



## Preventing Sex Trafficking: Reducing Demand for Commercial Sex

A proposal for the amendment of the TVPA and the adoption of administrative rule by the U.S. Department of State in order to properly evaluate and implement the TVPA's fourth minimum standard for the elimination of trafficking in persons

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## Executive Summary

Combating the crime of human trafficking has been named a top priority by the United States government.<sup>1</sup> An effective response to the injustice must be comprehensive and well implemented. Priority has been placed on prevention of human trafficking, prosecution of perpetrators, and protection of victims. Prosecution and protection are unquestionably important, however, prevention of human trafficking is essential in order to eradicate the crime. The international community, scholars, NGOs, IOs, human trafficking experts and governments have all recognized that one of the most critical components of preventing human trafficking from occurring is reducing the demand for trafficked persons.<sup>2</sup> This proposal specifically addresses the need to focus on the demand for commercial sex and thus the demand for victims of sex trafficking. Globally—and more specifically in destination countries—sex trafficking victims make up the majority of identified cases of human trafficking. For example, the European Commission reports that in the European Union, seventy-six percent of all registered trafficking victims were trafficked for sexual exploitation in prostitution<sup>3</sup> and Europol reports that “[t]rafficking for sexual exploitation is the most common form of trafficking in the EU.”<sup>4</sup> The 2009 United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons (“UNODC Global Report”) noted that seventy-nine percent of all identified victims of human trafficking were subject to sexual exploitation.<sup>5</sup> For the purpose of this proposal we are focused on specifically addressing the prevention of sex trafficking, a form of modern slavery that affects an estimated 4.5 million victims globally.<sup>6</sup>

Research has shown that legal or decriminalized models of prostitution increase the market for commercial sex and thereby increase the demand for prostituted persons, thus increasing rates of human trafficking.<sup>7</sup> In contrast, economic theory supported by case studies has proven that reducing demand for commercial sex by criminalizing the purchase of sexual services reduces the market for sex and thereby reduces trafficking in persons for sexual exploitation.<sup>8</sup> A significant international consensus contends that reducing the demand for trafficked persons is a primary means of eradicating human trafficking and should be a priority. The United States government has been clear and consistent on its position regarding the importance of demand reduction and has specifically taken a strong stance against prostitution. The government has done so because it recognizes that prostitution fuels human trafficking. Government officials under both the Bush and Obama administrations have reaffirmed in multiple national policies, publications, and in statements and directives the government’s position against prostitution.<sup>9</sup>

Despite the U.S. government’s clear research-based position against prostitution, this critical stance is not being implemented in the State Department’s annual Trafficking in Persons Report (“TIP Report”) to Congress, even though making “serious and

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<sup>1</sup> “When we stop this crime from happening in the first place, we are preventing the abuse of those who are victimized as well as the ripple effect that caused damage throughout communities into our broader environment and which corrupt our global supply chains. We all have an interest in stopping this crime. That’s why President Obama is so focused on this issue. And that’s why, as Secretary of State, I will continue to make the fight against modern-day slavery a priority for this Department and for the country.” Secretary of State John Kerry. Remarks at the 2013 Trafficking in Persons Report Release. Benjamin Franklin Room, Washington, D.C. 19 June 2013. Address.

<sup>2</sup> See, e.g., Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, as amended (“TVPA”), United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000 (“Palermo Protocol”), the Europe Convention on Action against Human Trafficking, and the 2011 EU Directive of the European Parliament and the Council.

<sup>3</sup> European Commission Communication From the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 Brussels, 19.6.2012 COM (2012).

<sup>4</sup> Europol. *Trafficking in Human Beings in the European Union* (“Europol Report”). September 2011. The Hague.

<sup>5</sup> United Nations Office of Drug and Crime. *Global Report on Trafficking in Persons* (“UNODC Global Report”). 2010. Print.

<sup>6</sup> We recognize that labor trafficking is prevalent, with 2012 global estimates from the International Labor Organization putting the number of labor exploitation and state imposed forced labor victims at 16.4 million. This proposal is not intended to focus on demand for labor trafficking, but is solely focused on sex trafficking and reducing the demand for commercial sex.

<sup>7</sup> See, e.g., Di Nicola, Andrea, Isabella Orfano, Andrea Cauduro, and Nicoletta Conci. *Study on National Legislations on Prostitution and the Trafficking in Women and Children*. Brussels: European Parliament, 2005. Transcrime. Web. 11 July 2013.; Jakobsson, Niklas, and Andreas Kotsadam. “The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation.” *European Journal of Law and Economics* 35.1 (2013): 87-107. Print.; Cho, Seo-Young, Axel Dreher, and Eric Neumayer. “Does Legalized Prostitution Increase Human Trafficking?” *World Development* 41.1 (2013): 67-82. *Social Science Research Network*. Web. 12 July 2013. <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1986065](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986065)>.

<sup>8</sup> Ibid.

<sup>9</sup> See e.g., TVPA; National Security Presidential Directive-22. The White House. Washington, D.C. December 16, 2002. <http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf> (“Presidential Directive 22”); United States. Department of State. Bureau of Public Affairs. *The Link Between*

sustained efforts to reduce demand for commercial sex” is a criteria for meeting the minimum standards for the elimination of trafficking in persons. This glaring inconsistency must be remedied. Because legal prostitution fuels human trafficking, nations that maintain a legal model of prostitution are not simply neutral in meeting the criteria mandated by the Trafficking Victims Protection Act of 2000 (TVPA) for making serious and sustained efforts to reduce demand for commercial sex, but are actually making serious and sustained efforts to *increase* that demand.

As stated, the TVPA mandates that nations make prevention a priority, and has made reducing demand for commercial sex a significant criterion in determining full compliance with the minimum standards for the elimination of trafficking in persons. However, the TVPA has no clear guidelines on what constitutes “serious and sustained efforts to reduce demand for commercial sex”, or how this important criteria is to be measured. This lack of clarity is a significant problem that must be addressed, as the lack of rigor and quality in addressing this critically important aspect of prevention is having negative consequences on the prevention of human trafficking around the globe and is inhibiting major steps forward that could be taken if proper evaluation and reporting were taking place.

This proposal in the long term advocates for:

- The amendment of the TVPA to include in its criteria for meeting the fourth minimum standards for the elimination of trafficking in persons, language that would trigger failure to reduce demand for commercial sex for countries with legal prostitution as a national policy.
  - Section 108(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7106(b)) is amended— (1) in paragraph (12)—

(A) by inserting after subparagraph (B) the following:

“(C) For purposes of subparagraph (A), if the government of the country has the constitutional authority to do so and does not prohibit the purchase of commercial sex acts, it shall not be deemed to have made serious and sustained efforts to reduce demand for commercial sex acts regardless of other efforts to reduce demand for commercial sex acts.”.

This proposal in the short term advocates for:

- Immediate revision and adoption of administrative rule for the way that the United States Department of State Office to Monitor and Combat Trafficking in Persons judges full compliance with the fourth minimum standard.
  - If a country has a system of legal prostitution, the Office shall not consider said nation to fully comply with the criteria of making serious and sustained efforts to reduce demand for commercial sex.
  - Additionally, at a minimum we propose that if a country has a system of legal prostitution, reversing this policy should be mentioned as a recommendation in the country narrative, and the issue should also be addressed in the prevention section of the country narrative.

## The United States’ Position on Prostitution and Sex Trafficking

The United States Government as an international leader in the fight against human trafficking has taken a strong position and implemented important policy regarding the connection between prostitution and sex trafficking. In 2013, the TIP Report stated

definitively, “If there were no demand for commercial sex, sex trafficking would not exist in the form it does today. This reality underscores the need for continued strong efforts to enact policies and promote cultural norms that disallow paying for sex.”<sup>10</sup>

In a February 2002 National Security Presidential Directive, President George W. Bush wrote: “The United States opposes prostitution and any related activities, including pimping, pandering, and/or maintaining brothels as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The United States Government’s position is that these activities should not be regulated as a legitimate form of work for any human being.”<sup>11</sup> The Government has been clear in recognizing that legal prostitution fuels human trafficking, and stands in agreement with the international community in emphasizing that demand for human trafficking victims must be reduced in order to prevent sex trafficking. The U.S. Department of State has been strong in stating publicly the Government’s position, that there is a definitive link between prostitution and human trafficking.<sup>12</sup> Ambassador Mark Lagon, former Director of the US State Department’s Office to Monitor and Combat Trafficking in Persons made the position of the United States clear saying,

Two years after the enactment of the TVPA, the U.S. Government adopted a strong position against prostitution in a December 2002 policy decision, which notes that prostitution is inherently harmful and dehumanizing and fuels trafficking in persons. Turning people into dehumanized commodities creates an enabling environment for human trafficking. The United States Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels as contributing to the phenomenon of trafficking in persons.... This policy represents a significant paradigm shift. U.S. policy now categorizes prostitution as primarily a harmful phenomenon rather than a neutral work choice or market transaction. Why? Because prostitution fuels human trafficking. Because few activities are as brutal and damaging to people as prostitution. And because organized crime networks do not protect prostituted people.<sup>13</sup>

Furthermore, the U.S. Department of State made a definitive statement in the 2008 TIP Report, reiterating the U.S. position on human trafficking and prostitution by stating,

Sex trafficking would not exist without the demand for commercial sex flourishing around the world. Prostitution and related activities—including pimping and patronizing or maintaining brothels—encourage the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation operate. Where prostitution is tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery. Few women seek out or choose to be in prostitution, and most are desperate to leave it. A 2003 scientific study in the Journal of Trauma Practice found that 89 percent of women in prostitution want to escape prostitution but had no other options for survival.<sup>14</sup>

Supporting this position is the United States’ most important piece of legislation concerning human trafficking, the TVPA. The TVPA and its reauthorizations, define, mandate, and fund the U.S. Government’s anti-trafficking work both at home and abroad. It is important to point out that consistent with the U.S. position on sex trafficking and prostitution, the TVPA specifically restricts anti-trafficking funds to groups that oppose prostitution. Why? Because the United States Government takes the position that tolerated prostitution<sup>15</sup> is a cause of human trafficking and must be opposed and reduced in order to effectively combat human trafficking.

Furthering this position, “the TVPA, as amended most recently in the 112th Congress by the National Defense Authorization Act for Fiscal Year 2013, requires the President to authorize federal agencies and departments to terminate, without penalty, grants, contracts, and cooperative agreements if the grantee, sub-grantee, contractor, or subcontractor engages in or uses labor recruiters,

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<sup>10</sup> United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *2013 Trafficking in Persons Report* (“2013 TIP Report”), p. 27 Print.

<sup>11</sup> Presidential Directive 22, *supra*, note 9.

<sup>12</sup> Bureau of Public Affairs, *supra*, note 9.

<sup>13</sup> *Overlaps of Prostitution, Migration and Human Trafficking*, Ambassador Mark P. Lagon, Director of the Office to Monitor and Combat Trafficking in Persons Berne, Switzerland (November 12, 2008) <http://2001-2009.state.gov/g/tip/rls/rm/2008/111997.htm>

<sup>14</sup> United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *2008 Trafficking in Persons Report* (“2008 TIP Report”), Print.

<sup>15</sup> United States. Cong. *Trafficking in Persons: International Dimensions and Foreign Policy Issues for Congress*. By Liana Sun Wyler. Cong. Rept. Washington, D.C.: Congressional Research Service, 2013.

brokers, or other agents who engage in the procurement of a commercial sex act while the grant, contract, or cooperative agreement is in effect.”<sup>1617</sup>

In addition to the TVPA, the U.S. Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003,<sup>18</sup> which contains the President’s Emergency Plan for AIDS Relief, a major HIV/AIDS funding program, had also made the Government’s position on prostitution clear. The Act required agencies who desired government funding to oppose prostitution and sex trafficking by taking a pledge against prostitution and sex trafficking. The Act specified that,

Prostitution and other sexual victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic. One in nine South Africans is living with AIDS, and sexual assault is rampant, at a victimization rate of one in three women... Victims of coercive sexual encounters do not get to make choices about their sexual activities.<sup>19</sup>

Section 101 of the Act addresses the development of a comprehensive, five-year, global strategy. The Act states that the President shall prioritize prevention by means of “eradicating prostitution, the sex trade, rape, sexual assault and sexual exploitation of women and children”, among other things. Although the requirement of taking a position against prostitution was recently struck down as unconstitutional by the Supreme Court, the position of the Government was still recognized as valid.

Additionally, The U.S. Uniform Code of Military Justice (UCMJ) further emphasizes the United States’ position on prostitution. On October 14, 2005, President Bush signed E.O. 13387 "2005 Amendments to the Manual for Courts-Martial, United States" that enumerates the Article 134, UCMJ, offense of "patronizing a prostitute." "Patronizing a prostitute" is an Article 134 offense and is punishable by a Dishonorable Discharge, confinement for one year, reduction in grade to E-1 and forfeiture of all pay and allowances. Additionally, The Military Extraterritorial Jurisdiction Act (MEJA) passed in 2000, made serious crimes committed abroad by military personnel punishable as if they had been committed at home. Under MEJA jurisdiction, military dependents, Department of Defense (DoD) civilians, and civilian contractors of DoD outside the U.S. who act in concert with persons not subject to UCMJ can still be indicted if they "...engaged in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States..."<sup>20</sup> Therefore if such persons engage in "patronizing a prostitute", they too can be indicted.

It is clear that the United States has taken a strong position against prostitution and has specifically recognized the linkage between human trafficking and prostitution. This is evidenced in the law and policy of the United States and clearly spelled out in the TVPA, the U.S. Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, the UCMJ and the MEJA among other important government reports and publications such as the U.S. Office to Monitor and Combat Trafficking in Persons, TIP Report.

The issue being faced is that this important position is not being implemented in a systematic way in the TIP Report, with nations such as Australia, Germany, Spain and the Netherlands to name a few, hardly receiving mention of their legal prostitution markets and they way the nation’s prostitution policy is increasing demand for trafficking victims.

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<sup>16</sup> Ibid

<sup>17</sup> On January 2, 2013, the bill was signed by the President. H.R. 4310 incorporated elements of other bills introduced in the 112th Congress, including S. 3254, the National Defense Authorization Act for Fiscal Year 2013; H.R. 4259 and S. 2234, the End Trafficking in Government Contracting Act of 2012; and S. 3286 and S. 2139, the Comprehensive Contingency Contracting Reform Act of 2012.

<sup>18</sup> H.R. 1298--108th Congress: United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003. (2003). In [www.GovTrack.us](http://www.GovTrack.us). Retrieved April 23, 2013, from <http://www.govtrack.us/congress/bills/108/hr1298>

<sup>19</sup> Public Law 108--25 108th Congress United States AIDS, Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of Tuberculosis, and Malaria Act of 2003, Section 2, Paragraph 23.

# Prostitution and Sex Trafficking

As stated, the U.S. State Department asserts that prostitution and human trafficking are inextricably linked. In the 2008 U.S. TIP report to Congress, for example, the State Department asserts that “sex trafficking would not exist without the demand for commercial sex flourishing around the world” and that prostitution and any related activities “should not be regulated as a legitimate form of work for any human being.”<sup>21</sup> The TVPA restricts anti-trafficking funds to groups that oppose prostitution as stated above for this very reason. As is noted in the TVPA, prostitution and sex trafficking must be dealt with simultaneously in order to effectively combat the injustice of human trafficking for sexual exploitation. Most detected and identified cases of human trafficking around the world at this time, are sex trafficking cases. The 2009 report of the UNODC states that worldwide seventy-nine of identified victims of human trafficking were subject to sexual exploitation in prostitution, eighteen percent to forced labor and three percent to other forms of exploitation. Of these victims, sixty-six percent were women, thirteen percent girls, twelve percent men and nine percent boys.<sup>22</sup> When speaking specifically of cross border international human trafficking, the UNODC reported that of the 600,000-800,000 people that are trafficked internationally each year, the majority are women and girls trafficked for the purpose of forced prostitution.<sup>23</sup> The phenomenon of sex trafficking and sexual slavery is massive and millions are affected. In 2013 the UNODC reported that there were an estimated 4.5 million victims of sex slavery in the world at any given time, and that ninety-eight percent of these victims are women and girls.

We recognize that labor trafficking is a grievous crime and the seriousness and pervasiveness of the injustice of labor trafficking is by no means being ignored. However, when looking at developed countries that are primary destination countries for victims of human trafficking we can see that sex trafficking is the primary form of trafficking in such nations and prostitution the primary destination point. For example, in the European Union, most trafficking is for the purpose of sexual exploitation in prostitution. The result of the analysis of data collected by the European Commission in September 2011 on victims of human trafficking, found that three quarters of registered victims were trafficked for sexual exploitation (an increase from seventy percent in 2008 to seventy-six percent in 2010) and the rest for labor exploitation (a decrease from twenty-four percent in 2008 to fourteen percent in 2010), forced begging (three percent) and domestic servitude (one percent).<sup>24</sup> Twenty-one EU Member States were able to give gender-specific information. This shows that over the three years women and girls are the main victims of trafficking in human beings; female victims accounted for seventy-nine percent, of whom twelve percent were girls.<sup>25</sup> In 2011 Europol reported, “[t]rafficking for sexual exploitation is the most common form of trafficking in the EU. Victims are moved in and around the EU, both across borders and internally, and are exploited in all environments.”<sup>26</sup> In Canada, the United States, Australia, and the United Kingdom, we find the same trend. Most victims of human trafficking in these destination countries are trafficked for the purpose of sexual exploitation in prostitution.<sup>27</sup>

This leads to the conclusion that particularly in developed destination countries for victims of sex trafficking, one cannot effectively address the massive injustice of sex trafficking without seriously looking at the prostitution industry and the demand for prostituted women and girls in the industry. Because the prostitution industry is a primary destination point for victims of human trafficking, both prostitution and human trafficking must be addressed simultaneously in order for progress against the injustice to be made. If we want to stop sex trafficking we must address the issue of legalized prostitution and how such prostitution policy affects demand for victims, because “prostitution and sex trafficking are linked. Sex trafficking happens when and where there is a demand for prostitution and a context of impunity for its customers.”<sup>28</sup>

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<sup>21</sup> United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *2008 Trafficking in Persons Report* (“2008 TIP Report”), Print.

<sup>22</sup> UNODC Global Report, *supra*, note 5.

<sup>23</sup> *Ibid*

<sup>24</sup> European Commission. *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. Brussels, 2012. 19 June 2012. Web.

<sup>25</sup> *Ibid*, The statistics collected via Eurostat provide a general overview based on the replies received from all 27 Member States for 2008 to 2010.

<sup>26</sup> Europol Report, *supra*, note 4.

<sup>27</sup> See generally, United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report* for the years 2001-2013.

<sup>28</sup> Farley, Melissa. "Myths and Facts about Trafficking for Legal and Illegal Prostitution." *Prostitutionresearch.com*. Prostitution Research & Education, Mar. 2009. Web.

# Legal Prostitution Increases the Demand for Sex Trafficking Victims

There is wide international consensus on the absolute requirement that demand for human trafficking victims be addressed in order to prevent human trafficking. For example, The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000, the Europe Convention on Action against Human Trafficking,<sup>29</sup> and the 2011 EU Directive of the European Parliament and the Council on preventing and combating trafficking in human beings,<sup>30</sup> all specifically address the need to prevent human trafficking by reducing demand for trafficking victims.<sup>31</sup>

Research has shown that legal prostitution increases the demand for prostituted persons and thus increases the market for sex. As a result, there is a significant increase in instances of human trafficking. In 2012 researchers Seo-Young Cho, Axel Dreher, Eric Neumayer published their research findings that demonstrated “the scale effect of legalizing prostitution leads to an expansion of the prostitution market and thus an increase in human trafficking, while the substitution effect reduces demand for trafficked prostitutes by favoring prostitutes who have legal residence in a country.”<sup>32</sup> Their quantitative empirical analysis for a cross-section of up to 150 countries proved that the scale effect dominated the substitution effect. “On average, countries with legalized prostitution experience a larger degree of human trafficking inflows.”<sup>33</sup> In addition, in 2005 Di Nicola et al. provided descriptive statistics focusing on 11 EU countries. According to their results, stricter prostitution laws are correlated with reduced flows of human trafficking.<sup>34</sup> In addition to Cho et al. and Di Nicola et al., researchers Niklas Jakobsson and Andreas Kotsadam found a casual link between legal prostitution and increases in human trafficking. Using recent sources of European cross country data Jakobsson and Kotsadam found that trafficking of persons for commercial sexual exploitation is least prevalent in countries where prostitution is illegal and most prevalent in countries where prostitution is legalized.<sup>35</sup>

Evidence of the negative effect of legalized prostitution on human trafficking can be seen in the case of the Netherlands. When the Dutch government lifted the ban on brothels in 2000, making prostitution on par with any other business, organized crime spun further out of control. Job Cohen, the former mayor of Amsterdam said, “We’ve realized this is no longer about small-scale entrepreneurs, but that big crime organizations are involved here in trafficking women, drugs, killings and other criminal activities”<sup>36</sup> As a result, in 2007 the Dutch government was compelled to close approximately one third of the legal brothels in Amsterdam because of its inability to control traffickers and other organized crime groups.<sup>37</sup> In 2008, eight years after the removal of the brothel ban in the Netherlands, the National Dutch Police carried out a study, titled *Schone Schijn*, of human trafficking in the legalized prostitution sector. The researchers estimated that fifty to ninety percent of women in legalized prostitution were “working involuntarily.” Based on these estimates, the city of Amsterdam legal brothel sector alone would “employ” approximately 4,000 victims of human trafficking annually.

The link between legal prostitution and human trafficking in Australia was highlighted in the U.S. State Department's 1999 Country Report on Human Rights Practices, released by the Bureau of Democracy, Human Rights and Labor. The report noted that “Trafficking in East Asian women for the sex trade is a growing problem. Immigration and federal police have developed profiles and identified trends in the industry, but lax laws--including legalized prostitution in parts of the country--make (anti-

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<sup>29</sup> Council of Europe. *Convention Against Trafficking in Human Beings*. Warsaw, 2008. Chapter 2, Article 6.

<sup>30</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Article 18

<sup>31</sup> United Nations. Office on Drugs and Crime. *Convention against Transnational Organized Crime and the Protocols Thereto*. New York, 2004. Print. Article 9.5 says “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

<sup>32</sup> Cho, *supra*, note 7.

<sup>33</sup> *Ibid*.

<sup>34</sup> Di Nicola, *supra*, note 7.

<sup>35</sup> Niklas Jakobsson & Andreas Kotsadam, 2013. “The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation,” *European Journal of Law and Economics*, Springer, vol. 35(1), pages 87-107, February.

<sup>36</sup> Simons, Marlise. “Amsterdam Tries Upscale Fix for Red-Light District” *Crime*. New York Times, 24 Feb. 2008.

<sup>37</sup> 2008 TIP Report, *supra* note 19.

trafficking) enforcement difficult at the working level.”<sup>38</sup> Since 1992 prostitution laws in Australia have been characterized by a predominantly liberal and lax approach with states such as Victoria, New South Wales, and Queensland adopting models of legal prostitution that enable a booming sex industry with a large demand. In the legal brothels of Victoria, Australia, prostituted women service 3.1 million buyers per year from an adult male population of 1.3 million.<sup>39</sup> New South Wales (NSW), Australia has adopted some of the most liberal laws that not only allow the sale of sex, but also allow brothels to operate legally, although in reality, illegal brothels in NSW outnumber legal ones by a ratio of four to one.<sup>40</sup> Chris Seage the spokesperson for the Adult Business Association has said the situation in Sydney is “out of control” as the total number of brothels in 2009 was set to exceed 400 and was growing.<sup>41</sup> Because of laws that legalize and decriminalize the sex industry, Australia has given traffickers and pimps a relatively hospitable operating environment. Contrary to progressive thought, based on two decades of research, which views prostitution as a form of violence against women, the NSW government has adopted an “old think” mentality on the issue of prostitution. This mentality, which views the buying and selling of people as a legitimate form of business, denies the factual link between legal prostitution and the injustice of sex trafficking,<sup>42</sup> and provides an enabling environment for traffickers, pimps and buyers to continue to exploit with impunity. The decriminalization of prostitution in NSW is not only a barrier to the effective prevention of the trafficking of women into the sex industry, but is also a predominate cause of the trafficking of women in NSW. The Sydney Morning Herald reported in May 2012 that plans are underway in Sydney to build the biggest brothel in Australia, which, if approved, will be opened twenty-four hours per day with sixty-one rooms in operation.<sup>43</sup> According to a March 2012 report funded by the Ministry of Health, there are as many as two hundred legal brothels within twenty kilometers of Sydney's central business district.<sup>44</sup> In 2010 it was reported, based on a government survey, that in NSW as a whole there were 271 legal brothels and many more illegal brothels. The number reported was “just the beginning,” as only fifty-six of NSW's 152 councils responded to the government survey on which the numbers were based. It is not surprising that there are an estimated 10,000-prostituted people working in the sex industry in NSW, putting the state on par with Amsterdam. “Experts say it is far easier to start a brothel than a pub” in NSW.<sup>45</sup> These numbers indicate a growing prostitution market, and they also indicate that the demand for sex in NSW is very high. One of the results has been the trafficking in women and children into Australia from other countries in order to 'supply' the increasing demand caused by the expansion of the sex industry. “The 'sex entrepreneurs' have difficulty recruiting women locally to supply an expanding industry, and trafficked women are more vulnerable and more profitable.”<sup>46</sup> Where government sanctioned prostitution exists, trafficking persists. The Swedish Government has said, “International trafficking in human beings could not flourish but for the existence of local prostitution markets where men are willing and able to buy and sell women and children for sexual exploitation.”<sup>47</sup> Such is the case in Australia.

In addition to the Netherlands and Australia, Germany has shown the negative results of an uninhibited sex industry on the trafficking of women for sexual exploitation. As early as 1993, after the first steps towards legalization had been taken, it was recognized (even by pro-prostitution advocates) that seventy-five of the women in Germany's prostitution industry were foreigners from Uruguay, Argentina, Paraguay and other countries in South America.<sup>48</sup> After the fall of the Berlin wall, brothel owners reported that nine out of every ten women in the German sex industry were from Eastern Europe and other former

<sup>38</sup> United States. Department of State. Bureau of Democracy, Human Rights, and Labor. *1999 Country Reports on Human Rights Practices*. Washington, D.C., 2000. Entry for Australia.

<sup>39</sup> Malarek, Victor. "Welcome to Johns World." *The Johns: Sex for Sale and the Men Who Buy It*. New York: Arcade Pub., 2009. 12-13. Print.

<sup>40</sup> Illegal brothels are exploding across Sydney amid accusations all levels of government are doing little to drive them out of business. It's been claimed "tough" new laws have failed to prevent unprotected sex, slavery and corruption. An investigation by The Daily Telegraph has revealed illegal brothels and escort services outnumber licensed establishments by four to one and the gap is growing.” Daily Telegraph May 18 2008 See also, Gartlan, Pat. "Legalised Prostitution Is a Failed Experiment." Editorial. *The Examiner* [Launceston, Australia] 15 May 2012. Web.

<sup>41</sup> Walters, Adam. "Illegal Brothels Booming across Sydney." *The Daily Telegraph* [Sydney, Australia] 18 May 2009. Web. <http://www.dailytelegraph.com.au/news/nsw/illegal-brothels-booming-across-sydney/story-e6freuzi-1225713067757>.

<sup>42</sup> Cho, *supra*, note 7.

<sup>43</sup> "Australia's Biggest Brothel Poised to Get Planning Nod." *The Sydney Morning Herald* 28 May 2012. Web. <http://www.smh.com.au/business/australias-biggest-brothel-poised-to-get-planning-nod-20120528-1zdzq2.html>.

<sup>44</sup> *Ibid*.

<sup>45</sup> Tabakoff, Nick. "Sydney the Brothel Capital of the South Pacific." *The Daily Telegraph* [Sydney, Australia] 11 Nov. 2010. Web. <http://www.dailytelegraph.com.au/archive/national-old/sydney-the-brothel-capital-of-the-south-pacific/story-e6freuzr-1225952320313>.

<sup>46</sup> Poulin, Richard. "The Legalization of Prostitution and Its Impact on Trafficking in Women and Children." *Sisyphus.org*. 6 Feb. 2005. Web. <http://sisyphe.org/spip.php?article1596>.

<sup>47</sup> Sweden. Ministry of Industry, Employment and Communications. Division for Gender Equality. *Prostitution and Trafficking in Women*. Stockholm, 2004. Web. <[http://myweb.dal.ca/mgoodyea/Documents/Sweden/prostitution\\_fact\\_sheet\\_sweden\\_2004.pdf](http://myweb.dal.ca/mgoodyea/Documents/Sweden/prostitution_fact_sheet_sweden_2004.pdf)>.

<sup>48</sup> Altink, Sietske. *Stolen Lives: Trading Women Into Sex and Slavery*. London: Scarlet, 1995. 33.



Soviet countries. "NGOs report that most of the foreign women had been trafficked into the country since it is almost impossible for poor women to facilitate their own migration, underwrite the costs of travel and travel documents, and set themselves up in business without outside help."<sup>49</sup>

Where prostitution is legal, trafficking flourishes. Traffickers will always seek to supply a demand for sex where it exists. The legal sex industry then acts as a magnet for traffickers, increasing the number of women who are being exploited. "Legal prostitution sanitizes prostitution, making the harms of trafficking for prostitution invisible. Suddenly, dirty money becomes clean. Illegal acts become legal. Overnight, pimps are transformed into legitimate businessmen and ordinary entrepreneurs, and men who would not formerly consider buying a woman in prostitution think, 'Well, if it's legal, now it must be O.K.'"<sup>50</sup>

## Prostitution is Inherently Harmful, A Form of Violence Against Women

When analyzing prostitution research that has been conducted over the past two decades it becomes clear that prostitution, whether legal or illegal, is inherently harmful and a form of violence against women. The longer a woman or child is in prostitution the more she is psychologically harmed and physically endangered.<sup>51</sup> Research published in the scientific Journal of Trauma Practice, took place in nine countries (5 of the nine were countries where prostitution is legal) and surveyed 854 prostituted women. The study concluded that 60-75 percent of women in prostitution were raped, 70-95 percent were physically assaulted, and sixty-eight percent met the criteria for post-traumatic stress disorder in the same range as treatment-seeking combat veterans and victims of state-organized torture.<sup>52 53</sup> Eighty-nine percent of the 854 prostituted women told the researchers that they urgently wanted to escape prostitution.

Many similar studies have been conducted with similar results. For example, according to a study published in the British Journal of Psychiatry more than half of women in prostitution in the United Kingdom have been raped and or seriously assaulted and at least seventy-five percent have been physically assaulted at the hands of pimps and johns.<sup>54</sup> A report in the British Medical Journal about client violence towards women in prostitution stated that of the 125 women in indoor prostitution contacted, forty-eight percent had experienced client violence. The types of violence experienced included: being slapped, punched, or kicked; robbery; attempted robbery; beaten; threatened with weapon; held against will; attempted rape; strangulation; kidnapped; attempted kidnap; forced to give client oral sex; vaginal rape and anal rape.<sup>55</sup>

An article in the Michigan Journal of Gender and Law states, "It is not possible to protect the health of someone whose "job" means that they will get raped on average once a week."<sup>56</sup> One woman explained that prostitution is "like domestic violence taken to the extreme." The sexual service provided in prostitution is most often violent, degrading and abusive, including sex between a buyer and several women; slashing the woman with razor blades; tying women to bedposts and lashing them until they bleed; biting women's breasts; burning the women with cigarettes; cutting her arms, legs and genital areas; and urinating and defecating

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<sup>49</sup> Ibid. p. 43

<sup>50</sup> Farley, *supra*, note 26.

<sup>51</sup> Ibid.

<sup>52</sup> Farley, Melissa, et al. "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder." *Journal of Trauma Practice* 2.3/4 (2003): 33-74. *Prostitutionresearch.com*. Web. <<http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>>.

<sup>53</sup> Ramsey, R., et al "Psychiatric Morbidity in Survivors of Organized State Violence Including Torture." *The British Journal of Psychiatry* 162 (1993): 55-59. Print.

<sup>54</sup> United Kingdom. Home Office. *Solutions and Strategies: Drug Problems and Street Sex Markets*. By Gillian Hunter and Tiggey May. London, 2004. Web. <<http://www.vawpreventionscotland.org.uk/sites/default/files/Drug%20Problems%20and%20Street%20Sex%20Markets.pdf>>.

<sup>55</sup> Church, Stephanie, et al. "Violence by Clients Towards Female Prostitutes in Different Work Settings: Questionnaire Survey." *British Medical Journal* 322 (2001): 524-25.

<sup>56</sup> Hunter, Susan K. "Prostitution Is Cruelty and Abuse to Women and Children." *Michigan Journal of Gender & Law* 1 (1993): 91.

on women.<sup>57</sup> Women who have worked in prostitution exhibit the same incidents of traumatic brain injury (TBI) as a result of being beaten, hit, kicked in the head, strangled or having one's head slammed into objects which have been documented in torture survivors.<sup>58</sup> Furthermore, a study published in the American Journal of Epidemiology found that the mortality rate of women in prostitution to be 200 times higher than the general population.<sup>59</sup> A mortality survey of 1600 women in U.S. prostitution noted "no population of women studied previously had the percentage of deaths due to murder even approximating those observed in our cohort".<sup>60</sup> In this mortality survey, murder accounted for fifty percent of the deaths of women in prostitution.

## Minimum Standards for Combatting Trafficking in Persons: The 4<sup>th</sup> Minimum Standard

Section 108(a) of the Trafficking Victims Protection Act establishes four minimum standards by which each nation's anti-human trafficking efforts are evaluated in the annual TIP Report.<sup>61</sup> Of particular importance in this discussion is the fourth minimum standard, which states that "[t]he government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons."<sup>62</sup> The TVPA then goes on in Section 108(b) to provide twelve criteria that "should be considered as indicia" of a government's efforts required by the fourth minimum standard.<sup>63</sup> Among these twelve criteria are provisions related to government activities such as the investigation and prosecution of acts of trafficking in persons as well as protection of trafficking victims.<sup>64</sup> Also included in the criteria is whether a government has "made serious and sustained efforts to reduce the demand for commercial sex acts."<sup>65</sup> Thus the TVPA stipulates that a government's efforts to reduce demand for commercial sex are an integral part of making serious and sustained efforts to eliminate human trafficking.

As shown in the sections above, legalized models of prostitution actually increase the demand for commercial sex, which inevitably increases incidents of human trafficking for the purpose of sexual exploitation. Consequently, any government with a legalized model of prostitution has in place a legal system that does not simply make no serious and sustained efforts to reduce demand for commercial sex but one that actually *increases* that demand. In other words, a country with legalized prostitution is not simply neutral in its efforts to reduce demand for commercial sex (which would, by itself, constitute a failure to meet this criteria) but is actually doing the opposite and undertaking efforts to increase that demand.

Section 110(b)(1) of the TVPA instructs the Secretary of State to submit the annual TIP Report to Congress.<sup>66</sup> The TIP Report is required to place each country into one of three tiers based upon whether a country meets the minimum standards for the elimination of trafficking in persons listed in section 108(a).<sup>67</sup> The top ranking—known as "Tier 1"—is to be reserved for countries that "fully comply" with those minimum standards.<sup>68</sup>

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<sup>57</sup>Raymond, Janice, et al. *A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)*. Coalition Against Trafficking in Women (CATW), 2002. Web.

[http://reliefweb.int/sites/reliefweb.int/files/resources/7092F5115C910FD8C1256F56003B65FD-Gender\\_Migration\\_CATW\\_2002.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/7092F5115C910FD8C1256F56003B65FD-Gender_Migration_CATW_2002.pdf).

<sup>58</sup>Jacobs, Uwe, and Vincent Iacopino. "Torture and Its Consequences: A Challenge to Clinical Neuropsychology." *Professional Psychology: Research and Practice* 32.5 (2001): 458-64.

<sup>59</sup>Potterat, John J., et al. "Mortality in a Long-term Open Cohort of Prostitute Women." *American Journal of Epidemiology* 159.8 (2004): 778-85. Longitudinal study of prostitution in Colorado Springs – sample size: 1,969 people in prostitution from 1967-1999.

<sup>60</sup>Ibid.

<sup>61</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 108(a) (2000), as amended.

<sup>62</sup> Ibid., § 108(a)(4).

<sup>63</sup> Ibid., § 108(b).

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., § 108(b)(12).

<sup>66</sup> Ibid., § 110(b)(1).

<sup>67</sup> Ibid.

<sup>68</sup> Ibid., § 110(b)(1)(A).

The phrase “fully comply” is left undefined in the TVPA, thus its definition must be derived from the plain meaning of the word or phrase.<sup>69</sup> In this case, the plain meaning definition of “fully comply” could be said to be, “in a full manner or degree to conform, submit, or adapt (as to a regulation or to another's wishes) as required or requested.”<sup>70</sup> Given the fact that legal prostitution increases demand for commercial sex and that the TVPA requires that a government undertake efforts to reduce demand for commercial sex, it follows logically that a nation with a legal model of prostitution should not be found by the State Department to “fully comply” with the minimum standards, since that nation would be acting in direct contradiction of those minimum standards.

Yet not only does the State Department regularly state that nations with legalized prostitution fully comply with the minimum standards, but it also goes so far as to credit those same governments with making serious and sustained efforts to reduce demand for commercial sex. Many of the things that these governments get credit for have little or no data or research to support the assertion that they reduce demand for commercial sex (or even have anything at all to do with demand).

For example, in the 2013 TIP Report, the Netherlands attains a Tier 1 ranking for fully complying with the minimum standards.<sup>71</sup> That nation also receives praise for its “innovative approaches to prevent trafficking and address demand for commercial sex acts.”<sup>72</sup> Those efforts include continuing what the State Department calls “a previously successful campaign to educate clients of women in prostitution about trafficking and encouraged them to anonymously report signs of exploitation to authorities through the national anti-trafficking hotline.”<sup>73</sup> No statement is made to support how exactly educating clients in that way does anything to reduce demand. Further, encouraging clients of women in prostitution to report signs of exploitation does nothing to address demand—it actually addresses supply. The next example of demand reduction is that the Amsterdam police “conducted and publicized a sting operation at three hotels in 2012 to ensure compliance with a ban on illegal prostitution on their premises.”<sup>74</sup> The Report then goes on to state that, “in response the Dutch hotel association announced an industry policy favoring the dismissal of hotel managers who fail to prevent illegal prostitution in their hotels.”<sup>75</sup> In essence the government is credited for reducing demand by simply enforcing an already-existing law and for a hotel association (a non-government entity) simply adopting a policy of “favoring” dismissal of hotel managers that fail to prevent an already-illegal activity in their hotel (should not all hotel associations already have a policy that looks unfavorably upon managers failing to prevent illegal activity?). Yet neither of these efforts has anything to do with reducing demand for commercial sex. It is true that enforcement of a ban on illegal prostitution in a particular area will serve to reduce demand for *illegal* prostitution by discouraging the purchase of illegal commercial sexual services, but it does absolutely nothing to reduce demand for the vast legal commercial sex industry that exists. The response of the hotel association addresses only supply, not demand (not to mention the fact that the TIP Report explicitly states that the tier rankings are not affected by efforts undertaken by non-governmental actors<sup>76</sup>, thus rendering the hotel association’s response completely irrelevant).

The TIP Report goes on to detail another effort by the Dutch government to supposedly reduce demand for commercial sex: “In 2012, the government implemented a number of measures targeting local pimps who seduce young women and then coerce them into sex trafficking and forced prostitution in the Netherlands, including through an awareness campaign for students co-created by a former domestic trafficking victim.”<sup>77</sup> These government measures, though laudable, do nothing to address demand. By targeting pimps and the recruitment of women into forced prostitution, the government is explicitly addressing the *supply* of prostituted persons, not the demand.

The 2013 TIP Report country narrative for the nation of the Netherlands exemplifies the continuing problem of the lip service given in the TIP Report to the reduction of demand for commercial sex. Despite the mandate in the TVPA that governments

<sup>69</sup> See, e.g., *Caminetti v. United States*, 242 U.S. 470, 490 (1917).

<sup>70</sup> See, “Fully.” Def. 1. *M-w.com*. Merriam-Webster, Web. 11 July 2013, and “Comply.” Def. 2. *M-w.com*. Merriam-Webster, Web. 11 July 2013.

<sup>71</sup> United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *2013 Trafficking in Persons Report*, p. 277.

<sup>72</sup> *Ibid.*, p. 279.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.* p. 44.

<sup>77</sup> *Ibid.* p. 279.

should make serious and sustained efforts to reduce demand for commercial sex and the academic research establishing the relationship between legal prostitution and increased demand for commercial sex, the State Department continues to state that nations with legalized models of prostitution are in full compliance with the minimum standards. The State Department even goes so far as to credit these nations for making serious and sustained efforts to reduce demand for commercial sex even though they point only to examples which have no scientifically-established relationship to the reduction of demand for commercial sex. Established research and data state that legalized prostitution increases the demand for commercial sex, yet the State Department overlooks that data and makes assertions about the demand-reduction activities of a government that have no established basis in scientific research.

## TIP Report Relevance and Impact

According to the U.S. Department of State, the U.S. TIP Report to Congress is the “U.S. Government’s principal diplomatic tool to engage foreign governments on human trafficking...[and] reflects the U.S. Government’s commitment to global leadership on this key human rights and law enforcement issue.”<sup>78</sup> The report has been proven to have global impact on anti-trafficking policies. Examples of the power and impact of the Report have been tangibly seen in Cambodia, Israel, Japan, Nigeria, South Korea and the Philippines to name a few.<sup>79</sup> It is also the world’s most comprehensive resource of governmental anti-human trafficking efforts.<sup>80</sup> A June 2012 report by the State Department’s Office of Inspector General concluded that “[a]fter 10 years of publication, the TIP report has gained wide credibility for its thoroughness and is recognized as the definitive work by the anti-trafficking community on the status of anti-trafficking efforts and a catalyst for change globally.”<sup>81</sup> Some nevertheless argue that “inconsistent application of the minimum standards [mandated by TVPA] and superficial country assessments have compromised their credibility.”<sup>8283</sup>

Extensive international cooperation is needed in order to significantly impact the prevalence of trafficking in persons. States cooperate and adopt policies to impact human rights issues for a variety of reasons. Some scholars argue that both “carrots” and “sticks” are needed to influence policies of other governments.<sup>84</sup> Some argue that it is a country’s influence or its “soft power” that entices cooperation<sup>85</sup>, others argue that “soft coercion”, that of scrutiny and shaming in the form of information

<sup>78</sup> United States Department of State. *Trafficking in Persons Report*. Web. <<http://www.state.gov/j/tip/rls/tiprpt/>>.

<sup>79</sup> The Cambodian Government had been largely unresponsive to reports of the sexual exploitation of very young children in Svay Pak until the country was placed on Tier 3 in the 2002 TIP Report and designated as failing to meet the minimum standards for the elimination of trafficking in persons. International Justice Mission reports that U.S. Ambassador Charles Ray “leveraged the Tier Ranking and threat of diminished foreign assistance to persuade the Cambodian Government to begin taking child trafficking seriously. The Anti-Human Trafficking and Juvenile Protection police (AHTJP), led by General Bith Kim Hong, have since been effective in combating child trafficking, leading to hundreds of victim rescues, perpetrator arrests and convictions.” In the 2001 TIP Report Israel was placed on Tier 3 in large part for its failure to address the trafficking of women from Eastern and Central Europe into Israel for sexual exploitation. Following Israel’s placement on Tier 3, the Israeli government became significantly more engaged in combating human trafficking, passing anti-trafficking legislation in 2006, opening shelters, convicting traffickers, and taking more aggressive steps to monitor and confront labor trafficking. The release of the 2004 TIP Report with a Tier 2 Watch List ranking for Japan put strong international pressure on the nation as well as gave significant traction to domestic anti-trafficking advocates, which helped lead to the eventual passage of an anti-human trafficking law in the country. The TIP Report’s inclusion of a section on issues related to foreign “trainees” brought to Japan to work as apprentices generated significant media attention on the practice, and the Japanese government included reform of the system in its official 2009 National Action Plan. The TIP Report was an important catalyst for combating trafficking in Nigeria – particularly the trafficking of women to Italy for sexual exploitation. After Nigeria’s 2004 designation as a Tier 2 Watch List country, the wife of the President of Nigeria helped develop a comprehensive anti-trafficking framework, leading the country to secure a Tier 1 ranking in 2009. The Philippines was designated as a Tier 2 Watch List country for the second year in 2010, requiring significant improvement to avoid a Tier 3 ranking in the 2011 TIP Report. The TIP Office, strongly supported by the U.S. Embassy in Manila, worked closely with the Aquino Government to address weaknesses in the country’s capacity to combat sex- and labor trafficking. The government of the Philippines made profound reforms, including putting trafficking cases on a fast track to unclog a massive backlog. In the first three months of 2011 alone, there had been 12 convictions in anti-trafficking cases supported by International Justice Mission – compared with eight convictions in all of 2010.

<sup>80</sup> 美國在台協會. “Trafficking in Persons Report.” (2011).

<sup>81</sup> United States. Department of State and Broadcasting Board of Governors. Office of Inspector General. *Inspection of the Office to Monitor and Combat Trafficking in Persons*. ISP-I-12-37. June 2012. <[http://www.ncdsv.org/images/DOS-OIG\\_InspectionOfTheOfficeToMonitorAndCombatTraffickingInPersons\\_6-2012.pdf](http://www.ncdsv.org/images/DOS-OIG_InspectionOfTheOfficeToMonitorAndCombatTraffickingInPersons_6-2012.pdf)>.

<sup>82</sup> Chuang, Janie A. “The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking.” *Michigan Journal of International Law* 27.2 (2006): 437-94.

<sup>83</sup> United States. Cong. *Trafficking in Persons: U.S. Policy and Issues for Congress*. By Alison Siskin and Liana Sun Wyler. Cong. Rept. Washington, D.C.: Congressional Research Service, 2012.

<sup>84</sup> Department of State and Broadcasting Board of Governors, *supra*, note 80.

<sup>85</sup> Nye, Joseph S. *Soft Power*. New York: Public Affairs, 2004.

dissemination is what causes cooperation<sup>8687</sup> and others the “hard coercion” of economic sanctions is what causes nations to act. The U.S. TIP Report to congress encompasses all of the above. The TVPA allows for economic sanctions to be applied to states that do not comply to a certain degree with the set minimum standards for the elimination of trafficking in persons. In addition the U.S. TIP Report itself is a form of “soft coercion” in that it scrutinizes a nations’ anti-trafficking actions, or lack thereof, and a negative report and lower Tier ranking in the report is a substantial form of public shaming.

Because the U.S. TIP Report is a powerful diplomatic tool, we propose that a significant reduction in demand for trafficking victims can be achieved internationally by implementing the suggested changes to the way nations are analyzed in the TIP Report. Analyzing and reporting on the prostitution policy of the government of each country in the TIP Report is crucial in determining whether the nation is actually meeting the minimum standards for the elimination of trafficking in persons, by making “serious and sustained efforts to eliminate severe forms of trafficking in persons,” particularly whether or not a state is meeting the aforementioned fourth minimum standard by meeting the criteria of the government of the country making serious and sustained efforts to reduce the demand for commercial sex acts. We also propose that prostitution policies as they relate to the fourth minimum standard and criteria 12 must be including in the report and grading of each country and that this inclusion will have an important international impact because of the influence the TIP Report has on global policy and government action.

## Case Study: Spain

According the 2012 U.S. TIP Report, Spain is a destination and transit country for men, women, and children subjected to forced labor and sex trafficking. Victims originate from Eastern Europe, Latin America, East Asia, and sub-Saharan Africa. Additionally human trafficking victims are exploited and trafficked within the countries’ borders. The vast majority of detected cases of human trafficking in Spain were for the purpose of prostitution.<sup>88</sup> A recent article in the New York Times cited a 2009 study that determined thirty-nine percent of the male population in Spain admitted to purchasing sex at least once. According to an important Spanish government study conducted in 2007, there are between 900,000 and 1,500,000 purchases of sex every day in Spain, a nation with a population of 47,000,000.<sup>89</sup> What’s more, tourist cities like Barcelona attract and cater to visitors for whom purchasing sex is an expected part of their nightlife. Some tourist websites even go so far as promoting legal prostitution as a selling point.

According to the 2010 TIP Report, as many as 400,000 women were being prostituted in Spain and up to ninety-percent of these women were being forced to prostitute by organized crime groups.<sup>90</sup> Recent in-person discussions between government officials, police and NGOs in Spain, and Exodus Cry's leadership, indicated that no one disputed these statistics. In fact, many suggested that the current numbers must be higher as the sex industry continues to grow. This brings forth important insight; if the statistics cited in multiple TIP Reports, by government officials, Spanish government reports, Spanish NGOs and confirmed by Spanish police are correct, we can conclude that there are currently a minimum of 360,000 women trapped in sexual slavery in Spain. This number is startling, but what is more startling is the fact that for the last 12 years, Spain has received a Tier 1 rating in the U.S. TIP Report, and there has been little mention of the legal status of prostitution playing a role in the massive demand for prostituted women and girls in the unhindered and expansive sex industry in the nation. In the most recent TIP Report in 2012

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<sup>86</sup> “governments respond not only to public criticism and shaming, but also to scrutiny itself. That is, the mere inclusion in a monitoring scheme may prompt governments to take action to avoid potential shaming. . . We find that states respond faster to harsher grades, and that they react when their grade first drops below a threshold, but we also find that countries are more likely to criminalize human trafficking when they simply are included in the report. Because the US also ties the reports to economic assistance, we test whether the findings hold even when we control for aid and material sanctioning. Aid does enhance the effect of shaming, but both shaming and scrutiny contribute independently to state decisions to criminalize.” Kelley, Judith, and Beth Simmons. "From Scrutiny to Shame: Social Pressure in US Anti- Human Trafficking Policy." Reading. Hauser Colloquium. NYU School of Law, New York. 25 Oct. 2012. Web. <[http://iilj.org/courses/documents/Judith\\_Kelley\\_Hauser.pdf](http://iilj.org/courses/documents/Judith_Kelley_Hauser.pdf)>.

<sup>87</sup> Ibid.

<sup>88</sup> See generally, United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report* for the years 2001-2013.

<sup>89</sup> Comisión para la Investigación de Malos Tratos. “El cliente de prostitución. De invisible a responsable” 2007 *Comisión for the Investigation of Ill-Treatment*

<sup>90</sup> United States. Department of State. Office to Monitor and Combat Trafficking in Persons. *2010 Trafficking in Persons Report*. \_\_\_\_\_.

there was no mention of the role that legalized prostitution plays in the ever-increasing sex market, nor the issue of demand for sex trafficking victims.

Within the Spanish legal framework of prostitution, both the purchase and the sale of sex are legal. Although profiting from the prostitution work of another is prohibited, which means pimping and brothels are technically illegal, these scant restrictions are easily sidestepped and rarely enforced. Hotels, clubs, apartments, and houses can function as brothels.<sup>91</sup> In fact, a 2008 Spanish study found that there were 11,000 locations acting as brothels in Spain. In addition, street prostitution is legal and rampant and in many areas throughout the country.<sup>92</sup> The legal status of prostitution in Spain has been shown to increase trafficking by increasing the market for sex, and thus increasing the demand for prostituted women, regardless of ancillary unenforced laws such as the outlawing of pimping and brothels.

Considering the U.S. government's stance on legal prostitution previously stated and the fact that ninety-percent of the 400,000 prostituted persons in Spain are victims of sexual slavery, it is utterly unacceptable that the TIP Report has not only rated Spain as a Tier 1 country for 12 years in a row, but has also failed to significantly address the role that the uninhibited legal prostitution market, and the government's policy of legal prostitution, has played in the demand for prostituted women and the prevalence of sex trafficking, which is the number one form of trafficking in Spain.

## Proposed Changes

United States Department of State Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report must immediately begin to comprehensively address in relation to prevention, demand for prostituted persons by systematically addressing prostitution policy in TIP Report country profiles. Because of the U.S. position on prostitution which opposes the government support and sanctioning of the prostitution industry as a legitimate form of business, and the U.S. recognition of research based linkages to legal prostitution and increases in human trafficking due to expanded sex markets and increased demand for prostituted persons, it is critical that the TIP report reflect this position. The report must clearly emphasize the relation that each nation's prostitution policies play in the prevention or lack thereof of human trafficking.

This proposal in the long term advocates for:

- The amendment of the TVPA to include in its criteria for meeting the fourth minimum standard for the elimination of trafficking in persons, language that would trigger failure to reduce demand for commercial sex for countries with legal prostitution as a national policy.
  - Section 108(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7106(b)) is amended— (1) in paragraph (12)—

(A) by inserting after subparagraph (B) the following:

“(C) For purposes of subparagraph (A), if the government of the country has the constitutional authority to do so and does not prohibit the purchase of commercial sex acts, it shall not be deemed

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<sup>91</sup> Daley, Suzanne. "In Spain, Women Enslaved by a Boom in Brothel Tourism." *New York Times* 6 Apr. 2012. Web. <[http://www.nytimes.com/2012/04/07/world/europe/young-men-flock-to-spain-for-sex-with-trafficked-prostitutes.html?pagewanted=all&\\_r=3&](http://www.nytimes.com/2012/04/07/world/europe/young-men-flock-to-spain-for-sex-with-trafficked-prostitutes.html?pagewanted=all&_r=3&)>.

<sup>92</sup> Fundación Alternativas 2008. "Prostitución y políticas públicas: entre la reglamentación, la legalización y la abolición" (*Prostitution and public politics: between regulation, legalization and abolition*) Pedro Brufao Curiel

to have made serious and sustained efforts to reduce demand for commercial sex acts regardless of other efforts to reduce demand for commercial sex acts.”.

This proposal in the short term advocates for:

- Immediate revision and adoption of administrative rule for the way that the United States Department of State Office to Monitor and Combat Trafficking in Persons judges full compliance with the 4th minimum standard.
  - If a country has a system of legal prostitution, the Office shall not consider said nation to fully comply with the criteria of making serious and sustained efforts to reduce demand for commercial sex.
  - Additionally, at a minimum we propose that if a country has a system of legal prostitution, reversing this policy should be mentioned as a recommendation in the country narrative, and the issue should also be addressed in the prevention section of the country narrative.