothels, massage parlors, or their own place of business) have shown that labor trafficking is more prevalent. One such study of Vietnamese migrants in Cambodia illustrated that “out of one hundred women, only six had been tricked into sex work; the rest knew before they left Vietnam that they would be working in a brothel in Cambodia.”³⁹

³⁶ See, U.S. Department of State, Fact Sheets, *available at*: www.state.gov/g/tip/rls/fs/index.htm.

³⁷ See Weitzer, *Growing Moral Panic*, *supra* note 17, at 4 (Weitzer cites the State Department factsheet entitled “The Link Between Prostitution and Sex Trafficking,” which claims that 600,000 to 800,000 people are trafficked each year, “hundreds of thousands” of whom are trafficked into prostitution. Weitzer comments on the validity of this data: “No credible evidence is provided to support these alarming figures, and ‘hundreds of thousands’ is conveniently vague. The use of inflated figures is a tactic common to moral crusades; it is in their interest to exaggerate the problem.” Further, Weitzer notes that this factsheet was released four years after another State Department document had claimed that the figure was closer to “700,000 to 2 million women and children” that were trafficked each year, although the same report admitted that “no one U.S. or international agency is compiling accurate statistics.”).

³⁸ See Weitzer, *New Direction*, *supra* note 13 (Weitzer writes that significant debate exists as to what methodologies and framework should be used to pinpoint victims, how to isolate them for effective study, and the validity of US State Department Statistics). See *generally*, GAO Study, *supra* note 6.

³⁹ Weitzer, *Moral Crusade*, *supra* note 20, at 31.

These assumptions clearly have a negative impact on sex workers. They promote a framework of victimization and reinforce social stigmatization within public discourse by failing to recognize sex workers as individuals who possess free will and inalienable human rights. Such sentiments refuse to address the notion that sex work can provide any economic or personal satisfaction, despite assertions by sex workers that their entry or continuation in the industry has brought them such fulfillment.⁴⁰

Negative Consequences of Conflation in Public Policy

A. Overview

In order for advocates and government to construct successful public policy, target groups and their respective needs must be correctly identified. However, the conflation of sex workers with victims of coerced trafficking and victims of forced sexual exploitation impedes this process. It is imperative to acknowledge from the start that not all sex workers are coerced. The appropriate separation of these two groups grants social service agencies the opportunity to address the health and social concerns of sex workers as legitimate laborers. Subsequently, agencies that focus on the cessation of “sex slavery” can then address the social needs of victims and promote the prosecution of their abductors and others who profit off of their bondage.

Because of an inability to separate out sex work and trafficking, current policy presumes that permitting or legalizing prostitution will lead to or enable trafficking. While there has been no empirical support sustaining this belief, it is clear that the criminalization of sex work harms those engaged in the profession. There are numerous mechanisms by which the illegal nature of sex work perpetuates hazardous conditions, including: imposing

⁴⁰ Id. Women cited in the study of Vietnamese migrants in Cambodia referenced above stated that they went to work in a brothel for “economic incentives, desire for an independent lifestyle, and dissatisfaction with rural life and agricultural labor.”

barriers to accessing health care, social services, and safe sex materials; perpetuating poverty and oppression; promoting an underground and stigmatized profession; and creating an economic burden for women related to cyclical arrests and lack of bargaining power.⁴¹ Sex workers cannot advocate for occupational safety, health, and human rights without legal recognition. As evidenced by research in Nevada, Australia, and the Netherlands, many sex workers who are free to work indoors experience increased security due to the proximity of co-workers and managers, the implementation of emergency call buttons in their rooms and other safety measures, and greater respect from law enforcement.⁴²

Current policy also places women and children together. However, the needs of children are unique and require policies tailored specifically to them. By combining the trafficking of children with the voluntary practice of sex work by adults, ‘women *and* children’ becomes ‘women *as* children’. Again, this approach advances the view of sex workers as victims, as opposed to adults with human rights. In order to create effective outreach and targeted interventions, the issues affecting women and children must be dealt with separately so as to identify the individual needs of each group.

It is important to acknowledge that not all individuals who are trafficked, are forced to cross a border, are female, or are forced into the sex trade. Many agree to be smuggled across national borders to potentially better economic opportunities in industries such as agriculture and textiles. This is evidenced by the fact that experts and practitioners in the field report that victims represent both sexes and that the majority of them have been

⁴¹ See Urban Justice Center, *supra* note 14, at 38-40.

⁴² Weitzer, Growing Moral Panic, *supra* note 17, at 3.

trafficked into construction work, restaurant services, or domestic work.⁴³ Yet the skewed government focus on sex-trafficking, and the practice of using attention grabbing language in the media, continues to dominate mainstream perception and public policy. Consequently, conflation has resulted in an uneven distribution of funding that fails to address the needs of male laborers or individuals who have been trafficked into forced labor in other industries.

B. Adverse Effects on International Relations

The conflation mentality has spawned harmful federal policies. One controversial policy is the “anti-prostitution pledge” that all international recipients of U.S. aid must sign. This pledge, which is written into The Trafficking Victims Protection Act of 2003 (TVPRA), among other federal policies, prohibits U.S. funding for organizations that tacitly “promote, support, or advocate the legalization or practice of prostitution.”⁴⁴ The intention was to crackdown on the transnational practice of human sex trafficking by requiring the help of foreign governments in shutting down the entire sex industry. Conversely, the result was further polarization of international government policy and the further minimization of the human, social, and economic rights of sex workers. This has been accomplished by depriving foreign governments and non-profit agencies who advocate on behalf of sex workers of much needed funds and by rating international governments on their commitment to ending sex trafficking according to politicized U.S. State Department standards.

The State Department’s Office to Monitor and Combat Trafficking in Persons has since produced an annual *Trafficking in Persons Report* that assesses government response

⁴³ See Nathan, *supra* note 4.

⁴⁴ TVPRA, 22 U.S.C. 7110(g) (2) (2003). See *infra*, footnote 13 (This footnote provides more information on the “anti-prostitution pledge”).

in each country to trafficking and rates countries on a tiered system based on these efforts.⁴⁵ Tier one consists of countries that fully comply with U.S. standards, tier two of countries that do not fully comply but do make a significant effort, and tier three of countries that neither comply nor make serious effort to combat sex trafficking.⁴⁶ There is also a group of countries listed on the “Tier 2 Watch List,” whose efforts are suspect or deficient in some way. Interestingly, the governments of Netherlands, Australia, New Zealand, and Germany, which all allow legalized or decriminalized prostitution in all or part of their respective countries, are all within tier 1, despite the U.S. government’s adamant stance that liberalization of prostitution laws encourages trafficking.⁴⁷ Each country’s level of funding is connected directly to its performance.

The U.S. government has consistently supported Sweden’s “end demand” policies,⁴⁸ arguing that targeting clients in an effort to “end” prostitution will ultimately decrease the level of sex trafficking within its borders. However, these claims are highly contested by foreign governments, NGO’s, and experts alike.⁴⁹ In fact “several

⁴⁵ Office to Monitor and Combat Trafficking in Persons, United States Department of State, Trafficking in Persons Report: Introduction (June 5, 2006), available at: <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ In 1998, the Swedish government passed the Violence Against Women Act, which criminalized the purchase of sex. The law was enacted in 1999 and has stirred significant controversy. See Don Kulick, *Four Hundred Thousand Swedish Perverts*, *GLQ*, 11:2, 205-235, 209-210 (2005).

⁴⁹ See Karin Grundberg, *Sweden’s Prostitutes Ply Their Trade on the Internet*, Agence France Presse (January 13, 2003), available at: www.walnet.org/csis/news/world_2003/afp-030113.html (Grundberg cites the co-author of one study, who argues that “prostitutes now suffer more perversity and violence on a daily basis”). See also, Report by a Working Group on the Legal Regulation of the Purchase of Sexual Services, Norwegian Ministry of Justice and Police Affairs, *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences* 1-59, 12 (Oct. 8, 2004), available at: <http://odin.dep.no/jd/english/012101-990578/dok-bn.html> (The Working Group cited a study that found that “There are fewer clients and it is therefore reckoned that a larger part of them are ‘dangerous.’ For instance, they want ‘rougher things’ and have more peculiar demands (for instance more rough sex) or are prepared to pay more for unprotected sex.” The Working Group also cited a study that found that “the clients had become more scared and more stressed... This made it very difficult for the sex workers to assess whether the client was ‘OK’ or not during the negotiations”) Id. at 13; See also, Petra Ostergren, *Sexworkers’ Critique of Swedish Prostitution Policy*, (2004), available at: <http://www.petraostergren.com/content/view/44/108/>. See also, Don Kulick, *Sex in the*

independent studies, including one conducted by the Swedish Police, showed that (the 1998 Swedish laws) exposed prostitutes to more dangerous clients and less safe sex practices.”⁵⁰ Again, this is most likely a consequence of forcing sex workers to leave safer indoor work and instead work covertly on the streets.

United States policy makers continue to argue that wherever prostitution has been liberalized, there has been a direct correlation to an increase in trafficking in persons. Yet nations such as the Netherlands, Germany, and Australia, which have all legalized and institutionalized sex work, have secured placements in tier one. The U.S. State Department recognizes that the Netherlands has been vigorous and consistent in investigating and prosecuting trafficking cases and in providing assistance to victims of trafficking.⁵¹ Further, the U.S. has even recognized the Dutch government’s utilization of the legalization of prostitution as a tool in *fighting* trafficking, citing interviews conducted with individuals in the red light district to assess levels of trafficking as part of the government’s progressive “prevention” programs.⁵² Most strikingly, the State Department’s 2005 Report cited Dutch police, who found a “decrease in trafficking in the legal sector.”⁵³ A working group commissioned by the Norwegian Ministry of Justice and Police Affairs studying the effect of legalization on trafficking measures found that police and government agencies in the Netherlands can fully focus on anti-trafficking measures rather than diverting necessary

New Europe: The Criminalization of Clients and Swedish Fear of Penetration, ANTHROPOLOGICAL THEORY, 3(2): 199-218, 204 (Sage Publications 2003).

⁵⁰ Feingold, *supra* note 2, at 24.

⁵¹ Office to Monitor and Combat Trafficking in Persons, United States Department of State, *Trafficking in Persons Report: Country Narratives – Countries H through P – ‘The Netherlands’* (June 5, 2006), available at: <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>.

⁵² *Id.*

⁵³ Weitzer, *Moral Crusade*, *supra* note 20, at 32.

time, money, and energy on targeting voluntary prostitution.⁵⁴ As scholar Ronald Weitzer points out, this tendency even rings true at home, for “if legal prostitution fueled trafficking, Nevada should be a Mecca for traffickers. Yet there has been no documented increase in trafficking in areas of the state where brothels are legal.”⁵⁵

C. Negative Impact on International Non-Governmental Organizations

Both the practice of ranking foreign governments and of connecting international aid to the ‘anti-prostitution pledge’ in the name of combating trafficking have had negative consequences for NGOs and sex workers abroad. While the international human rights community and the majority of international governments share the U.S.’ commitment to eradicating the trafficking of persons for sex slavery, in practice each nation has employed varying policy tools to achieve that goal. Problematically, current U.S. policy leaves little room for variation.

The effect on the international NGO community has been twofold. First, the conceptualization of all sex work as illegal sex trafficking, coupled with increased government funding to promote anti-trafficking, has created a new brand of NGO’s that ‘rescue’ women. Second, it has revoked funding from many organizations that promote the empowerment of women by working *along side* sex workers to help them attain social services and gain workers’ rights.

⁵⁴ Report by a Working Group, *supra* note 49, at 37-39. In the Netherlands, the aim of the police is to combat trafficking, not prostitution. Indeed, this distinction frames the country’s approach to prostitution, as the government seeks to control only forms of sexual exchange that are coercive or otherwise harmful. To this end, the police receive extensive training on anti-trafficking measures. The police have established numerous objectives, including:

1) to establish an effective and coordinated effort against trafficking in human beings; 2) to raise the proficiency of the police in regards to the control of prostitution and trafficking; and 3) to develop new methods for combating trafficking in human beings. These objectives have been implemented largely by having those within the industry work together with the police, an extensive licensing system, and regular checks on brothels to ensure compliance.

⁵⁵ Weitzer, *Moral Crusade*, *supra* note 20, at 31.

In fact, over the past four years, the U.S. government has given around 1 million dollars each to ‘rescue’ organizations, including International Justice Mission and Shared Hope International.⁵⁶ These organizations further complicate the work of sex worker advocates by forcibly removing sex workers from brothels and holding them against their will, often in detention centers or jails, in an attempt to ‘save’ them. Many nations, such as Thailand and South Korea, in an effort to graduate from tier two to tier one of the U.S. rating system, have encouraged their police forces to aid in these sorts of ‘rescue missions.’ Such practices result in human rights violations through the forcible movement of sex workers against their will. Since these groups often fail to consult directly with the sex work community, they do not understand that once freed, the vast majority of the women who have been ‘rescued’ will return to their work in order to survive and support their families.⁵⁷

While the US government terms these raids “rescue missions,” many within the targeted community believe that these raids serve only to further subjugate and marginalize poor Third World women utilizing state-sponsored violence and coercion. This cultural and political disconnect played out in May 2005, when the U.S. prompted an international NGO, Restore International, to conduct a raid on a building identified as a brothel.⁵⁸ During this raid, which was termed a “rescue mission” by the U.S. government, the police confined dozens of children who were on their way home from boarding school and wrongly accused them of being involved in prostitution.⁵⁹ Without verifying that they were in fact

⁵⁶ Weitzer, *Moral Crusade*, *supra* note 20, at 30.

⁵⁷ Empower Chiang Ma, *A Report By Chiang Ma Thailand on the Human Rights Violations Women are Subjected to When Rescued By Anti-Trafficking Groups Who Employ Methods Using Deception, Force and Coercion* (June 2003) available at: www.nswp.org/mobility/mpower-0306.html.

⁵⁸ Mena Seshu, “SANGRAM Statements,” (June 19, 2005), available at: <http://www.genderhealth.org/pubs/SANGRAMStatements.pdf>.

⁵⁹ *Id.*

minors or checking on their family situations, the police continued to hold many of them (the last of the young women held were not released until July 18), despite pleas from family members and local NGO workers.⁶⁰ When Meena Seshu, Director of SANGRAM, opposed the US' actions, SANGRAM was labeled "pro trafficking" by the US government and attacked for "thwarting rescue efforts."⁶¹

This was not the first time that a US "rescue mission" had yielded such an arguably perverse result. Similarly, in May 2003, 28 women were taken from a brothel in Chiang Ma, Thailand.⁶² Women who were "rescued" believed that they had been arrested, had their belongings taken from them, were separated from one another, and were not allowed to contact family or other support.⁶³ Many of these women had been involved in an outreach program run by Empower Foundation, a Thai organization that promotes the empowerment and establishment of rights for women involved in the sex industry. Four of the "rescued" women escaped the "rescuers" and came to Empower Chiang Mai.⁶⁴ The rest of the women, some of whom were simply visiting friends at the brothel when they were "rescued," were held longer and were eventually transferred to a rehabilitation center for an indefinite period of time.⁶⁵ Addressing the problems implicit in the anti-trafficking/anti-prostitution discourse and First World imposition of its views, Empower issued the following statement:

Empower abhors the trafficking of any persons; forced labor including forced sex work; and the sexual abuse of children, whether for commercial exploitation or not... However, the focus on trafficking in persons [in recent years] has meant many groups with little or no experience on the issues of migration, labor, sex work or

⁶⁰ Id.

⁶¹ Rema Nagarajan, *US Accuses NGO of 'Trafficking*, HINDUSTANTIMES.COM (September 29, 2005), available at: http://www.hindustantimes.com/news/181_1504660,00050001.htm.

⁶² Empower Chiang Ma, *supra* note 57.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

women's rights have been created to take advantage of the large sums of money available to support anti-trafficking activities. Their lack of experience and contact with the sex worker community has meant they are unable or unwilling to differentiate between women who have been trafficked and women who migrant workers. They also show a great deal of trouble differentiating between women and girls, often applying identical standards and solutions for both.⁶⁶

These examples underscore the disparate realities that are created by disparate discourses – instead of banding together to fight trafficking, the politics surrounding prostitution have created antagonistic forces/movements that are instead working against one another. Utilizing different modes of analysis, these movements have ceased to understand the other, arguably creating a travesty of justice because of the lost opportunities that could be gained by collective opposition to trafficking.

Similarly, the anti-prostitution pledge has negatively impacted governments and NGOs throughout the world by its restrictive conditions surrounding money to fight HIV/AIDS. Brazil refused to sign the anti-prostitution pledge and has consequently been declared ineligible for the renewal of a 48 million dollar U.S. grant for AIDS prevention in early 2006.⁶⁷ Contrary to the beliefs propagated by the U.S. government, the Brazilian government's refusal to criminalize sex work is not evidence of a lack of commitment to end sex trafficking. Rather, the Brazilian government has created one of the world's most effective and progressive policies of HIV/AIDS prevention through a unique partnership with the sex work community. The education and inclusion of sex workers in public health campaigns has been integral to the nation's success in curbing the rapid spread of

⁶⁶ Id.

⁶⁷ Reel Monte, *Where Prostitutes Also Fight AIDS: Brazil's Sex Workers Hand Out Condoms, Crossing US Ideological Line*, WASH. POST, A14 (March 2, 2006), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/01/AR2006030102316.html>.

HIV/AIDS.⁶⁸ However, because Brazil refuses to condemn the livelihood of those who have been central to their achievements, they will continue their public health battle in 2007 with \$48 million less in funding.

Lastly, it appears that Sweden and the United States are not the only governments implementing “end demand” measures in a misguided attempt to combat trafficking. In July 2005, the Indian Cabinet cleared the path for passage of an Indian anti-prostitution bill, the Immoral Traffic (Prevention) Amendment Bill.⁶⁹ Whether this bill’s potential passage is a result of pressure from the United States, internal feminist movements, transnational advocacy networks, or a by-product of all three, it will undoubtedly infringe upon the human rights of sex workers. Much like the TVPRA, Sections 5A, 5B and 5C of the Indian Immoral Trafficking Bill conflate trafficking and sex work.⁷⁰ In addition, the bill promotes increased penalization of clients,⁷¹ thus further endangering sex workers, as they are forced to meet clients in covert locations where it is difficult to negotiate protection. Indian and international NGO’s have collectively requested that the Bill be withdrawn, in order to avoid heightened discrimination and dehumanization of sex workers.⁷²

⁶⁸ Id. Monte reports that because of a “working partnership” between sex workers and the Brazilian government, the number of HIV-infected individuals in Brazil is only half the amount that the World Bank projected a decade ago.

⁶⁹ The Immoral Traffic (Prevention) Amendment Bill (2005). Legislation introduced in the Indian Parliament in 2005.

⁷⁰ Id. at 5(a)-(c)

⁷¹ Id. at 5(c): Punishment for visiting a brothel.

⁷² See Email from the Karnataka Sexworkers Union, *Press Release: Public Rally for May Day, Bangalore, India*, to a Sex Worker listserve (April 30, 2006) (on file with the Sex Workers Project) (the email states that the rally will include a repeal of the Immoral Traffic Prevention Act, which is termed an “unjust law” that does not represent the needs of sex workers); See also, Email from Tripti Tandon, Lawyers Collective HIV/AIDS Unit, Jangpura, New Delhi, India, to a Sex Worker listserve (Jan. 31, 2006) (on file with the Sex Workers Project) (the email states that the bill problematically conflates trafficking and sex work and will negatively impact sex workers by imposing penalties on clients, and urges organizations to take action against the bill).

VI. CONCLUSION & RECOMMENDATIONS

It is imperative that government agencies, non-profit organizations and advocates begin to reframe the current policy approach towards sex trafficking. The first step is to understand that trafficking in persons for the purpose of sexual slavery is a unique problem that must be separated from the issues of sex work, forced labor trafficking, and voluntary smuggling.

The Sex Workers Project (SWP) at the Urban Justice Center condemns all forms of trafficking that involve the movement of individuals without their consent and that result in sex slavery. However, SWP recognizes that not all forms of trafficking are for sex work and that not all sex work is coerced. Sex workers may enter into the industry by choice and it is imperative that their human, social, and economic rights be safeguarded. SWP questions the victimization framework currently attached to U.S. government policy and instead promotes a holistic approach that seeks to empower sex workers by viewing them as individuals with agency who have to make daily decisions about economic opportunities, stigma, criminalization, and discrimination. Our goal is to achieve change and enable sex workers to achieve human rights.